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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.19771 of 2008

and

M.P.No.1 of 2008

Kousalya Sankaralingam

... Petitioner

Vs.

The Director of Town Panchayats,
Kuralagam, Chennai.

... Respondent

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the proceedings of the respondent in its RC.No.6017/2003/A4, dated 18.01.2008 and quash the same.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.C.Selvaraj
Government Advocate (Civil)

O R D E R

The present Writ Petition has been filed for the issuance of a Writ of Certiorari to call for the proceedings of the respondent in RC.No.6017/2003/A4 dated 18.01.2008 and quash the same.

2. The petitioner, while working as Executive Officer in Nelliyalam Town Panchayat, Pandalur Taluk, The Nilgris, was issued with a charge memo dated 26.04.2003. The gravamen of the charge is that the petitioner has failed to inform the purchase of an immovable property which she purchased along with her sister by contributing a sum of Rs.10,000/- for her share without getting prior permission from the competent authority. The petitioner submitted her explanation on 27.06.2003 stating that she had no knowledge about the purchase of the property and



that she has not contributed any money towards the same. It was purchased by her mother without her knowledge in the name of her sister and herself by paying the entire sale consideration to the vendor. Therefore, there is no occasion for her to communicate the purchase of the immovable property to the Department. An Enquiry Officer was appointed who held that the charges are proved. Based on that, the Director of Town Panchayats, in RC.No.6017/2003/A4, dated 18.01.2008, had imposed the punishment of censure. Aggrieved over the same, the petitioner has approached this Court on the ground that the impugned order has been passed without jurisdiction, without application of mind, without any material evidence and purely on assumption.

3. The learned counsel for the petitioner would contend that the Government has decided vide G.O.Ms.No.301, Municipal Administration and Water Supply (Election) Department, dated 24.08.2004, to upgrade the Town Panchayat, where the population of the Panchayat is more than 30,000 into one of Grade - III Municipality. As such, Nellyalam Town Panchayat was also upgraded as Grade - III Municipality. In furtherance of this, the Government has also issued an amendment to the Rules under Tamil Nadu Act V of 1920 as amended by Tamil Nadu Act 23 of 2004 i.e. Tamil Nadu District Municipalities Act, 1920 and in supersession of Notification No.I(2)/MW/1929(e-11)94 published at page 35 of Part II - Section 2 of Tamil Nadu Government Gazette Extraordinary dated 31.05.1994. In effect, the Rules were amended in respect of Executive Officers of Grade - III Municipalities. As per the amendment, the Commissioner of Municipal Administration has been conferred with the powers to exercise and perform the powers and duties of the Inspector of Grade - III Municipalities. Thereby, the Commissioner of Municipal Administration was appointed as Disciplinary Authority of the Executive Officers of Grade - III Municipalities. As long as the petitioner had continued in the Grade - III Municipality, the competent authority to impose punishment is the Commissioner of Municipal Administration whereas, the impugned punishment order was issued by the Director of Town Panchayats, who has no jurisdiction. Therefore, prima facie the impugned order is liable to be set aside for want of jurisdiction.

4. Secondly, the learned counsel would contend that even assuming, without admitting that the Director of Town Panchayats has powers to pass such an order, the impugned order is not sustainable for not adducing any reason for the same. In support of this contention, he would rely on the judgment of the Hon'ble Supreme Court in the case of The Government of Tamil Nadu and another Vs. Ruchen S.Barua and others [2010 (2) SCC 497] and the judgment of the Division Bench of this Court in the case of The Secretary to Government, Cooperation, Food and Consumer

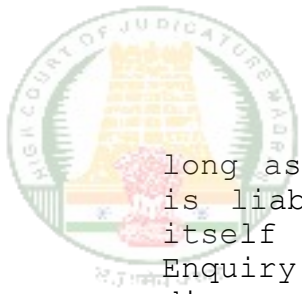


Protection Department, Chennai, and others Vs. G.Nagendran (order dated 22.07.2016 in W.A.(MD) No.873 of 2016). Insofar as the impugned order is concerned, it simply says that the disciplinary authority has obtained further explanation of the delinquent and decided to drop further action and let off the delinquent with severe warning. Since the Vigilance Commissioner has informed that severe warning is not classified as punishment, it was modified as censure. But, the disciplinary authority has not discussed about the charges as well as the explanation submitted by the petitioner, finding of the Enquiry Officer and the reasons for imposing punishment. On that ground also, he would contend that the impugnd order is liable to be set aside.

5. Thirdly, it is submitted that the petitioner has taken a stand that she had no knowledge about the purchase of the property as it was done by her mother by investing her own money to which the presence of the petitioner is not mandatory at the relevant point of time. She had also stated that available materials clearly show that the property was sold only to the mother of the petitioner and the money was paid by the mother to the vendor and the petitioner is not at all involved in the transaction. While that being so, at the outset the framing of charges is itself on the basis of assumption and secondly, the finding of the Enquiry Officer is without any evidence and therefore, the findings are perverse and the order based on the perverse findings after coming to a conclusion to drop further action, is arbitrary and the punishment is liable to be set aside and the consequential attendant benefits have to be given to the petitioner.

6. Per contra, the learned Government Advocate (Civil) would submit that as per G.O.Ms.No.118, Municipal Administration and Water Supply Department, dated 21.08.2007, all the Executive Officers of Grade - III Municipalities are reverted back to the Town Panchayats and the Director of Town Panchayats has continued to exercise his power as disciplinary authority in respect of the Executive Officers of Town Panchayats. Therefore, the charge was initiated at the time when the petitioner working as Executive Officer of Town Panchayat and in view of G.O.Ms.No.118, the Director of Town Panchayats is the competent authority and he does not lack jurisdiction to impose any such punishment.

7. Secondly, the purchase of the property was proved by way of a registered sale deed. The petitioner cannot plead ignorance of sale transaction by which she has acquired two cents of immovable property. It is well settled by the Service Rules that any Government Servant is bound to disclose purchase of immovable property and to get prior permission for the same. As



long as the petitioner has failed to get prior permission, she is liable to be punished and the production of sale deed by itself would prove the same. Therefore, the finding of the Enquiry Officer is correct and the punishment of censure is not disproportionate, but, it is a very minor punishment. Therefore, the order is sustainable.

8. Heard the submissions made by the learned counsel appearing on either side and perused the materials placed before this Court.

9. At the outset, the admitted facts are follows:-

It is not in dispute that the petitioner was working as Executive Officer in Nelliyalam Town Panchayat. It is also not disputed that the said Nelliyalam Town Panchayat is upgraded as Grade - III Municipality and the Commissioner of Municipal Administration was conferred with the powers of disciplinary authority. In other words, the Director of Town Panchayats is divested of powers for taking action on Executive Officers of the Grade - III Municipalities. It is also noted that the petitioner was permitted to retire from service by none other than the Commissioner of Municipal Administration. If that be so, it is very clear that the Commissioner of Municipal Administration is the competent authority. It is further substantiated by G.O.Ms.No.300, Municipal Administration and Water Supply Department, dated 24.08.2004 wherein, the Rules with regard to the powers and duties of Inspector of Grade - III Municipalities have been amended and the Commissioner of Municipal Administration is conferred with such powers. In that event, either the petitioner should have been reverted back to Town Panchayat as per G.O.Ms.No.118, Municipal Administration and Water Supply Department, dated 21.08.2007 or Nelliyalam Grade - III Municipality should have been downgraded as Town Panchayat. If this event does not take place, the petitioner continues to be the Executive Officer of the Grade - III Municipality and the Commissioner of Municipal Administration continues to be the competent authority for taking any action against the petitioner. In view of that matter, the contention of the learned counsel for the petitioner that the order is passed without jurisdiction is well founded and the Director of Town Panchayats is an incompetent authority to initiate impugned proceedings against the Executive Officer.

10. A reading of the impugned order itself shows that the petitioner continued as Executive officer of the Grade - III Municipality, which was an erstwhile Town Panchayat, that means, the petitioner is the Executive Officer of the Grade - III Municipality. Therefore, the order passed by the Director of Town Panchayats is without jurisdiction.



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11. A further reading of the order reveals that absolutely no reasons were accorded. Paragraph Nos.3 and 4 are extracted as under:-

"3) Explanation of Tmt.Kousalya was obtained vide reference 3rd cited and Thiru.R.Jayabal, formerly Assistant Director of Town Panchayats, Dharpamuri Zone was appointed as Inquiry Officer vide reference 4th cited. The Enquiry Officer has submitted his enquiry report vide reference 5th cited and stated that all the 3 charges are proved.

4) The further explanation of Tmt.K.Kousalya was obtained against the enquiry report and the Disciplinary authority has decided to drop further action (let off with severe warning) in the above disciplinary case. Therefore, a proposal for seeking concurrence of Vigilance Commissioner was sent to the Government vide this office reference 7th cited."

The Director of Town Panchayats has stated that charges were issued to the delinquent, explanation obtained, Enquiry Officer was appointed, he submitted an enquiry report holding all the charges are proved, the petitioner has submitted a further representation against the enquiry report and he has decided to drop further action and the delinquent was let off with a severe warning.

12. It is an established procedure that the disciplinary authority shall apply his mind to the charges, the explanation submitted by the delinquent, the findings produced by the Enquiry Officer with regard to the charges either proved or disproved, the reasons adduced by the Enquiry Officer for arriving at a finding to hold that the charges proved or not proved and thereafter, reasons shall be recorded by the disciplinary authority as to why he accepts or differ with the enquiry report and to consider the objection submitted by the delinquent against the enquiry report and finally impose punishment or exonerate the charged official. If he decides to impose punishment shall record reasons on the proportionality of the punishment before imposing the same.

13. The Hon'ble Supreme Court in the judgment in the case of The Government of Tamil Nadu and another Vs. Ruchen S.Barua and others [2010 (2) SCC 497] has observed as under:-

"19. In his order, the Chairman of the Managing Committee did refer to the allegations levelled against the appellant and representation submitted by her in the light of the findings recorded by the



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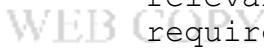
Enquiry Officer, but without ever advertent to the contents of her representation and giving a semblance of indication of application of mind in the context of Rule 120(1)(d)(iv) of the Rules, he directed her removal from service. Therefore, there is no escape from the conclusion that the order of punishment was passed by the Chairman without complying with the mandate of the relevant statutory rule and the principles of natural justice. The requirement of recording reasons by every quasi-judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognised facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned."

Failure to discuss about the factum of the case is violative of principles of natural justice and vitiates the order passed by the authority concerned.

14. Likewise, the Hon'ble Division Bench of this Court in W.A.(MD) No.873 of 2016, dated 22.07.2016, has observed as under:-

"23. Coming to the facts of the present case, we could see that the impugned order of the first respondent does not disclose any reason nor an application of mind as to the contentions/points raised on behalf of the writ petitioner. Except narrating the orders of various authorities and recommendations of second respondent and the Tamil Nadu Public Service Commission, there is no independent discussion or independent consideration of the case, at least with regard to the quantum of punishment. Hence, we are of the view that the impugned order suffers from materials irregularities in the sense that it does not indicate any independent application of mind nor disclose any independent reason by referring to the facts admitted and the facts established."

15. A cryptic order passed by the incompetent authority is not sustainable in law. Furthermore, once he has taken a decision to drop further action, he should have closed the disciplinary proceedings, but, imposing severe warning, which is not an enumerated punishment for any misconduct under Rule 8 of Tamil Nadu Civil Services (Discipline and Appeal) Rules itself shows the order has been passed without application of mind. Further, it was modified as censure on the advice of the other



16. Coming to the factual matrix, I find that at the relevant point of time, registration of sale deed does not require the presence of the person in whose name it was made. The purchase was made by the mother of the petitioner by paying the entire sale consideration to the vendor. The vendor has executed the sale deed. In that view of the matter, it was an unilateral deed executed by the vendor. The money was paid by the mother of the petitioner without the petitioner's knowledge. Further submission has been made before this Court that totally 21 cents were purchased out of which, two cents with demarcation was purchased in the name of the petitioner. This finding during the enquiry establishes the fact that available materials prove that the petitioner had no knowledge about the transaction, she had not given any money, she was not present at the Registrar's office at any point of time in respect of the transaction.

18. Since this Court has reached the above inference, the impugned order passed in RC.No.6017/2003/A4, dated 18.01.2008, by the Director of Town Panchayats stands set aside. It is also submitted that due to pendency of the disciplinary proceedings, the petitioner was deprived of her promotional prospects, but for which, she was fully eligible to be promoted.

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of this order.

In fine, the Writ Petition is allowed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Director of Town Panchayats,
Kuralagam, Chennai.

+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.30120

+1cc to the Government Pleader, S.R.No.30378

W.P.No.19771 of 2008
and M.P.No.1 of 2008

SSI (CO)
SU(20/01/2022)