



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI
W.P. (MD)Nos.19570 of 2014 and 16516 of 2017

and
W.M.P (MD)Nos.1 of 2014, 1 of 2015, 10311 and 13147 of 2017

G.Suresh Kumar

... Petitioner in both W.Ps.

Vs.

1.The Commissioner,
Thanjavur Corporation,
Thanjavur.

2.The Commissioner,
Mannargudi Municipality,
Mannargudi.

... Respondents in W.P. (MD)No.19570/2014

1.The Commissioner,
Thanjavur Corporation,
Thanjavur.

2.The Commissioner,
Kumbakonam Municipality,
Kumbakonam,
Tanjore District.

... Respondents in W.P. (MD)No.16516/2017

PRAYER in W.P. (MD)No.19570 of 2014 : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the first respondent's charge memos dated 30.06.2014 and 22.09.2014 in his proceedings Na.Ka.No.5668/2014/C1 and quash the same.

PRAYER in W.P. (MD)No.16516 of 2017: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the first respondent to regularize the petitioner's service, who has been working as Revenue Assistant from 1994 onwards within the time limit fixed by this Court.

In W.P. (MD)No.19570 of 2014:

For Petitioner: Mr.T.K.Gopalan

For R1 : Mr.S.Pakalavan

For R2 : Mr.A.Karthick, GA



In W.P. (MD) No.16516 of 2017:-

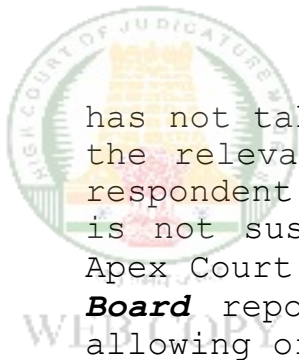
For Petitioners : Mr.P.T.S.Narendravasan
For R1 : Mr.S.Pakalavan
For R2 : Mr.A.Karthick, GA

C O M M O N O R D E R

These writ petitions have been filed to quash the charge memos dated 30.06.2014 and 22.09.2014, issued by the first respondent and to direct the first respondent to regularise the petitioner's service, who has been working as Revenue Assistant from 1994 onwards, within the time limit fixed by this Court.

2. The case of the petitioner is that he was appointed as Revenue Assistant in the year 1994, on compassionate ground, as the father of the petitioner died, while he was in service. The petitioner joined duty on 31.12.1993 and continuously working as Revenue Assistant in Thanjavur Municipality for about ten years. While he was in service, a false case was registered against the petitioner in Crime No.27 of 2003 and the charge sheet was also filed against the petitioner under the Prevention of Corruption Act. Subsequently, the petitioner faced trial before the Chief Judicial Magistrate, Kumbakonam in S.C.No.11 of 2004 and the trial Court has convicted the petitioner on 17.08.2009. Subsequently, the first respondent terminated the petitioner from service on 18.08.2009. As against the order of conviction, the petitioner has preferred an appeal in CrI.A.(MD).No.258 of 2009 before this Court and this Court has allowed the appeal and acquitted the petitioner on 05.09.2013. After acquittal, the first respondent reinstated the petitioner on 23.06.2014. Thereafter, the petitioner is working as Revenue Assistant in the second respondent Municipality. At this juncture, the first respondent has issued a charge memo against the petitioner, on 30.06.2014. The petitioner has submitted his explanation on 22.07.2014, through registered post. Without considering the petitioner's explanation, again the first respondent issued another charge memo on 22.09.2014 and the petitioner has submitted his explanation on 10.10.2014. However, the same was not considered. Hence, the petitioner has filed the present writ petitions seeking to quash the charge memos dated 30.06.2014 and 22.09.2014, issued by the first respondent and to direct the first respondent to regularise the petitioner's service from 1994 onwards.

3. The learned counsel appearing for the petitioner would submit that initially a criminal case was registered against the petitioner under the Prevention of Corruption Act, in the year 2003. Thereafter, the petitioner was convicted by the trial Court on 17.08.2009. Immediately, after the conviction, the petitioner was removed from service. On appeal, the criminal case ended in favour of the petitioner. However, the first respondent



has not taken any action to initiate the disciplinary proceedings at the relevant point of time and after lapse of 10 years, the first respondent has issued the charge memos against the petitioner, which is not sustainable one. The very same issue was considered by the Apex Court in the case of **P.V.Mahadevan v. M.D., Tamil Nadu Housing Board** reported in **AIR 2006 (SC) 207**. Accordingly, he prayed for allowing of this writ petition.

4. Per contra, the learned counsel appearing for the first respondent would submit that based on the judgment of this Court in Crl.A.(MD).No.258 of 2009, the petitioner was reinstated into service and posted as Revenue Assistant at Mannargudi Municipality. As per G.O.(Ms).No.251, P & AR (Per-N) Department, dated 21.04.1988, in the case of an acquitted by the Court, departmental disciplinary action may be proceeded against an acquittal official for the delinquency of involving in grave official misconduct. He would further submit that as per Tamil Nadu Municipal Service Rules, 1970, enquiry officer was appointed on 03.11.2014. But, the petitioner has not attended the enquiry conducted by the enquiry officer. Therefore, the charges framed against him was not finalised by the enquiry officer and the final orders will be passed only on the basis of the enquiry report received from the enquiry officer. Even though the reasonable opportunity was given to the petitioner, he failed to co-operate with the enquiry officer. Hence, he prayed for dismissal of this writ petition.

5. Heard the learned counsel for the petitioner, learned counsel for the first respondent, learned Government Advocate appearing for the second respondent and perused the materials available on record.

6. The facts in the present case are not in dispute. Admittedly, the petitioner was involved in a criminal case under the Prevention of Corruption Act and the trap was conducted by the Vigilance Department as if he demanded a sum of Rs.3,000/- as bribe and accepted a sum of Rs.1,800/-, thereby, he was implicated in a case in Crime No.27 of 2003, for the offence under Section 7 of the P.C. Act. Initially, the petitioner was convicted by the trial Court in S.C.No.11 of 2004. As against the order of conviction, the petitioner has preferred an appeal before this Court in Crl.A.(MD).No.258 of 2009. This Court has allowed the appeal on 05.09.2013. Thereafter, the first respondent has issued the impugned orders. The grievance of the petitioner is that the petitioner was involved in a criminal case in the year 2003. However, the charge memos were issued after a lapse of 10 years, which is not sustainable one. To that effect, the learned counsel for the petitioner has referred the above said decision.



7. True it is that the petitioner was facing criminal prosecution in which initially he was convicted, only to be acquitted in appeal and, thereafter, the petitioner was reinstated and proceeded with departmentally. It is to be pointed out that the charges in the criminal prosecution was grave enough for the management to proceed departmentally after acquittal in the criminal case. Acquittal in the criminal case is not a bar to proceed departmentally. Further, it is to be pointed out that the nature of evidence in the criminal trial and departmental proceedings to prove the guilt are totally different and in view of the gravity of the charges the petitioner was proceeded against. However, it is to be pointed out that only charge memos have been issued and enquiry officer has been appointed and the petitioner has not participated in the enquiry. It is always open to the management to proceed against a delinquent officer and it is the duty of the delinquent to participate in the enquiry and prove his innocence. The petitioner cannot scuttle the process of enquiry on mere technicalities. The petitioner not having participated in the enquiry, cannot come before this Court seeking quashment of the charge memos.

8. For the reasons aforesaid, this Court is not inclined to interfere with the charge memos issued against the petitioner. Accordingly, the W.P.(MD).No.19570 of 2014 is dismissed. However, considering the fact that the charge memos are pending right from 2014, this Court directs the first respondent to conclude the disciplinary proceedings within a period of six months from the date of receipt of a copy of this order.

9. In view of the pendency of the departmental proceedings against the petitioner, the prayer sought for by the petitioner in W.P.(MD).No.16516 of 2017 cannot be considered at this point of time. However, liberty is granted to the petitioner to work out his remedy, after conclusion of the departmental proceedings. Accordingly, this writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Commissioner,
Mannargudi Municipality,
Mannargudi.

2.The Commissioner,
Kumbakonam Municipality,
Kumbakonam,
Tanjore District.

3.The Commissioner,
Thanjavur Corporation,
Thanjavur.

+1 CC to M/s.SPL GP (SR-11868 & 12027[F] dated 17/03/2021)

+2 CC to M/s.S.ALAGUSUNDAR, Advocate (SR-11967 & 11968[F] dated
17/03/2021)

+2 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-11764[F] dated
17/03/2021)

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svn(CO)

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