

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.13837 of 2014

M.Muniappan

... Petitioner

vs.

1. The Director of Town Panchayat,  
Kuralagam, Chennai.
2. The District Collector,  
Dharmapuri District.
3. The Assistant Director of Town Panchayat,  
Dharmapuri Circle,  
Dharmapuri District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2<sup>nd</sup> Respondent in his proceedings Roc.No.5409/2010/T2, dated 29.11.2012 and Na.Ka.No.Pa.2/5409/2010, dated 04.01.2013 and the consequential order passed by the 3<sup>rd</sup> Respondent herein in his proceedings Na.Ka.No.5409/2010/Pa2 dated 13.03.2014 and quash the same and consequently direct the Respondents herein to permit the Petitioner to retire from service with effect from 30.09.2011, and disburse all consequential service and monetary benefits with interest, within a time frame.

For Petitioner : M/s.G.Bala & Daisy

For Respondents : Mr.S.Thangavel,  
Special Government Pleader

ORDER

According to the Petitioner, he joined the Government service as Watchman on 22.05.1978. He was promoted as Office Assistant on 01.12.1982 and further promoted as Record Clerk on 16.03.1990. He was further promoted as Bill Collector on 30.11.2009, and has totally rendered 31 years of service.

2. While the Petitioner was working as a Bill Collector, he was placed under suspension on 19.11.2010 on contemplation of disciplinary proceedings by the 3<sup>rd</sup> Respondent herein. Thereafter, he was issued with a Charge Memo dated 24.12.2010 and without conducting proper enquiry, he was dismissed from service on 16.08.2011, just 15 days prior to the date of his

retirement.

3. Aggrieved by the order of punishment, the Petitioner preferred an Appeal to the 1<sup>st</sup> Respondent herein on 23.09.2011. After considering the Petitioner's statutory Appeal, the Head of the Department pointed out as many as five serious irregularities and illegalities in the disciplinary proceedings and cancelled the order of dismissal from service dated 16.08.2011 passed by the 2<sup>nd</sup> Respondent herein and further directed the Disciplinary Authority to proceed with the disciplinary proceedings from the point from which the irregularities had crept in.

4. Pursuant thereto, the the 2<sup>nd</sup> Respondent passed an order on 29.11.2012, placing the Petitioner under suspension and a fresh Charge Memo was framed and issued to the Petitioner on 04.01.2013. It is the case of the Petitioner that, the allegation contained in the Charge Memo would not amount to an act of misconduct and that, there is no legal base to substantiate the charge Memo.

5. Hence, the Petitioner has come up with this Writ Petition challenging the impugned order of suspension dated 29.11.2012 passed by the 2<sup>nd</sup> Respondent and the consequential order dated 13.03.2014 passed by the 3<sup>rd</sup> Respondent and for a direction to the Respondents to permit him to retire from service with effect from 30.09.2011 and disburse all consequential service and monetary benefits with interest.

6. Learned counsel for the Petitioner contended that, the charges levelled against the Petitioner are baseless and that, the Department does not have any witness to prove the charges against him. He went on to contend that, as per the order of the 1<sup>st</sup> Respondent, immediately after the dismissal order was set aside, the 2<sup>nd</sup> Respondent ought to have passed an order allowing the Petitioner to retire from service with effect from 30.09.2011 and ought to have proceeded against the Petitioner under the Pension Rules. But, in gross violation of the Statutory Rules, the 2<sup>nd</sup> Respondent passed an order dated 29.11.2012 placing the Petitioner under suspension with retrospective effect from 19.11.2010. Hence, according to the learned counsel, the entire proceedings are liable to be quashed for having been passed in violation of the procedures contemplated in the Statutory Rules.

7. In reply, learned Special Government Pleader appearing for the Respondents submitted that, the fresh Charge Memo dated 04.01.2013 was issued as per the order of the 1<sup>st</sup> Respondent in the Appeal preferred by the Petitioner, as the Petitioner did not submit his explanation in compliance with the statutory process. He pointed out that, as per Rule 17(e) of T.N.C.S. (D & A) Rules, till the suspension is set aside, the order of suspension shall be deemed to have continued in force on and from the date of original order of dismissal, removal or compulsory retirement and shall remain in force until further orders. It is his contention that, the Charge Memo issued against the Petitioner is not in an arbitrary manner, but on the basis of evidentiary value, which proves

that, the Petitioner has committed serious irregularities such as, real estate business with private persons without seeking prior permission, which is in violation of Rule 20(1) of the Government Servants Conduct Rules and that, he has not collected property tax and professional tax within the time stipulated by the Higher Authorities.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. Admittedly, the first Charge Memo dated 24.12.2010 was issued to the Petitioner by the 2<sup>nd</sup> Respondent herein, pursuant to which, the Petitioner was dismissed from service on 16.08.2011. On consideration of the Appeal dated 23.09.2011 preferred by the Petitioner, the 1<sup>st</sup> Respondent cancelled the order of dismissal from service and directed the Disciplinary Authority to proceed with the disciplinary proceedings from the point from which the irregularities had crept in. However, without doing so, the Disciplinary Authority again placed the Petitioner under suspension, by an order dated 29.11.2012 and issued a fresh Charge Memo dated 04.01.2013.

10. When the 1<sup>st</sup> Respondent has cancelled the dismissal order passed against the Petitioner and has directed the Disciplinary Authority to proceed with the Disciplinary proceedings from the point where the irregularities crept in, there is no need for the Disciplinary Authority to again place the Petitioner under suspension and issue a fresh Charge Memo. The power to issue a fresh charge memo is not precluded by any Rules, but the Disciplinary Authority is competent to issue a fresh Charge Memo only when there are new facts and circumstances, and in the absence of the same, it is not proper on the part of the Disciplinary Authority to issue a fresh Charge Memo. There is no new fact or circumstance revealed from any material document, and nothing has been produced before this Court to substantiate the same.

11. The Disciplinary Authority has not stated as to under what circumstances or was there any fresh material available before him, warranting issuance of the fresh Charge Memo. It is an admitted position that, the power to issue fresh Charge Memo is within the exclusive domain of the Disciplinary Authority, but it can be done only in the manner as contemplated under law, that too, it should have been supported by fresh facts and circumstances, coupled with oral and documentary evidence. Thus, on this score, the fresh Charge Memo is not supported by any convincing reasons so as to uphold the same by this Court.

12. In view of the foregoing, this Court directs the 2<sup>nd</sup> Respondent/Disciplinary Authority to proceed with the first Charge Memo issued against the Petitioner and conclude the disciplinary proceedings, after affording an opportunity of personal hearing to the Petitioner, within a period of six months from the date of receipt of a copy of this order. The Petitioner is also permitted to make fresh representation to the Respondents, in respect of his grievance and the same shall be taken into consideration by the Respondents.

The Writ Petition is disposed of with the above direction.  
No costs. Consequently, connected M.P.Nos.1 and 2 of 2014 are closed.

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Assistant Registrar (CS)

//True copy//

Sub Assistant Registrar

(aeb)

To:

1. The Director of Town Panchayat,  
Kuralagam, Chennai.
2. The District Collector,  
Dharmapuri District.
3. The Assistant Director of Town Panchayat,  
Dharmapuri Circle,  
Dharmapuri District.

+1 C.C. to The Government Pleader, SR.NO. 36504

W.P.No.13837 of 2014

AJS (CO)

VS 19.12.2020

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