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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A.1156 of 2020

The Commisssioner,
Greater Chennai Corporation,
Rippon Building,
Chennai.

... Appellant/1st Respondent

-vs-

1.C.Balaji Babu

... Respondent/Petitioner

2.The Secretary to Government,
Municipal Administration & Water Supply Department,
Secretariat, Fort St.George,
Chennai-600 009.

... Respondents/2nd Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 24.02.2020 passed in W.P.No.11404 of 2012 by this Hon'ble Court by allowing this Writ Appeal.

Prayer in W.P.No.11404 of 2012:

Writ Petition filed Under Article 226 of Constitution of India, Calling for the records relating to the impugned order of the 1st respondent issued in Na.Ka. No.R1/1536/07 dated Nil (signed on 18.6.2009) and the consequential order passed by the 2nd respondent in GO (D) No.500 MAWS (MC3) Department dated 2.12.2011 and quash the same.

For Appellant: Mr.S.Silambanan,
Addl. Advocate General
For Mr.R.Gopinath

For R1 :Mr.S.N.Ravichandran for Caveator



J U D G M E N T

S.VAIDYANATHAN, J.,
and
R.VIJAYAKUMAR, J.,

This Writ Appeal has been filed by the Appellant for setting aside the order of the learned Single Judge dated 24.02.2020 made in W.P.No.11404 of 2012, in and by which, the punishment of removal from service has been modified into the one of withholding of increment without cumulative effect for three years.

2. For the sake of brevity, the parties would be referred to by their original nomenclature found in the Writ Petition as 'the Writ Petitioner' and 'Appellant/1st Respondents'.

3. It was the case of the Writ Petitioner that he was removed from service on the ground that while he was working as Assistant, he was issued with a charge memo dated 23.07.2007 for misappropriation of amount in respect of booking of a Kalyana Mandabam. According to the Writ Petitioner, two other persons, who were charged with the similar misconduct, were let off by way of simple imposition of punishment of stoppage of increment for three years without cumulative effect, whereas a punishment of removal from service was imposed on the Writ Petitioner.

3.1. It was further case of the Writ Petitioner that an outsider has been appointed as an Enquiry Officer, which is contrary to the Rules applicable to the Corporation and that no one was examined to establish the charges. Accepting the submission of the Writ Petitioner with regard to discrimination, learned Single Judge has allowed the Writ Petition, which does not warrant any interference by this Court.

4. The Appellant herein has contended that the Writ Petitioner, having accepted his guilt before the Vigilance and remitted the misappropriated amount, cannot now take a different stand. Since a serious misconduct has been committed and there was a temporary misappropriation of the amount, he cannot be left off with a minor punishment. It is also contended that even if it is accepted that the enquiry had not been conducted in a fair manner, learned Single Judge, instead of conversion of punishment, ought to have remanded the matter to the Authority for any lesser punishment.



6. It is seen that the Writ Petitioner joined the services of the Appellant / Corporation as Office Assistant and while he was an Assistant on promotion, he was issued with a Charge Memo dated 23.07.2007. Admittedly, no enquiry has been conducted, as, on the basis of the charges, he was straightaway removed from service and the charges have not been established in the enquiry. The documents relied upon by the Appellant herein cannot be looked into at this stage, as the same has got to be examined in the enquiry. Though the charges are indeed serious in nature, the punishment of removal from service has been imposed without conducting a proper enquiry and the same has been interfered with by the learned Single Judge, by reducing the punishment. Of course, learned Single Judge has rightly observed in the order that enquiry has not been conducted properly and that there is a violation of principles of natural justice. Once the enquiry is bad, the matter will have to be remanded back to the Disciplinary Authority for fresh consideration, who, in turn, after complying with all the requirements and after getting a report from the Enquiry Officer, can, if required, impose a punishment based on the evidence that may be available. While agreeing with the observation made by the learned Single Judge that there was no enquiry, which is bad in the eye of law, we are of the view that the matter is liable to be remitted to the Disciplinary Authority to consider afresh.

<https://hcservices.ecourts.gov.in/hcservices/>



Authority or the Enquiry Officer, who is going to be appointed by the Disciplinary Authority shall not be influenced by any of the observations made either by the learned Single Judge or by this Bench.

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8. This Writ Appeal is allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

The Secretary to Government,
Municipal Administration & Water Supply Department,
Secretariat, Fort St.George,
Chennai-600 009.

+lcc to Mr.S.N.Ravichandran, Advocate Sr.54836
+lcc to Mr.Gopinath, Advocate Sr.54912

W.A.1156 of 2020

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