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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.4932 of 2009
and M.P.No.1 of 2014

- 1 T.V.PALLANEE (DECEASED)
NO.11, PANCHAYAT COLONY,
RADHA NAGAR, CHROMPET, CHENNAI-44.
- 2 PUSHPA PALLANEE
No.11, PANCHAYAT COLONY,
RADHA NAGAR, CHROMPET CHENNAI-44.
- 3 V. P. JAGHAN KAMAL
No.11, PANCHAYAT COLONY,
RADHA NAGAR, CHROMPET, CHENNAI-44.
- 4 ARUNA LALITH PALLANEE
No.11, PANCHAYAT COLONY,
RADHA NAGAR, CHROMPET,
CHENNAI-44.

...PETITIONERS

(Petitioner 2 to 4 substituted as legal heirs of deceased sole petitioner vide order dt 28.10.2021)

Vs.

- 1 THE STATE OF TAMIL NADU
REP. BY ITS SECRETARY TO GOVERNMENT,
MUNICIPAL ADMINISTRATION & WATER SUPPLY DEPT.
FORT ST.GEORGE CHENNAI-9.
- 2 THE COMMISSIONER OF MUNICIPAL
ADMINISTRATION, EZHILAGAM ANNEX,
CHETPUT, CHENNAI-31.

...RESPONDENTS

Prayer : Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the 1st Respondent in GO (D) No.369 Municipal Administration and Water Supply (ME II) Department dated 7.9.2006 quash the same.



For Petitioner : Mr.Syed Mustafa
For Respondents : Mr.T.Arunkumar, A.G.P.

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O R D E R

The sole writ petitioner, deceased T.V.Pallanee while functioning as Municipal Commissioner, Tambaram Municipality, was served with Charge memo on 30.12.1998 under Rule 17(b) of the Tamilnadu Civil Services (Discipline & Appeal) Rules. The charge memorandum containing two charges framed against the petitioner are as follows:

Charge No.1:

'that Thiru T.V.Palani, while functioning as Municipal Commissioner, Tambaram was responsible for having placed purchase order of Bleaching powder from M/s.The George Town Electrical, Electronics Allied Products and Servicing Industrial Co-operative Society Ltd., Chennai - 79 (discussed in Annexure of this memorandum) in violation of the procedure laid down in G.O.Ms.No.708, Finance (BFE) Department, dated 22.8.1994'.

Charge No.2 :

'that while functioning as Municipal Commissioner, Tambaram, Thiru T.V.Palani has issued purchase order for purchase of bleaching powder (as discussed in charge No.1) at a higher rate of Rs.24.15 per Kg. Without verifying the prevailing market rates at that time in violation of the procedure prescribed in Municipal Manual'.

2. The deceased Municipal Commissioner had submitted his detailed defence statement on 18.6.1999, whereby he denied the charges levelled against him. It is the specific explanation made by the deceased petitioner that by invoking the emergency provisions under Section 15 of the Tamil Nadu District Municipalities Act, 1920, he purchased bleaching powder since there was a suspected outbreak of Cholera. Due to sudden outbreak of Cholera, the decision was taken to purchase bleaching powder from George Town Electrical Electronic Allied Products and Servicing Industrial Co-operative Society Ltd. Therefore, there is no irregularities on the part of the deceased petitioner.



3. Insofar as the Charge No.2, the deceased petitioner has submitted an explanation before the enquiry officer that he has not committed any irregularities since bleaching powder has been purchased routinely from the aforesaid Society and the rates of the Society was much lower than the prevailing market rate. It is also explained before the authority, in the normal course, preference will be given to Society for the purchase of materials. Therefore, in good faith, in order to prevent outbreak of Cholera, the deceased petitioner by invoking emergency provisions under Sec.15 of the Tamil Nadu District Municipalities Act, 1920, purchased bleaching powder from the aforesaid Society. Based on the aforesaid explanation given by the writ petitioner, the enquiry officer found that both the charges were not proved against the deceased petitioner and submitted a report to the first respondent. However, the first respondent disagreed with the findings of the enquiry officer and consequently, issued show cause notice by proceedings, dated 1.4.2003 and the petitioner submitted detailed explanation. Subsequently, the first respondent has passed the final order by imposing punishment of Rs.200/- cut-in Pension of the petitioner for a period of one year. The said order is under challenge in the present writ petition.

4. Counter affidavit has been filed on behalf of the respondents wherein it is stated that after following the due procedure laid down in the said rules, punishment order has been passed imposing a punishment of cut-in pension of Rs.200/- per mensem for one year from the pensionary benefit of the petitioner for the proven charges. Further, it is stated that there was no justification recorded for the purchase of huge quantity (3.00 Metric Tonne) of bleaching powder under Sec.15 of the Tamilnadu District Municipalities Act, 1920. Moreover, there was no necessity to purchase bleaching powder in huge quantity (3000 Kgs.) incurring an abnormal expenditure of Rs.72,450/- in a day under Sec.15 of the said Act. In view of the proven charges and after obtaining views of the Tamil Nadu Public Service Commission, punishment was imposed on the petitioner and therefore, there is no irregularities in the order passed by the first respondent.

5. Heard the rival submissions of the parties and perused the materials available on record.

6. At the time of admission, no interim order was passed and the amount was recovered from the petitioner. Now, the matter is taken up for final disposal. Writ petitioners 2 to 4 were substituted as legal heirs of the deceased petitioner. Therefore, cause title was suitably amended in the writ petition.



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7. According to the learned counsel appearing for the petitioner, explanation of the petitioner is very clear that by invoking emergency provisions under Sec.15 of the Tamilnadu District Municipalities Act, 1920, the deceased petitioner has purchased bleaching powder from the said Society since there was sudden outbreak of Cholera. The Municipality has regularly purchased bleaching powder from the aforesaid Society by placing an order, not by way of inviting tenders. The learned counsel appearing for the petitioner relied on the unreported judgment of this Court in identical case in T.V.PALLANEE VS. STATE OF TAMILNADU (W.P.No.37803 of 2005, dated 23.12.2020) wherein this Court set aside the impugned order by placing reliance on the various decisions of the Hon'ble Supreme Court as well as this Court. Therefore, on the same line, the impugned punishment order is illegal and the same is liable to be set aside. In the aforesaid judgment, this Court considering the fact that the first respondent had simply disagreed with the findings of the enquiry officer by passing a non speaking order, set aside the punishment order. Whereas in the case in hand, the disciplinary authority recorded a finding that the purchase of Bleaching powder is not an occasional process, but it is a routine one for the maintenance of water supply. Therefore, the aforesaid judgment will not rescue the petitioner.

8. According to the learned Additional Govt. Pleader, in the final order, the first respondent has clearly stated that the purchase of bleaching powder is not an occasional process, the Municipality has purchased bleaching powder regularly for the maintenance of water supply to prevent any outbreak of Cholera. Therefore, explanation of the deceased petitioner was not accepted on the ground that huge quantity (3.00 Metric Tonne) of bleaching powder has been purchased by the Municipality without following the procedures. To that extent, there is no satisfactory explanation from the deceased petitioner. In the absence of any materials placed before the authority concerned, the punishment of cut-in pension of Rs.200/- per month for a period of 12 months was imposed and the same is perfectly valid. Therefore, the writ petition is liable to be dismissed.

9. The explanation of the petitioner to the charges (supra) framed against the petitioner is as follows:

When he was at Tambaram Municipality, there was an outbreak of Cholera and he has taken all measures to control the deadly disease from further spreading. When it was completely under control, the Junior Engineer and the Municipal Engineer had brought a note in person on 6.1.1996 and explained him that there was completely no stock of Bleaching Powder for chlorination purpose and immediate purchase under section 15 of the Tamilnadu District Municipalities Act, 1920 was necessary.



As chlorination of water following the outbreak of cholera was an absolute need to avert further re-occurrence, he approved the purchase of Bleaching powder exercising the emergency powers purely with bonafide intention to avert any delay in the matter of purchase and other formalities he has also submitted that the purchase was not made from any private individuals but only from M/s.George Town Electrical Electronic, Allied Products and Servicing Industrial Co-operative Society Ltd. which is approved by the Khadi and Village Industries Department. In the light of the above facts and circumstances, the charges framed against the petitioner are not correct and he denied it.

10. On perusal of record, as rightly pointed out by the learned Additional Government Pleader, the deceased petitioner has not submitted any satisfactory explanation, except by stating that due to sudden outbreak of Cholera, he purchased bleaching powder from the aforesaid Society. Further, it is admitted that the Municipality has purchased regularly from the aforesaid Society without following the procedure contemplated under the Rules, that too, huge quantity of 3.00 Metric Tonne of bleaching powder without floating a tender or following the procedure under the Rules.

11. Therefore, this Court is not satisfied with the reason stated by the petitioner that by invoking Section 15 of the Tamilnadu District Municipalities Act, 1920 the petitioner purchased such huge quantity of (3.00 Metric Tonne) bleaching powder directly from the aforesaid Society without calling for tenders from the public. Further, counsel appearing for the petitioner has fairly submitted that the aforesaid punishment order was given effect to and the amount of Rs.200/- per month was recovered from the pension of the petitioner. Therefore, findings of the first respondent is perfectly right and no warrants to interfere with the impugned order, dated 7.9.2006 passed by the first respondent.

12. In the result, the writ petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. THE SECRETARY TO GOVERNMENT,
STATE OF TAMIL NADU,
MUNICIPAL ADMINISTRATION & WATER SUPPLY DEPT.
FORT ST.GEORGE CHENNAI-9.

2. THE COMMISSIONER OF MUNICIPAL ADMINISTRATION,
EZHILAGAM ANNEX, CHETPUT, CHENNAI-31.

+lcc to M/s.Karthik Mugundan, Advocate, S.R.No.61036
+lcc to the Government Pleader, S.R.No.60692

W.P.No.4932 of 2009
and M.P.No.1 of 2014

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NSK 06/12/2021