



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 24.02.2020
PRONOUNCED ON : 05.11.2020
CORAM :

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.P(MD)No.13539 of 2014

and

M.P(MD)No.1 of 2014

M.Jalaludheen

.. Petitioner

Vs.

1.The Commissioner of Municipal Administration,
Water Supply Department,
6th Floor, Elizlagam,
Chennai - 5.

2.The Commissioner,
Karur Municipality,
Karur District.

3.The Commissioner,
Bodinayakanur Municipality,
Bodinayakanur,
Theni District.

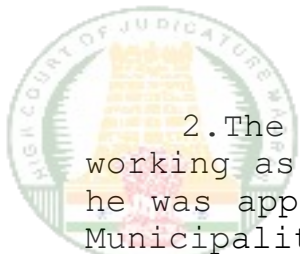
.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned recovery order passed by the 2nd respondent in his proceedings in Na.Ka.No8568/2013/A6 dated 11.07.2014 served to the petitioner on 27.07.2014 and quash the same as illegal and so far as the petitioner concerned and pass such further or other orders.

For Petitioner	: Mr.M.Ajmalkhan, Senior Counsel for M/s.Ajmal Associates
For Respondent No.1	: Mr.D.Muruganandam, Additional Government Pleader.
For Respondent No.2	: Mr.J.Senthil Kumaraiah
For Respondent No.3	: Mr.M.Karuppasamy Pandian, Government Advocate.

ORDER

This writ petition has been filed for issuance of a Writ of Certiorari seeking to call for the records relating to the impugned recovery order passed by the 2nd respondent in his proceedings in Na.Ka.No8568/2013/A6 dated 11.07.2014 served to the petitioner on 27.07.2014 and quash the same as illegal insofar as the petitioner is concerned.

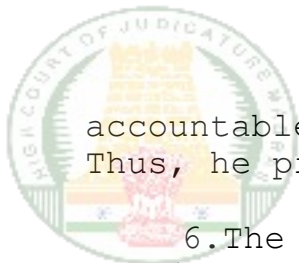


2.The case of the petitioner is that the petitioner is now working as Assistant in the 3rd respondent Municipality. Initially, he was appointed as Junior Assistant on 21.03.1995 at Bodinayakanur Municipality, Theni District and his service was regularized w.e.f. 03.07.1997 vide G.O.Ms.No.487, dated 14.09.2010. Subsequently, he was promoted as Revenue Inspector on 27.10.2010 and posted at Karur Municipality and he was instructed to take in-charge for Division-I from Mr.K.Ragupathy, Revenue Inspector, who is in-charge of Division-II.

3.According to the petitioner, as per allotment order, market place was allotted to his division and bus stand place was allotted to Mr.Ragupathy, Revenue Inspector, who is in-charge for Division-II. While the matter stood thus, the 2nd respondent granted license to one Mr.Arumugalm to collect amount for using the pay and use toilet situated in the bus stand for the year 2011-2012 by Resolution No.290, dated 31.10.2011 and subsequently the said license was canceled based on the complaint received from the public regarding collection of higher amounts, against which, the said Arumugam, preferred a suit in O.S.No.43 of 2011 before the District Munsif Court, Karur and the same has been allowed with a direction to the 2nd respondent to pay a sum of Rs.7,00,639/- with 12% interest. After completion of three years of service, the petitioner was transferred to the 3rd respondent municipality, vide proceedings, dated 19.09.2013.

4.It is the further case of the petitioner that the 2nd respondent vide proceedings, dated 07.02.2014, calling upon the petitioner to submit explanation for the allegation that the concerned Revenue Inspector and Writer failed to report about the Judgment and degree passed by the civil Court and thereby caused revenue loss to the tune of Rs.2,02,718/-, for which, he submitted detailed explanations on 06.03.2014 and 30.06.2014 stating that the said bus stand comes under the control of Mr.K.Ragupathy, Revenue Inspector, who was in-charge of Division-II and therefore, he was no way connected with the said allegation. Thereafter, the 2nd respondent, vide impugned proceedings, dated 11.07.2014, passed the Recovery Order directing to pay a sum of Rs.1,38,900/- in 24 monthly instalments. Against which, the present writ petition has been filed.

5.The 2nd respondent filed a counter affidavit *inter-alia* stating that as per allotment order, dated 03.11.2010, Market place was allotted to the Division-I Revenue Inspector and Bus Stand place was allotted to Division-II Revenue Inspector. As per G.O.Ms.No.19, dated 14.01.2011, Inam Karur Municipality and Thanthondrimalai Municipality were merged with Karur Municipality increasing the ward strength from 36 to 48 and after merging of the above, the lease races of Karur Municipality was taken in charge by both the Revenue Inspectors of Division I and II. The two Revenue Inspectors were



accountable when anyone of them is not in charge of their duty. Thus, he prayed to dismiss the writ petition.

6.The learned senior counsel appearing for the petitioner submitted that the petitioner submitted his explanation to the memo issued by the 2nd respondent, dated 07.02.2014, but the 2nd respondent without considering the same and also without giving any specific finding, has passed the impugned recovery order. The petitioner is no way connected with the revenue loss caused to the 2nd respondent municipality. The bus stand situated in Ward No.18 comes under the control of one Mr.K.Ragupathy, Revenue Inspector, Division-II. Thus, he prayed to quash the impugned recovery order.

7.The learned counsel for the 2nd respondent municipality submitted that since the ward strength of the 2nd respondent is increased from 36 to 48, the lease rates of Karur Municipality was taken in charge by both the Revenue Inspectors and therefore, the petitioner is also responsible for the revenue loss caused to the 2nd respondent municipality.

8.Heard the learned senior counsel appearing for the petitioner, learned Additional Government Pleader appearing for the 1st respondent, learned counsel appearing for the 2nd respondent and the learned Government Advocate appearing for the 3rd respondent and perused the materials available on record.

9.It is the specific contention of the learned counsel for the petitioner that the market place was allotted to the petitioner's division and the bus stand place was allotted to Mr.Ragupathy, Revenue Inspector who was in-charge for Division-II. It is seen that the 2nd respondent has granted licence to one Mr.Arumugam to collect the amount for using the pay and use toilet for the year 2011-2012 by a Resolution No.290, dated 31.10.2011 and later on, it appears that the licence has been cancelled as complaint has been received from the public. Against the cancellation order, the said Arumugam has preferred a suit in O.S.No.43 of 2011 before the District Munsif Court, Karur, and the same was allowed with the direction to the 2nd respondent to pay a sum of Rs.7,00,639/- with 12% interest.

10.Perusal of record shows that the petitioner was not arrayed as a party in the said suit filed by the said Arumugam and even as per the admitted fact, the petitioner was in-charge of the market place and therefore, the petitioner was not aware of the said suit nor the cancellation of the licence granted in favour of Arumugam since the result of the suit was not brought to the notice of the authorities. Subsequently, the petitioner was also transferred and posted in the 3rd respondent Municipality and thereafter, coming to know about the judgment and decree in the civil suit, a memo was issued to the petitioner calling upon him to submit his explanation



alleging that the concerned Revenue Inspector and Writer failed to report about the judgment and decree in O.S.No.43 of 2011 dated 19.04.2012 and thus caused revenue loss to a sum of Rs.2,02,718/-. The petitioner has submitted his explanation stating that he was not in-charge of the bus stand and he was not aware of the suit which was pending at that point of time as he was not a party to the suit. The authorities ought to have conducted an enquiry as the petitioner has specifically denied the allegations levelled against him. The petitioner would rely on a decision in **W.P.No,34587/2005 dated 01.04.2009, N.Subramanian vs. The Group Commandant, CISF, Group Headquarters, Chennai and Deputy Commandant, CISF, Chennai**, wherein, at paragraphs 6, 10 to 12, the Principal Seat of this Court has held as follows:-

'6.Whether such compliance of the principles of natural justice is also required in case where the rules do not contemplate an enquiry. In our opinion, even in case where the rules do not make a provision for enquiry in cases where minor penalties are imposed, nevertheless, the compliance of the principles of natural justice may be required and the non compliance may vitiate the order. Then again, it depends upon the facts of each case. In the event the charges are very minor and the order imposing minor penalty merely refers to the charge without adversely imputing anything about the delinquent employee, the failure to conduct an enquiry will not vitiate the order. However, the same cannot be the general rule. In case if the charges are serious in nature and nevertheless the employer proceeds to follow Rule 37 and the order of punishment contains certain adverse imputation, remarks or even comments on the delinquent employee which may be considered as a stigma or which may likely to affect his reputation in the eye of public, certainly the failure to conduct enquiry by giving an opportunity to such delinquent employee would vitiate the order for non compliance of the principles of natural justice. This principle also applies to the case where charges are minor, nevertheless some imputations/observations are made against the delinquent. The test to decide whether an enquiry is required or not is not the mere fact of minor penalty is imposed, but the nature of charges, the nature of observations or findings of the disciplinary authority while passing final orders of penalty. While deciding the question as to whether the failure on the part of the employer to hold an enquiry in the absence of rules would by itself vitiate the order, the Court must keep the above principles in mind. This is more so when the delinquent employee seeks for such an enquiry before he is mulcted with any penalty.

10.To appreciate the issue, we may usefully refer to the judgment of the Supreme Court in O.K.Bhardwaj v. Union of India and others, 2002 SCC (L&S) 188 and the following



observations of the Supreme Court would make the position clear.

"2.The High Court has recorded its opinion on two questions: (i) that the punishment imposing stoppage of three increments with cumulative effect is not a major penalty but a minor penalty; (ii) in the case of minor penalties, "it is not necessary to give opportunity to the employee to give explanation and it is also not necessary to hear him before awarding the penalty", a detailed departmental enquiry is also not contemplating in a case in which minor penalty is to be awarded.

3.While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.

4.Learned counsel for the respondent, however, says that though the second proposition of the High Court may not be correct, yet so far as this case is concerned it does not make any difference for the reason that in this case, as a fact an opportunity was given to the appellant and that there has been adequate compliance with the principles of natural justice. But since the High Court has not considered the matter from the above angle that is on merits the proper course in our opinion is to remit the matter to the High Court to consider whether an opportunity was given to the appellant to put forward his case and whether in the light of the facts and circumstances of the case, an enquiry was called for and if called for, was it held according to law and the principles of natural justice, and to dispose of the matter according to law. The appeal is allowed with the above directions. No costs."

11.In fact a Division Bench of this Court in an unreported decision in W.P.No.21954 of 2004 dated 11.12.2006 (Jamil Akhtar v. The Assistant Commissioner, Central Industrial Security Force, 6th Reserve Battalion, Arakkonam & others) has also quashed the impugned order of punishment on the ground of non holding of enquiry in spite of a specific request made by the employee in that regard.

12.In our considered view, an enquiry is contemplated in case where a delinquent refutes the charge and by such refutation, the employer is duty bound to prove the charge



levelled against the delinquent by letting in evidence.
This is more so when the delinquent employee seeks for such an enquiry in his explanation as well.''

11.The petitioner has not been issued with any charge memo and without following the principles of natural justice, straightaway, the 2nd respondent issued the impugned recovery order which in my considered opinion is without following the due process of law and therefore, I am inclined to interfere with the impugned recovery order.

12.Accordingly, the impugned order passed by the 2nd respondent dated 11.07.2014 is set aside insofar as the petitioner is concerned. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

- 1.The Commissioner of Municipal Administration,
Water Supply Department,
6th Floor, Elilagam,
Chennai - 5.
- 2.The Commissioner,
Karur Municipality,
Karur District.
- 3.The Commissioner,
Bodinayakanur Municipality,
Bodinayakanur,
Theni District.

+1 CC to M/s.M.KARUPPASAMY PANDIAN, Advocate (SR-7921[F] dated 24/02/2020)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-7838[F] dated 24/02/2020)

+1 CC to M/s.J.SENTHIL KUMARIAH, Advocate (SR-7940[F] dated 24/02/2020)

+1 CC to M/s.SPL.GP (SR-8069[F] dated 25/02/2020)

PRE-DELIVERY ORDER MADE IN
W.P(MD)No.13539 of 2014
DATED : 05.11.2020

CK(CO)

KB(11.11.2020) 6P 8C