



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2020

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.8898 of 2011

P.Gnanamuthu (Deceased petitioner)

G.Alphonse

... Petitioner

(Petitioner is substituted for the deceased sole petitioner vide Court order dated 11.06.2019 in M.P(MD)No.1/2015 in W.P(MD) No.8898/11)

vs.

1) The Secretary to Government,
Municipal Administration and Water Supply (TP4) Department,
Fort St.George,
Chennai-600 009.

2) The Director of Town Panchayat,
Kuralagam,
Chennai-600 108.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the second respondent passed in Na.Ka.No.19591/2007-1/A4, dated 26.10.2007 and the impugned order of the first respondent passed in G.O.Pa.No.234, Municipal Administration and Water Supply (TP4) Department, dated 28.06.2011 and quash the same and consequently directing the respondents to allow the petitioner to retire from 31.01.2003 with all monetary and attendant benefits.

For Petitioner : Mr.R.Suresh Kumar for

M/s.Veera Associates

For Respondents : Mr.D.Muruganandham

Additional Government Pleader

ORDER

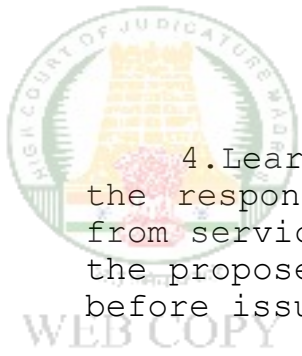
The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the 2nd respondent passed in Na.Ka.No.19591/2007-1/A4, dated 26.10.2007 and the impugned order of the 1st respondent passed in G.O.Pa.No.234, Municipal Administration and Water Supply (TP4) Department, dated 28.06.2011 and quash the same and



consequently directing the respondents to allow the petitioner to retire from 31.01.2003 with all monetary and attendant benefits.

2.The petitioner submits that he joined the services of the 2nd respondent as Bill Collector on 18.03.1965 and was promoted as Junior Assistant in 1986 and further promoted as Executive Officer in 1999 and was given selection grade in the cadre of Executive Officer. He has put in blemishless service during his entire career. While so, 40 days before the date of superannuation, the petitioner was issued with the charge memo under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 26.12.2002 which according to him was trivial in nature and the charges are pertaining to the lack of supervision as well as not following the procedure in making payment and issuance of contracts. The petitioner gave his explanation immediately that is on 06.01.2003 itself.

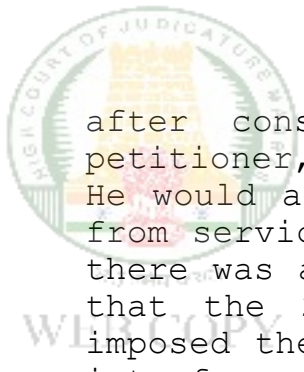
3.Learned counsel for the petitioner would state that the charges are not pertaining to misappropriation or irregularity in making payment, but for not following the procedure, the charges were framed. The petitioner was further subjected to another charge memo and subsequently by proceedings dated 05.08.2005 it was finally concluded that the charges are dropped. According to the petitioner, even though he gave his explanation well before his retirement, the respondents had not chosen to conclude the disciplinary proceedings within a reasonable time. However, on the date of retirement, the petitioner was not allowed to retire from service and he was retained in service. After 4½ years of the retirement, the charge memo was proceeded and the enquiry officer was appointed only on 12.03.2007. The enquiry officer did not examine any of the witnesses in respect of the charges, nor marked any document to substantiate the charges and without following any procedure and without any application of mind, has simply concluded that the charges can be concluded to be proved. The enquiry report was given to the petitioner on 29.07.2007 asking him to give his explanation to the enquiry report. On the basis of the enquiry report, the disciplinary authority without any independent application of mind as to why he accepts the enquiry officer's report, has in one line order stated that he agreed with the findings of the enquiry officer and held that the charges were proved. None of the contentions raised by the petitioner was considered by the disciplinary authority and the order of dismissal is passed. While passing the order, the disciplinary authority has not even taken into consideration the blemishless service by the petitioner in the department for 39 years and therefore aggrieved over the same, the petitioner preferred appeal before the 1st respondent by appeal dated 12.12.2007 and the petitioner had given detailed explanation to the charges framed against him and the 1st respondent also dismissed the appeal without any application of mind by a non speaking order.



4.Learned counsel for the petitioner would state that though the respondents had decided to impose the punishment of dismissal from service, no show cause notice was given to the petitioner as to the proposed punishment of dismissal from service which is mandatory before issuing the order of punishment.

5.The Government has filed counter. Learned Additional Government Pleader appearing for the respondents would state that the charge memo was issued on 26.12.2002 and the petitioner gave his explanation on 06.01.2003. One C.V.Natarajan, Executive Officer (Special Grade), Madukkarai Town Panchayat, was appointed as enquiry officer and the enquiry officer submitted his report. Though the charges were framed against the petitioner along with other delinquents namely, G.Kalichamy, Mrs.M.Indrani and Mr.N.Natarajan, since the petitioner retired from service, the files relating to the petitioner alone was forwarded to the 2nd respondent for passing final orders. He would further state that the petitioner was issued with another charge memo for the irregularities committed in discharging duties as Executive Officer in Sirumugai Town Panchayat by levelling 7 charges, for which, the petitioner submitted his explanation dated 12.10.2004 and the 2nd respondent appointed the Assistant Director of Town Panchayat as the enquiry officer by proceedings dated 06.12.2004 and the enquiry officer submitted his report dated 17.01.2005 and the 2nd respondent passed final orders dated 05.08.2005 not pressing the charges holding that enquiry could not be conducted due to lapse of time. The petitioner gave further representation dated 18.07.2006 alleging that the enquiry officer has submitted his report without enquiring him personally and without obtaining his explanation personally and had objected to the passing of final orders in the case of other delinquents and forwarding his files alone to the 2nd respondent. The petitioner's representation was considered in his favour and final order passed by the District Collector in respect of other 3 delinquents was cancelled and the copy of the said order of the 2nd respondent was served on the petitioner and other delinquents.

6.Learned Additional Government Pleader would further state that at that point of time, the enquiry officer retired from service and therefore, another enquiry officer was appointed. After 4½ years, another enquiry officer was appointed and the enquiry report was forwarded to the 2nd respondent. On the enquiry report, the petitioner gave his reply and the 2nd respondent has imposed the punishment of dismissal from service in the case of the petitioner, in the case of G.Kalichamy, punishment of censure was imposed, in the case of N.Natarajan, punishment of stoppage of increment for 4 years without cumulative effect was imposed affecting his pensionary benefits and in case of Indrani, as she died on 08.03.2007 pending proceedings, charges were not pressed. The petitioner filed appeal dated 12.12.2007 against the dismissal order and the 1st respondent



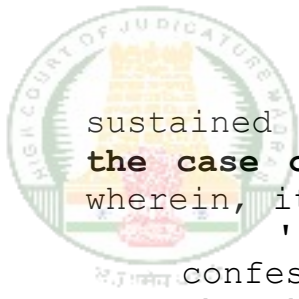
after consulting with the TNPSC, rejected the appeal of the petitioner, against which, the present writ petition has been filed. He would also state that since the earlier enquiry officer retired from service, another enquiry officer was to be appointed by which, there was a delay. Learned counsel for the respondents would state that the 2nd respondent considering the gravity of the charges, imposed the punishment of dismissal from service and therefore, the interference of this Court is not necessary.

7. Heard the learned counsel for the petitioner as well the respondents.

8. Perusal of the charges shows that it is not a case of misappropriation or bribe. Charge No.1 levelled against the petitioner is that when purchase of the materials above Rs.10,000/- has to be made with the prior permission of the higher authority which was in vogue, the petitioner had procured electrical items for Rs.1,48,499/- on the same date, on various bills, without any prior permission from his higher authority. The enquiry officer held that though the materials were utilised by entering into the Register, as the petitioner purchased materials for Rs.1,48,499/- on different bills though not above Rs.10,000/- since it has been purchased on the same date, it can be construed that charge No.1 is proved. The second charge is that in 2001-2002, without calling for tender forms for purchasing the above electrical materials and without getting the approval of the Panchayat Council, the petitioner has purchased the materials on his own. Hence, the enquiry officer said that the second charge can also be construed to be proved. The third charge against the petitioner is that the Junior Assistant namely, Natarajan though collected the rent for the godown, had not deposited the same immediately and had deposited it only on 03.05.2002 and the petitioner failed to verify the same. The 4th charge is that the petitioner paid the amount for repairing drinking water pipes before obtaining measurements from the Engineers and the petitioner ought to have paid the amount only after the measurement was obtained. The 5th charges is that the petitioner had failed in his duties violating the Government Servants Conduct Rules.

9. None of the witnesses were enquired to prove the charges. The petitioner has given detailed explanation and even the explanation was not extracted and the enquiry officer has simply held on surmises that the charges 1 and 2 are construed to be proved and charges 3, 4 and 5 are proved. Perusal of record shows that the petitioner has given his detailed reply. The enquiry officer without any application of mind on mere surmises has given the report and it is also seen that though there is allegation against other co-delinquents, they were all punished with lesser punishment.

10. Perusal of record shows that the enquiry report is without any application of mind and therefore, it cannot be allowed to be

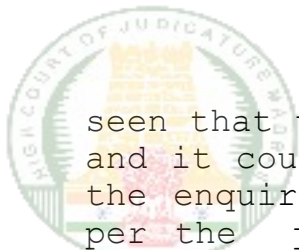


sustained in view of the judgment reported in **(2009) 2 SCC 570 in the case of Roop Singh Negi vs. Punjab National Bank and others**, wherein, it has been held as follows:-

''23.If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.''

11.It is seen that though the petitioner gave his reply immediately even before his retirement, charge memo has been issued and he was placed under suspension and only on 28.06.2011, dismissal order came to be passed and the delay itself has caused grave prejudice to the petitioner. Perusal of record shows that none of the contentions raised by the petitioner in the reply has been considered and orders came to be passed without any application of mind.

12.Though the show cause notice was issued in the year 2002, 40 days before his retirement, the petitioner gave his reply immediately, but there was a delay of nearly 9 years in concluding the disciplinary proceedings. Perusal of record shows that the disciplinary authority even without looking into the reply by the petitioner on the enquiry report, has simply accepted the findings of the enquiry officer and without any application of mind in a one line order, has passed the dismissal order and against which, the petitioner filed appeal to the 1st respondent and the 1st respondent consulted with the TNPSC and the TNPSC also without any reason, accepted the report of the enquiry officer and passed the impugned order. It is an unfortunate case where the petitioner who has put in 39 years of unblemished service, was issued with the charge memo at the verge of his retirement and as rightly contended by the learned counsel for the petitioner, none of the witnesses was examined to prove the charges against the petitioner and none of the petitioner's reply was considered by the enquiry officer, disciplinary and appellate authorities and on the very face of the charges, even if it would have been found to be proved, it can be construed only as a dereliction of duty and therefore, the punishment of dismissal is shockingly disproportionate. It can be



seen that the finding of the enquiry officer is based on no evidence and it could be concluded only as a perverse finding and therefore, the enquiry report itself can be subjected to judicial scrutiny as per the judgment in **Kultheep Singh v. Commissioner of Police and others, reported in 1999 (2) SCC 10**, wherein, the Supreme Court held that normally the Apex Court and the High Court will not interfere with the finding of fact recorded at the domestic enquiry, but if the finding of guilt is based on no evidence, it would be perverse finding and would be amenable to the judicial scrutiny.

13.The charges framed against the petitioner are not serious to impose the punishment of dismissal from service and the enquiry officer's report is based on no evidence. There is no reasoning by the disciplinary authority as well as the appellate authority why they had accepted the findings of the enquiry officer and if they could have accepted the findings of the enquiry officer, it is not known how an order of dismissal from service has been passed and this order has been passed without any reason. None of the petitioner's reply was considered. The enquiry report was not questioned by any of the authorities when no witness was examined in the enquiry. Reasoning is the soul of the order. The order which does not contain any reason for conclusion can be termed to be a non speaking order. The Hon'ble Supreme Court in the decision in **East Coast Railway and another vs. Mahadev Appa Rao and others, reported in (2010) 7 SCC 678**, has held in paragraph No.23 as follows:

"23.Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non application of mind by the authority making the order is only one of them. Every order passed by a Public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable."

14.In a decision in **N.S.Jayaraman & Sons Vs. the Government of India, reported in 2010 (2) CWC 485**, a learned Single Judge of this Court has held that reasoning is the heartbeat of every conclusion and without any reasoning, the conclusion becomes defunct and that the rationale behind is that the affected party can know why the decision has gone against him and that one of the salutary requirements of natural justice is spelling out reasons for the order made. But, in the case on hand, the second respondent has imposed the punishment of dismissal from service without considering the explanations and assigning any valid reasons for such



conclusion. Therefore, the order of the second respondent is liable to be set aside.

15. In the decision in **V.P.Suresh Kumar Vs. Deputy Inspector General of Police, Armed Police, Trichy and another**, reported in (2011) 7 MLJ 1282, a learned Single Judge of this Court has held that when an appeal has been preferred questioning the order of the original authority, the appellate authority is expected to pass a speaking order dealing with the grounds raised in the appeal and that an order passed without dealing with grounds raised by delinquent before an appellate authority is nothing but a non speaking order and is liable to be set aside. In the case on hand, the first respondent has not considered all the grounds raised by the petitioner in the appeal and dismissed the appeal without assigning any valid reasons.

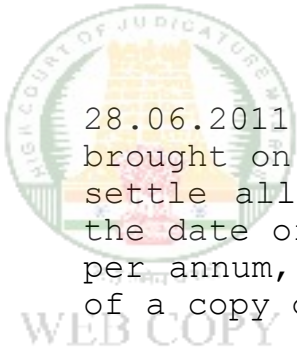
16. In the decision in **N.Nandagopalan Vs. Secretary to Government**, reported in (2006) 3 M.L.J. 191, a learned Single Judge of this Court has held that if several employees are involved in the same incident, the employer has no discretion to proceed against some of the employees only and absolve the others.

17. In the case in **Rajendra Yadav vs. State of Madhya Pradesh**, reported in (2013) 3 SCC 73, the Hon'ble Supreme Court has held in paragraph No.12 as follows:

"12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate i.e., lesser punishment for serious offences and stringent punishment for lesser offences."

18. The petitioner who had challenged the dismissal order, without even enjoying the fruits of the order, died due to the mental agony and now his wife is before this Court by way of substitute petition. Therefore, in the light of the above discussion and decisions, I am inclined to interfere with the impugned orders.

19. Accordingly, the impugned order of the second respondent passed in Na.Ka.No.19591/2007-1/A4, dated 26.10.2007 and the impugned order of the first respondent passed in G.O.Pa.No.234, Municipal Administration and Water Supply (TP4) Department, dated



28.06.2011 are quashed. As the petitioner died and her wife is brought on record as his legal heir, the respondents are directed to settle all the retirement benefits of the deceased petitioner from the date of his superannuation, to his wife, along with 12% interest per annum, within a period of twelve weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

To

1)The Secretary to Government,
Municipal Administration and Water Supply (TP4) Department,
Fort St.George,
Chennai-600 009.

2)The Director of Town Panchayat,
Kuralagam,
Chennai-600 108.

+1 CC to SPL.GP (SR-2571[F] dated 23/01/2020)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-2638[F] dated 23/01/2020)

ORDER MADE IN
W.P(MD)No.8898 of 2011
DATED : 22.01.2020

VB(21.02.2020) 8P 5C