



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.04.2022

Coram:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.18071 of 2009

G.Prem Kumar

.. Petitioner

Vs.

1. The Chennai Metropolitan Water Supply
and Sewerage Board,
Represented by its Managing Director,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.
2. The General Manager,
The Chennai Metropolitan Water Supply
and Sewerage Board,
Represented by its Board of Directors,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.
3. The Chennai Metropolitan Water Supply
and Sewerage Board,
Represented by its Board of Directors,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the proceedings of the first respondent in No.CMWSSB/P&A/VC(A)/7740/2008, dated 12.07.2008, confirming the order of the second respondent made in Proc.No.MMWSSB/P&A/STF/RA2/50207/92, dated 12.01.1996 imposing the punishment of stoppage of two increments with cumulative effect and treating the period of suspension as one on leave and quash the same.

For petitioner : Mr.P.Rajendran

For respondents: Mr.T.Gowthaman

R1 TO R3

ORDER

This Writ Petition is filed challenging the order passed by the second respondent, dated 12.01.1996 imposing the punishment of stoppage of two increments with cumulative effect and the order dated 12.07.2008 passed by the first respondent, confirming the same on appeal.



2. Brief facts leading to the disciplinary proceedings against the petitioner is that, aggrieved by non-consideration of several demands, the Association of Assistant Engineers indulged in certain forms of protest, which led to a surcharge atmosphere, which led to issuance of charge memo to the petitioner, who was also the office bearer of the Association at the relevant point of time. The petitioner was suspended from service and even though the said order of suspension was challenged by the petitioner by filing a Writ Petition, subsequently, he withdrew the said Writ Petition, giving a letter of regret upon which the suspension was revoked. He was permitted to join duty and thereby, the charge memo containing three charges, was levelled as against the petitioner. The said three charges are extracted hereunder:

"Charge-1: That he be a responsible Assistant Engineer indulged in unlawful and illegal activities of holding meetings, affixing posters on the walls inside the Head Office premises and on parked vehicles of the Board, inside the Office complex, shouting slogans inside Office campus at No.1, Pumping Station Road, Chintadripet, Madras-2 demanding 3:1 ratio for promotion to the post of A.E.E. between A.E. and J.E. for which there are no provisions in the existing Regulations. His above activities amounts to misconduct under Section 6(5) and 6(6) and 6(25) of the MMWSS Board Employees Service (Discipline and Appeal), Regulations, 1978.

Charge-2: That he participated in the relay fast agitation and 'fast unto death' agitation and pen down strike from 18.08.92 in gross violation of Section 6 of the MMWSS Board Employees Conduct Regulations, 1978 and which amounts to misconduct under Section 6(15) and 6(20) of MMWSSB Board Employees Service (Discipline and Appeal) Regulations, 1978.

Charge-3: On 27.08.92, he instigated the Assistant Engineers on illegal strike to storm into the Conference hall while the 140th Board meeting was in progress, and forcibly entered into the Conference hall at 12.30 P.M. along with other Assistant Engineers and stalled the proceedings for nearly an hour and on his way into the Conference hall physically assaulted Thiru P.Ramu, Office Assistant and Thiru



WEB COPY

S.Prabhakar, Field Worker who were there on duty informed him that the Board meeting was on. This above act is a criminal offence and highly objectionable and amounts to misconduct under Section 6(3) and 6(21) of the MMWSS Board Employees Service (Discipline and Appeal) Regulations, 1978."

3. The petitioner submitted explanation denying the charges even while admitting his presence in the scene of occurrence and thereupon, the Enquiry Officer was appointed, who found after conduct of oral enquiry that the Charge No.1 was proved and Charge Nos.2 and 3 were partly proved.

4. The second show cause notice dated 22.11.1994 was issued to the petitioner calling for further explanation on the Enquiry Report. The petitioner submitted his further explanation on 29.11.1994. However, after considering the further explanation and the report of the Enquiry Officer, the Disciplinary Authority rejected the further explanation and accepting the Enquiry Officer's Report, imposed the punishment of stoppage of two increments with cumulative effect by the impugned order dated 12.01.1996. Aggrieved by that, the petitioner filed an appeal, dated 29.02.1996 before the first respondent and after consideration of the Memorandum of Grounds of Appeal, by the second impugned order, dated 12.07.2008, the first respondent rejected the appeal and confirmed the order of punishment imposed by the Disciplinary Authority. Aggrieved by the same, the present Writ Petition has been filed by the petitioner.

5. The Writ Petition is resisted by the respondents by filing detailed counter affidavit. According to the respondents, the disciplinary enquiry was conducted as per the Rules in vogue. The charges levelled against the petitioner are serious in nature, leading to interruption in the very work of the respondents-Board. However, considering the fact as to the protest and all the attending factors, a lenient view was taken in imposing the punishment of only two increments cut with cumulative effect. All the grounds raised by the petitioner in the further representation as well as in the Grounds of Appeal, have been duly considered and answered by the Disciplinary Authority as well as the Appellate Authority, and therefore, there is no merit in the Writ Petition.

6. The learned counsel for the petitioner attacked the impugned order of punishment and the order passed in the appeal mainly on three grounds. Firstly, it is his contention that as per the relevant Service Rules, it is only the Board which is empowered to impose the punishment of stoppage of two increments



with cumulative effect, and therefore, the order of punishment passed by the General Manager of the respondents-CMWSSB in this case, is without jurisdiction and hence, it is liable to be set aside.

WEB COPY

7. The second submission is that certain other employees who are also placed on similar grounds, have been completely let off without punishment while in the case of the petitioner alone, the punishment was imposed.

8. Finally, the learned counsel for the petitioner contended that the findings of the Enquiry Officer, Disciplinary Authority and the Appellate Authority are perverse in nature, inasmuch as they are based on the alleged admission of the petitioner in the regret letter given to revoke the suspension, while witnesses on record have not spoken anything against the petitioner. This apart, the finding that the charges have been proved is taking into account the particular factum of all the charges and not the gravamen of the charges so as to bring home the misconduct. Therefore, he submitted that the impugned orders are liable to be set aside.

9. In support of his contentions, learned counsel for the petitioner relied upon a judgment of a Division Bench of this Court in Writ Appeal Nos.1521 and 1522 of 1994, dated 19.12.1994 (R.Rajan and another Vs. The Managing Director, Madras Metropolitan Water Supply and Sewerage Board, Madras-2 and another) for the proposition that only the Board alone is the competent authority to pass the order of punishment.

10. The learned counsel for the petitioner further relied upon an order of this Court dated 16.07.2007 passed in W.P.No.12373 of 1998 (C.R.Rajan Vs. The Government of Tamil Nadu, represented by its Secretary, Municipal Administration and Water Supply, Fort St.George, Chennai and another), by which, one Mr.C.R.Rajan, another office bearer of the Association, against whom also the punishment was imposed in the connected proceedings, by relying upon the judgment of the Criminal Court and his acquittal in the criminal case, this Court had interfered with the order of punishment therein and allowed the Writ Petition.

11. The learned counsel for the petitioner further relied upon the decision of the Honourable Supreme Court of India reported in 2006 (5) SCC 446 (G.M.Tank Vs. State of Gujarat), for the proposition as to the relevance of the order passed by the Criminal Court vis-a-vis disciplinary proceedings.

12. Per contra, the learned Standing Counsel appearing for the respondents/CMWSSB, reiterating the facts contained in the



counter affidavit and taking this Court through the Enquiry Report, submitted that the contention of the petitioner that the findings are perverse, cannot be sustained, as they are based on legally acceptable evidence. He further submitted that as far as the question of jurisdiction is concerned, the petitioner has not produced the correct applicable Rules as to the date of issuance of the charge memo, which he has furnished to the Court, whereby the General Manager is the appropriate authority to impose the penalty with-holding the increment and therefore, the plea as to the jurisdiction is factually incorrect.

13. As far as the contention regarding the co-delinquent is concerned, the learned Standing Counsel appearing for the respondents submitted that it cannot be said that the result of the disciplinary proceedings either by the Disciplinary Authority or in the appeal by the Appellate Authority or the consequent order of the Court, will have a direct bearing on the present case, because, the charges were framed independently in respect of each and every delinquent and evidence was let in and depending on the evidence and the role played by them, the result, as well as the quantum of punishment varied and therefore, the result or the quantum of punishment in respect of the other delinquents, cannot be claimed as a matter of parity in this case.

14. I have considered the rival submissions made on behalf of both sides and perused the materials available on record.

15. At the outset, the first contention relating to the jurisdiction, is incorrect, as the relevant Regulation is placed by the learned Standing Counsel appearing for the respondents-Board, which reads as under:

Regulation 7 of the Chennai Metropolitan Water Supply and Sewerage Board Employees (Discipline and Appeal) Regulations, 1978: Penalties, their authorisation and appeals: The employees of the class or category mentioned in Col.(1) of Annexure below may be imposed with the penalties mentioned in Col.(2) of the said table by the authorities mentioned in the corresponding entries in Col.(3) thereof and appeal against such imposition may be to the authorities mentioned in the corresponding entries in the Col.(4) thereof.



Sl. No.	Class and category of employees	Penalty	Competent Authority to impose the penalty in Column 3	Appellate Authority
VIII		a)	General Manager	
	2.Asst. Engineer	b) With-holding of increments	-do-	Exe. Dir

16. Therefore, the contention of the learned counsel for the petitioner that only the Board is the competent authority in respect of imposition of punishment of the petitioner, is factually incorrect, and therefore, it fails.

17. The second contention raised by the learned counsel for the petitioner claiming parity regarding the other co-delinquent is also without any merit, inasmuch as rightly contended by the learned Standing Counsel appearing for the respondents-Board, it is not a common charge which is framed and individual charges are framed in respect of each of the delinquents depending upon the role played by them and the evidence let in and the results varied and therefore, the petitioner cannot claim parity or equality in the matter of punishment, especially when the charges framed and the role played differ for each of the delinquents.

18. However, I am in agreement with the learned counsel for the petitioner in respect of the third ground of attack, namely as regards the nature of findings by the Enquiry Officer as well as the Disciplinary Authority. Admittedly, upon perusal of the Enquiry Report, it is seen that none of the witnesses examined on behalf of the respondents-Board spoke about the actual misconduct being committed by the petitioner. The gravamen of Charge No.1 is with regard to holding meetings, affixing posters in the campus and also on the vehicles parked inside the campus, and when that gravamen of the charge stood un-proved, the charge is held to be proved on the basis of the admission of the mere fact as to the presence at the protest and not the charge as such, that too in the regret letter submitted by the petitioner for his reinstatement into service by revocation of suspension order, and therefore, the same cannot be treated as admission of the charge. The admission of the charge should be unambiguous and unequivocal, and admission of fact will not amount to admission of charge, as held by the Apex Court in the Constitution Bench judgment reported in AIR 1960 SC 1070



WEB COPY

(Jagadish Prasad Saxena Vs. State of M.P) and it is useful to extract relevant portion of paragraph 12 which is as follows:

"12. The two facts accepted by the appellant do not necessarily or inevitably lead to the conclusion that he was guilty of the offence with which he was charged; besides, if his statements are used against him all his statements must be considered as whole and, thus considered, there is no admission of guilt at all."

19. This Court, in a catena of decisions starting from K.Govindaswamy Vs. Tamil Nadu Civil Supplies Corporation, reported in 1998 (2) MLJ 323, has repeatedly held that the respondents levelling the charge have to prove the charge by letting in positive evidence on their own and cannot pick and choose the sentences from the explanation offered by the delinquent to be the sole basis for the proof of charge, and therefore, on that ground also, the findings of the Enquiry Officer relating to Charge No.1, has to go. Similar is the case in respect of Charge No.2 also.

20. Only in respect of Charge No.3, the witness has spoken that he has seen the petitioner entering into the Board room. Even in that case, the gravamen of the charge is assaulting Mr.P.Ramu, Office Assistant and Mr.S.Prabhakar, Field Worker, who were there on duty and interrupting the proceedings. Therefore, mere admission of the fact that the person was inside the Board room along with the other protesting officials, and mere fact that the petitioner was the office bearer will by itself, will not prove the gravamen of the charge. Therefore, there is a basic flaw in the findings of the Enquiry Officer as well as the Disciplinary Authority and the Appellate Authority that firstly they omitted to consider the fact that in the absence of admission of the charge by picking mere statement from the explanation, the basis of the charge cannot be proved and secondly, while considering the charge of misconduct, the gravamen of the misconduct, i.e. not all the facts mentioned in the charge amounts to misconduct but the particular essence of the behaviour which amounts to misconduct, which has to be considered and has to be held as proved or not proved. Therefore, in this case, I hold that the findings of the Enquiry Officer as well as the Disciplinary Authority and the Appellate Authority are perverse in nature, and therefore, I have no hesitation in quashing the impugned order of punishment and the order of the Appellate Authority.

21. However, it is seen that the petitioner has since superannuated from service. Therefore, the Writ Petition is



allowed in the following terms:

(i) The impugned order dated 12.01.1996 passed by the second respondent and dated 12.07.2008 passed by the first respondent, are quashed.

(ii) The respondents are directed to re-work the pay and allowances of the petitioner as if the order of with-holding of increments, was not there and accordingly determine his last drawn pay and retiral benefits.

(iii) The petitioner however, will not be entitled to actual arrears of pay till the date of service, but he will be entitled to arrears on the retiral benefits and pension from the date of superannuation on such revised pay.

(iv) The petitioner will not be entitled to any interest on the arrears of the amounts to be paid to him.

(v) The above exercise should be carried out within a period of two months from the date of receipt of a copy of this order.

There shall be no order as to costs in the present Writ Petition.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Chennai Metropolitan Water Supply
and Sewerage Board,
Represented by its Managing Director,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.
2. The General Manager,
The Chennai Metropolitan Water Supply
and Sewerage Board,
Represented by its Board of Directors,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.



3.The Board of Directors,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.

+1 cc to Mr.T.Gowthaman, Advocate Sr.NO.26625

+1 cc to Mr.V.Jayachandran & Associates, Advocate Sr.NO. 25542

W.P.No.18071 of 2009

skm(CO)

A.SK(29/04/2022)