

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.27714 of 2019
and
W.M.P.No. 27241 of 2019

N.Ravichanran

Petitioner

vs.

The Tamil Nadu Water Supply and Drainage Board,
represented by its Managing Director/Principal Secretary
Chepauk, Chennai - 600 005. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Respondent relating to the order of the Respondent in Proc.No.27587/Estt(DP)/A2/2013 dated 29.03.2017 and quash the same and consequently to sanction and pay Death Cum Retirement Gratuity (DCRG) with interest.

For Petitioner : Mr.Kandan Duraisamy
For Respondents: Mr.S.Eraskine Leo

O R D E R

This writ petition has been filed challenging the impugned order passed by the respondent in Proc.No.27587/Estt(DP)/A2/2013 dated 29.03.2017 and for a consequential direction to the respondent to sanction and pay the Death-cum- Retirement Gratuity (DCRG) with interest.

2. This is the 5th round of litigation before this Court. Instead of traversing through the facts of the case afresh, it will be beneficial to extract the earlier order passed by this Court in W.P.No. 22154 of 2014 dated 02.03.2016 and relevant paragraph is extracted here under;

" In the result, this writ petition is partly allowed and the impugned orders of the first respondent in Proc.No.65498/Estt/(DP)/A2/2010-3 dated 23.01.2013 as confirmed by the second respondent in Proc.No.27587/Estt (DP)/A1/2013 dated 26.07.2014 are set aside and the matter is

remanded back to the Disciplinary Authority/first respondent, who shall issue fresh orders by observing the dictum laid down by the Hon'ble Supreme Court in the decision in Lav Nigam Vs. Chairman & MD. ITI Ltd and Another [(2006) 9 SCC 440]. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

3. After the order of this Court dated 02.03.2016, the respondent issued notice dated 13.02.2017 and informed the petitioner that the respondent is differing with the findings of the Enquiry Officer. The reason given by the respondent to differ with the Enquiry Officer is extracted hereunder;

" The delinquent official has failed to inspect the raw materials before it is manufactured. Though all the field tests have been conducted at the time of laying, sample tests in CIPET, third party check, it is a fact the pipes have broken and become useless. Had the delinquent officer tested the raw materials in a standard independent laboratory, the outcome of the usability of the pipe could have been established before it is being laid. The I.O. has failed to analyse this aspect which I consider vital.

I therefore hold the delinquent officer responsible for the failure of the pipes. As far as the first charge is considered I go by the findings of Inquiry Officer. Since the second charge is proved the third charge is also partially proved."

4. The petitioner on receipt of the notice from the respondent, gave a detailed reply on 16.02.2017.

5. The respondent on considering the reply given by the petitioner has passed the impugned order dated 29.03.2017 and he has imposed the punishment of forfeiture of the entire DCRG and a cut of Rs.5,000/- per month in the pension for a period of 5 years. The only reason given by the respondent for imposing the punishment is extracted here under;

" The charges that were framed, reply of the delinquent officer, findings of the Inquiry Officer and further defence statement are carefully analysed. The defense statement is examined with different test results of quality. After laying of the pipes and frequent leaks and bursts, 6 samples were taken for quality testing. All the 6 samples have failed the quality test. The failure of the pipes in quality

tests conducted after laying and the failure of the pipe in field clearly proves that the pipes were of substandard quality and no proper test was conducted by the delinquent.

Therefore, Charge No.2 is held as proved and Charge No.3 is held as proved accordingly."

6. When this Court remanded the matter back to the respondent by its earlier order dated 02.12.2016, this Court had categorically directed the respondent to issue fresh orders in light of the Judgment of the Hon'ble Supreme Court in the case of Lav Nigam Vs. Chariman & MD. ITI Ltd and another reported in (2006) 9 SCC 440.

7. In the above Judgment, the Hon'ble Supreme Court had stated that whenever the disciplinary Authority disagrees with the findings of the First Enquiry Officer, he must record his own findings for each charge and the reasons for such disagreement. This must be given to the delinquent Officer and his explanation must be called for. Only Thereafter, the disciplinary Authority can proceed to pass final orders.

8. In the present case, the reason why the respondent disagreed with the Enquiry Officer has been extracted supra. Further while passing the order, the respondent has given a completely new reason by stating that the sample pipes were sent for quality testing and all the sample pipes failed in the quality test and therefore the same proves that the pipes are of substandard quality and that the petitioner did not conduct any proper test before the laying of the pipes. The sample test of pipes had never taken place before and this was not even the reason given by the respondent in his proceedings dated 13.12.2017, where he had put the petitioner on notice with regard to his disagreement with the Enquiry Officer. The petitioner was taken by surprise with the reason given in the impugned order. Hence the petitioner never knew that the pipes are being sent for quality test. If the respondent had informed about the same, the petitioner would have sent his explanation with regard to the same.

9. That apart, the respondent has not given any reasons as to why he is disagreeing with the findings given by the Enquiry Officer. The respondent has virtually relied upon some quality test report and came to the conclusion.

10. In the considered view of this Court, the order passed by the respondent is clearly in violation of the principles of natural justice and it is not in consonance with the earlier directions given by this Court in W.P.No. 25154 of 2014.

11. It is true that even in the impugned order, the respondent has provided an Appellate remedy to the petitioner. Under normal circumstances, alternative remedy is a bar for entertaining the writ petition. However, this rule has an exception, in cases where the order has been passed in violation of the principles of natural justice. In the present case, the respondent has not put on notice to the petitioner with regard to the pipes being sent for quality test. That apart the respondent has also not given any reason as to why he is disagreeing with the findings of the Enquiry Officer. Therefore, inspite of the appellate remedy, this writ petition is entertained since this Court is able to see that the order passed by the respondent suffers from an error which is apparent on the face of the record.

12. In view of the above discussion, the impugned order passed by the respondent in his proceedings dated 29.03.2017 is hereby quashed. There shall be a direction to the respondent to settle the entire Death Cum Retirement Gratuity (DCRG) to the petitioner within a period of four (4) weeks from the date of receipt of a copy of this order. Consequent, upon the quashing of the impugned order, the petitioner will also be entitled for full pension without any deduction.

13. In the result, the writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

kmm

To

The Tamil Nadu Water Supply and Drainage Board,
represented by its Managing Director/Principal Secretary
Chepauk, Chennai - 600 005.
+1cc to M/s Muthumani doraisami, Advocate, Sr.No. 13388

W.P No.27714 of 2019
and
W.M.P.No. 2385 of 2020

CNR (CO)
GS (22/05/2020)