



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.[MD]No.882 of 2021

and

C.M.P(MD)No.3965 of 2021

The Commissioner and Special Officer,
Thoothukudi City Municipal Corporation,
Thoothukudi. ... Appellant / Respondent

Vs.

E.Gnanasekar ... Respondent / Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 26.02.2021 made in W.P.[MD] No.674 of 2019 on the file of this Court.

Prayer in WP(MD). 674 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned charge memo in A16/17170/2002 dated 24.04.2006 and consequent proceedings in impugned proceedings in Na.Ka.No.A16/17170/2002, dated 13.03.2018 of the Respondent and to quash the same and consequently direct the respondent to grant periodic promotion with all other attended benefits payable to him within the time frame fixed by this Hon'ble Court.

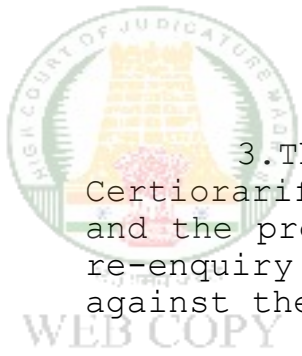
For Appellant : Mr.S.Saji Bino
For Respondent : Mr.A.Selventhiran
for Mr.J.Ashok Kumar

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

We have heard Mr.Saji Bino, learned counsel for the Appellant and Mr.A.Selventhiran, learned counsel for the Respondent.

2.This Writ Appeal filed by the Commissioner and Special Officer of Thoothukudi City Municipal Corporation, is directed against the Order, dated 22.06.2021 in W.P.(MD) No.674 of 2019 filed by the respondent herein.



3.The respondent prayed for a issuance of a Writ of Certiorarified Mandamus to quash the charge memo, dated 24.04.2006 and the proceedings of the appellant, dated 13.03.2018, by which, a re-enquiry was ordered by the appellant on the charges framed against the respondent.

4.The learned Writ Court by the impugned order, allowed the writ petition and quashed the charge proceedings only on the ground of delay and latches. The learned Single Bench referred to a decision in the case of **Koothapillai Vs. The Commissioner, Municipal Administration and Others** reported in **2009 (1) MLJ 761**, which was allowed following several decisions of the Hon'ble Supreme Court, wherein, disciplinary proceedings were quashed on the ground of unexplained delay and latches. In our considered view, the said decision would not be applicable to the facts of the instant case, since charge memo was issued to the respondent on 24.04.2006. The respondent submitted his reply and an enquiry was conducted and the Enquiry Officer submitted a report, dated 28.05.2013. For five long years, the appellant did nothing on the enquiry report and did not afford an opportunity to the respondent to submit further representation on the findings of the Enquiry Officer and did not pass final orders. After about 5 years, a proceedings, dated 13.03.2018, was issued stating that the Enquiry Officer, who was appointed to enquire into the charges did not conduct the enquiry properly and therefore, the appellant desires to conduct a re-enquiry. It is at that stage, the respondent filed a writ petition challenging the charge memo as well as the proceedings, dated 13.03.2018 ordering re-enquiry. On a perusal of the proceedings, dated 13.03.2018, we have no hesitation to hold that the same is unsustainable in law.

5.It is settled legal position that the findings of the Enquiry Officer will not bind the Disciplinary Authority. If the Disciplinary Authority holds that the findings of the Enquiry Officer are not sustainable, he can disagree with the findings. Hence, in the event of such disagreement a Disciplinary Authority has to issue a show cause notice to the delinquent employee clearly setting out as to how he is of the opinion that the findings rendered by the Enquiry Officer is not sustainable and how he proposes to come to a conclusion that the charges are held to be proved against the delinquent differing from the finding of the Enquiry Officer, who might have exonerated the delinquent employee. Thereafter, the delinquent employee is entitled to submit his objections and after affording reasonable opportunity, the Disciplinary Authority should conclude the proceedings. Unfortunately, the appellant appears to be not aware of the legal position and by proceedings dated 13.03.2018, stated that the Enquiry Officer, who was appointed, did not properly conduct the enquiry. Therefore, he is ordering re-enquiry. Such a procedure is



unknown to service jurisprudence. Therefore, the proceedings, dated 13.03.2018 is liable to be set aside.

6.Under normal circumstances, the Court might have remanded the matter back to the Disciplinary Authority namely, the appellant to issue fresh notice to the respondent / delinquent and to proceed afresh from that stage. However, we are not inclined to give any such liberty in the instant case, because more than 5 years have lapsed, after the enquiry report, dated 28.05.2013 was submitted.

7.Next, we move on to consider as to whether the learned Single Bench was correct in quashing the charge memo. As pointed out earlier, the only reason for quashing the charge memo is on the ground of delay and latches. In our considered view, the theory of delay and latches cannot be made applicable to the instant case, as the charge memo was issued in the year 2006. The respondent submitted to the jurisdiction, gave his reply, Enquiry Officer was appointed, the respondent participated in the enquiry and the Enquiry Officer has submitted his report, dated 28.05.2013. At no earlier point of time, the respondent had challenged the charge proceedings and for the first time, the challenge was made in the year 2019. Therefore, on the facts and circumstances of the case, the charge memo could not have been quashed.

8.In the result, the writ appeal is partly allowed and the order passed by the learned Writ Court quashing the charge proceedings, dated 24.04.2006 is set aside and the matter is restored to the stage of the enquiry report, dated 28.05.2013. In the light of the reasons we have assigned earlier, the proceedings of the appellant, dated 13.03.2018 is quashed. The respondent is directed to submit his further representation to the enquiry report, dated 28.05.2013, within a period of two weeks from the date of receipt of a copy of the judgment and on receipt of the same, the appellant, namely, Disciplinary Authority shall pass final orders on merits and in accordance with law within a period of three weeks, thereafter. No Costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RM



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+1 CC to M/s.S.SAJI BINO, Advocate (SR-17684[F] dated 27/04/2021)

JUDGMENT MADE IN
W.A. [MD] No. 882 of 2021
23.04.2021

PM(CO)
TR(08.06.2021) 4P 2C