BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.08.2020
DELIVERED ON : 09.09.2020
CORAM:
THE HONOURABLE **MR.JUSTICE RMT. TEEKAA RAMAN**
W.P.(MD)No.15965 of 2013
and M.P.(MD)No.1 of 2013

S.Thiagarajan ... Petitioner

Vs.

1.The District Collector,
Madurai District.

2.The Director of Town Panchayat,
Kuralagam, Chennai 620 108. ... Respondents

**PRAYER**: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent in Na.Ka.No.113762/90பஊ2, dated 23.09.1991 relating to the punishment of stoppage of increment for three years with cumulative effect and its connected proceedings of the second respondent in Na.Ka.No.5341/2012/A4, dated 20.03.2013 confirming the punishment, quash the same as illegal and consequently direct the respondents to issue all the terminal benefits due to the petitioner placing him in the seniority while he was suspended.

For Petitioner : Mr.D.Ghandiraj
For Respondents : Mr.D.Muruganandan,
Additional Government Pleader.

**ORDER**

The petitioner herein has filed the above writ petition challenging the order of punishment passed by the first respondent date 23.09.1991 for stoppage of increment for three years with cumulative effect and sought for a direction for all terminal benefits placing him in the seniority.

2.The petitioner while he was employed as Executive Officer Grade-I at Vilangudi Grade-I Town Panchayat, Madurai in 1990, he was placed under suspension by the first respondent on 19.01.1991 in contemplation of enquiry for 9 charges. The first respondent issued charge memo dated 19.01.1991 containing nine charges as stated infra regarding abuse of official power by petitioner violating statutory rules under manual of town panchayat and appointed Enquiry Officer on 24.01.1991 to conduct the enquiry into the charges.

3.Following charges were framed against the petitioner:-

Charge-1 14 tenders of the Town Panchayat were given to an registered contractor Mr.Megavarna Nadar, without qualification and previous experience and paid Rs.74,085/- of public money for gravelling of streets.

Charge-2 The petitioner failed to publish notices inviting tenders as per tender rules applicable to Town Panchayat.

Charge-3 The petitioner failed to put up any note about the unregistered contractor as would be necessary as per Rule 13(2) of the Tender Rules.
Charge-4 The petitioner sent Rs.74,085/- for gravelling 14 streets on invalid tender. The money spent on invalid tender is illegal and payment should be made good by him.

Charge-5 The petitioner collected house tax for 107 houses without Special Notices to the assesses as required under Rule 10(3) of the Rules without bringing them into House Tax Demand Register for 1989-90 and 1990-91 and omitted to give Assessment Number and violated the rules relating to levy of House Tax.

Charge-6 The petitioner has short collected house tax from ninteen assesses resulting in loss of Rs.7187-50 and failed to make entry of the said collection in the Register of House Tax Demand.

Charge-7 Petitioner has under-assessed the annual rental value of Pandian Theatre without issuing Special Notice and misused his official position.

Charge-8 Petitioner has purchased phenoyl, bleaching powder and lime powder with irregular statement without showing any issue.

Charge-9 The petitioner caused loss of Rs.561/- by not conducting any auction of enjoying usufructs as detailed in the statement as against the resolution No.92 dated 31.03.1990 of the Town Panchayat.

4.When the petitioner was furnished with questionnaire, he submitted his written explanation dated 22.01.1991 stating that he did not opt for any enquiry. However, the petitioner was given a chance to defend the charges by conducting oral enquiry on 13.02.1991. In the mean time, the suspension of the petitioner dated 31.07.1990 was revoked and he was allowed to join duty facilitating him to participate in the enquiry. The petitioner herein also participated in the oral enquiry conducted 13.02.1991 and after conclusion of oral enquiry, the Enquiry Officer submitted his report on 28.02.1991, holding that all the charges were proved on the basis of evidence of Junior Assistant Maniraj and documentary evidence of Personal Register and Register of contractors enrolled with the Vilangudi Town Panchayat, establishing that 14 tenders given to Megavarna Nadar who was not a registered contractor of Town Panchayat and grant of tender was without publication of tender as per manual on Panchayat Administration Part-I and tender rules. Only application of Megavarna Nadar without qualification and mandatory certificate and his name was not registered.

5.In the said enquiry, documentary evidence were marked and relied on for all the other 8 charges against the petitioner establishing his guilt of abuse and misuse of official power to favour an unregistered contractor of his choice in the discharge of public duties under the statute. On the basis of such enquiry report dated 28.02.1991, second show cause notice was issued to the petitioner on 03.05.1991, seeking explanation from the petitioner on the enquiry report. The petitioner also submitted his explanation on 20.05.1991 in reply to the second show cause notice issued by the first respondent. Not content with further explanation from the petitioner for want of evidence or material on behalf of the petitioner, the first respondent imposed punishment of stoppage of increment for three years with cumulative effect, dated 23.09.1991 and the said punishment was undergone.

6.The petitioner challenged the correctness of the punishment imposed by the first respondent by way of appeal to the second respondent and on dismissal of appeal by the second respondent on 23.03.1992, the petitioner approached the Tamil Nadu Administrative Tribunal, Madras in O.A.No.413 of 1992, challenging the order of punishment and confirmation of punishment passed by the respondents 1 and 2 herein. The said O.A.No.413 of 1992 which was pending on the file of the Tamil Nadu Administrative Tribunal, Madras, had been transferred to the High Court, Madras, Madurai Bench and the same was re-numbered as W.P.No.1431 of 2006. This Court by order dated13.03.2012 remanded the writ petition to the second respondent with a direction to pass considered and detailed order. The second respondent herein thereupon passed a detailed order and confirmed the order of punishment imposed and suffered by the petitioner.

7.Based upon the report of the Enquiry Officer, an appeal has been filed before the second respondent and the same was confirmed and hence, the writ petition.

8.The learned counsel appearing for the petitioner submitted that during the enquiry Maniraj has not appeared and hence, no statement was recorded at the time of enquiry. However, no opportunity was given to the petitioner for cross examination and all the charges are held to be proved in a mechanical manner without application of law and as such Megavarna Nadar, who is a registered Contractor has entitled the award tender and there is violation of awarding or tender in favour of him and hence, the finding rendered by the Enquiry Officer is bad in law. Despite the order passed by this Court in W.P.(MD)No.1431 of 2006, dated 13.03.2012 the appellate authority has mechanically upheld the appeal and prayed for set aside the punishment order. Thereby, stoppage of increment for three years with cumulative effect has been ordered.

9.Mr.D.Muruganandan, learned Additional Government Pleader appearing for the respondents would contend that there is no procedural irregularity in conducting of the enquiry and report therein and the petitioner has either produced any material to show any document to demonstrate that the said Megavarna Nadar, who was ordered 14 tender, was a registered contractor or there is no proof for publication of tender notification, which was awarded to the said Megavarna Nadar as required under the Manual of Administration of Town Panchayat.

10.(a)From records, it is seen that during enquiry, the Enquiry Officer has considered the evidence of Junior Assistant and rendered finding that this charge is proved by the evidence of Junior Assistant and the Town Panchayat records viz., Personal Register 1989 and Register for contractors. According to the evidence of Junior Assistant Maniraj, the unregistered contractor Megavarna Nadar submitted his application for registering his name without Certificate of Solvency and other necessary documents.

(b)It was further deposed by Junior Assistant that the petitioner received such an invalid application stating that the said Megavarana Nadar is very much known to him and assigned a number, without making any entry in the Personal Register for receipt of application or indicating the number assigned to the said Megavaran Nadar. It was further found that name of Megavarna Nadar was also not entered in the Register of Contractors so as to treat him as a register contractor of Town Panchayat.

(c)In the absence of any record or entry showing the said Megavarna Nadar as a registered contractor, the said Megavarna Nadar is only an unregistered contractor as per rules of Town Panchayat and Tender Rules for Town Panchayat. Therefore, grant of 14 contracts to a stranger is misuse of official power to favour a known person flouting the rules and duties cast upon the petitioner.

11(a)Documentary evidence has also rendered finding that since there was no publication of tender as per Rule 83(2)(1)a, b as per manual on Panchayat Administration Part-I. As per the documentary evidence, Megavarna Nadar is proved to be an unregistered contractor without qualification and experience. Since the tender was invalid and not in accordance with law, the said charge is held to be proved.

(b) Further more, all the 107 houses are new case and assessment is made for the first time. Every time the Executive Officer assesses new house for the first time, he shall intimate the owner of occupier by issuing a Special Notice with indicating assessed house tax. Special Notice is statutory in nature and this charge was not denied by the petitioner.

(c) The petitioner admitted the short collection of house tax due to the negligence of a Bill Collector A.Rajendran. It is the duty of the Executive Officer, as superior authority to initiate further action for recovery of dues in full and failure to do so entail moral responsibility.

12.From the material collected during the enquiry, the Enquiry Officer has found that the petitioner under-assessed the cost of the land and superstructure as against the prevailing rate. The petitioner has not followed the rules and procedure as per Rule 2 of the Rules under Paragaraph 49-1 House Tax of the Manual on Panchayat Administration Part-I. Any assessment without following the said rule is not legally valid and thus, rendered that all the charges are proved, in the manner known to law.

13.On perusal of the enquiry report, I find that Megavarna Nadar was examined and the statement of the Junior Assistant was recorded by the Enquiry Officer and document relied upon now by the petitioner is only a tabular register wherein an application to register the said Megavarna Nadar as a registered contractor was received. However, the same is without certificate of solvency and other necessary documents. The said fact was duly corroborated by the oral and documentary evidence of the Junior Assistant and hence, the finding rendered by the Enquiry Officer and accepted by the Disciplinary Authority/first respondent, does not suffer from any irregularity or illegality warranting interference.

14.Yet another point is that though the petitioner has stated that the said Megavarna Nadar, for whom 14 works ordered, was registered contractor and there is necessary paper publication regarding tender notification, that was awarded to the said Megavarna Nadar, for the reason best known to the petitioner that no evidence was produced either before the Enquiry Officer or before this Court and the said point was also negatived.

15.The quantum of punishment was awarded, based on the proved charges, nature and the gravity of the alleged violation in awarding 14 work orders to the unregistered contractor without paper publication and the Appellate Authority/second respondent has taken into consideration and awarded punishment of stoppage of increment for three years with cumulative effect and the same cannot be termed as excessive and hence, in this view of the matter, I do not find any merit in this writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Madurai District.

2.The Director of Town Panchayat,
Kuralagam, Chennai 620 108.

Order Made in
W.P.(MD)No.15965 of 2013
09.09.2020

srk(CO)
TR(16.09.2020) 6P 3C