

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.1935 of 2014

P.Babu Amarnath

.... Petitioner

Vs.

1. The Director of Town Panchayats
'Kuralagam',
Chennai - 600 108.

2. The Secretary to Government,
Municipal administration & Water Supply
(TP4) Department,
Fort St. George,
Chennai - 9.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in connection with the impugned order passed by him in Na.Ka.No.15878/2007/A5, dated 15.10.2007 and confirmed by the 2nd respondent in GO D No.476 MA & WS Department, dated 12.09.2013 and quash the same and direct the respondents to superannuate the petitioner from service and grant him all consequential service and monetary benefits within a reasonable time.

For petitioner : Mr.K.Venkatramani, SC, for
Mr.M.Muthappan
For respondents : Mr.S.Thangavel, Spl. GP

O R D E R

Petitioner has come up with this writ petition challenging the termination order passed by the 1st respondent in Na.Ka.No.15878/2007/A5, dated 15.10.2007 as well as the order of the second respondent / appellate authority, dated 12.09.2013 and for a consequential direction to the respondents to grant service and monetary benefits due to the petitioner.

2. It is the case of the petitioner that he was appointed as Junior Assistant on 06.03.1968 and subsequently promoted to the post of Selection grade Executive Officer, Town Panchayat on

19.10.2000. Owing to three charges levelled against him, he was kept under suspension by the second respondent and on the date of his superannuation, he was not allowed to retire from service. The primary charge raised relates to the purchase orders raised by him, without following the procedures laid down in G.O. No.149, dated 16.07.1998.

3. Denying all the charges, the petitioner made a detailed explanation, dated 30.04.2007 to the respondents. As regards Charge No.1, he has stated that he was not aware of the said G.O. No.149, Rule Department, dated 16.07.1998 and as against the other two charges, it was submitted by the petitioner that there was no financial loss caused as no purchase was made nor any payments made to that effect. The enquiry was conducted and the enquiry officer held the first and third charges as proved. That being so, on 15.10.2007, the 1st respondent passed the impugned order, imposing a punishment of removal of service on the petitioner. Aggrieved by the said order, he filed a statutory appeal before the 2nd respondent on 24.01.2008 and after a lapse of 5 ½ years, the 2nd respondent passed the rejection order, dated 12.09.2013. The said rejection order was communicated to him only on 20.10.2013 along with a copy of opinion rendered by the Tamil Nadu Public Service Commission, dated 11.07.2013. It is the grievance of the petitioner that the 1st respondent as well as the 2nd respondent have passed a non-speaking order, which is unsustainable and the punishment imposed on him is disproportionate to the delinquency. In such circumstances, he has approached this Court by filing the present writ petition.

4. Learned Senior counsel appearing for the petitioner submits that even though it is an admitted fact that the petitioner raised purchase orders, which was in violation of G.O.149, dated 16.07.1998, and the same happened due to lack of awareness on the part of the petitioner, however, without affording an opportunity to the petitioner, the 1st respondent/disciplinary authority, based on the oral enquiry conducted and on the explanation submitted by the petitioner, passed the impugned order, dated 15.10.2007 without examining any witnesses or marking any documents and the appellate authority, without noticing the discrepancy in the conduct of the enquiry, has mechanically affirmed the punishment imposed through a non-speaking order, which is wholly unsustainable. It is also the submission of the learned Senior counsel that the said order also suffers an inordinate and unexplained delay, which vitiates the punishment. It is the further submission of the learned Senior counsel that a perusal of the order of the appellate authority reveals that he has just reproduced the opinion submitted by the Tamil Nadu Public Service Commission, while issuing the rejection order. Hence the impugned orders,

being totally non-speaking orders, the same deserves to be set aside. It is the further submission of the learned Senior counsel that in an identical situation, one V.Srinivasan was imposed with a punishment of cut in pension of Rs.2,000/- for a period of three years, however, in the case of the petitioner, he was inflicted with the punishment of dismissal from service, which is not only disproportionate to the delinquency, but also shocks the conscience, in the light of violation of procedural formalities in the conduct of the enquiry. It is therefore pleaded that this Court may interfere with the punishment imposed on the petitioner and accordingly, allow this writ petition.

5. Mr.S.Thangavel, learned Special Government Pleader appearing for the respondents reiterated the submissions made in the counter and submitted that there was a gross violation of rules stipulated in G.O. 149, dated 16.07.1998 in the purchase of street light materials for the value of Rs.1.99 lakhs. Further, it is the submission of the learned Special Government Pleader that while floating tenders for purchases, prior approval of the competent authority is required, which has not been done in this case. The petitioner cannot plead ignorance of the Government Order to put forth his claim for reduction in punishment and interference with the same by this Court. It is further submitted that reliance placed on similar case cannot be taken note of as the facts and circumstances of each case requires to be considered separately and further it is submitted that the delay in the disposal of the appeal is on account of administrative delay of which the petitioner cannot take shelter. Therefore, prays for dismissal of this writ petition.

6. This Court bestowed its best attention to contentions advanced by the learned counsel on either side and perused the materials available on record.

7. The non-following of the guidelines mandated in G.O. No.149, dated 16.07.1998 is admitted by the petitioner, but the case of the petitioner is only to the extent that he was not aware of the said Government Order. The said government order relates to purchases to be made above a threshold limit and in the case on hand, the purchases made are above the threshold limit and, therefore, the permission of the competent authority is required. In the instant case, it is not in dispute that the petitioner has not followed the procedures laid down in G.O. No.149. It is further pointed out that ignorance of the petitioner of the said Government Order cannot be a ground for this Court to interfere with the impugned order.

8. However, a perusal of the materials available on record, more so the counter affidavit filed by the respondents reveal that the act of the petitioner has not caused any financial loss to the respondents, though the act of the petitioner is a lapse on his part. Further, the materials on record also reveals that the petitioner has not been given sufficient opportunity to put forth his defence and defend himself as the enquiry has not been conducted in a manner known to law. Proper enquiry by placing oral and documentary evidence has not been conducted, while finding the petitioner guilty of the charges. In such a scenario, the act of the 1st respondent in imposing punishment on the petitioner without going through the process of enquiry vitiates the enquiry proceedings. Further, a perusal of the order passed by the 2nd respondent / appellate authority clearly reveals that the said order is a non-speaking order, as it has merely extracted the opinion given by the Tamil Nadu Public Service Commission, without entering into the merits of the appeal filed by the petitioner. No separate finding has been rendered by the appellate authority on the basis of the materials available before him. The order has been passed by the appellate authority mechanically without applying his mind to the materials available before him. In such a backdrop, this Court is of the considered view that this is a fit case where the matter has to be remanded back to the respondents. However, this Court is also oblivious of the fact that almost a to remand back the matter to the respondents. However, taking into consideration the fact that almost a decade and a half has passed since the alleged delinquency committed by the petitioner and further taking note of the age of the petitioner, who is a senior citizen as on date, this Court is of the considered opinion that asking the petitioner to go through the rigmarole of enquiry at this point of time, more so when there has been no financial loss to the respondents, this Court, in the interest of justice, and in view of the inherent powers vested in it under Article 226 of the Constitution of India, deems it fit and proper to remand the matter back to the 2nd respondent/appellate authority, who is at liberty to reconsider and refix the punishment imposed on the petitioner.

9. For the aforesaid reasons, the writ petition is allowed and the impugned order in G.O. D No.476 MA & WS Department, dated 12.09.2013 passed by the second respondent/appellate authority is hereby set aside and the matter is remanded back to the 2nd respondent/appellate authority for fresh consideration as to reconsideration and refixation of punishment imposed on the petitioner. The 2nd respondent/appellate authority shall

complete the aforesaid exercise within a period of twelve weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS IX)

/true copy/
Sub Asst. Registrar

vsi2

To

1. The Director of Town Panchayats
'Kuralagam',
Chennai - 600 108.

2. The Secretary to Government,
Municipal administration & Water Supply
(TP4) Department,
Fort St. George,
Chennai - 9.

+1 cc to the Government Pleader sr40952
+1 cc to Mr.M.Muthappan advocate sr40967

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