



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.04.2022

PRONOUNCED ON : 20.04.2022

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.15333 of 2010

K.Rajendran

... Petitioner

Vs.

1. The Secretary to Government of Tamil Nadu,
Municipal Administration and
Water Supply Department
Fort St.George, Chennai - 600 009.

2. The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate Writ or order or direction in the nature of Writ calling for the records of the impugned proceedings of the first respondent in G.O.No.404 dated 10.09.2009 which confirmed the order of the second respondent in proceedings vide F.W. & M.C.H.No.F15/3762/2003/26.02.2007 and quash the same as null and void and against the principle of natural justice and consequently direct the respondents herein allowing the petitioner to continue his service with all monetary benefits and the due elevation as Deputy Communication Officer w.e.f. 18.02.2009.

For Petitioner : Mr.G.Thangavel

For Respondent : Mrs.E.Renganayaki
Additional Government Pleader
For R1

Mr.M.Ganesan
For R2- Chennai Corporation



O R D E R

The Petitioner, since superannuated from service, was originally working as Computer cum Clerk in the second respondent Corporation. While so, he was served with a Charge Memo dated 13.01.2004 containing six charges.

2. The petitioner submitted his explanation on 06.02.2004 denying the charges and factually giving the detailed explanation in respect of each and every charge. Not accepting his explanation, the second respondent proceeded with enquiry by appointing an enquiry officer and after conduct of oral enquiry, the enquiry officer submitted his report on 03.04.2006, holding four of the six charges except the charge Nos.4 and 6 as proved. A second show-cause notice was issued to the petitioner on 12.04.2006, enclosing the enquiry report. The petitioner submitted his further representation on 03.05.2006. After considering the charges, explanation, enquiry officer's report and the further explanation, the disciplinary authority rejected the explanation of the petitioner and agreed with the enquiry officer's report and for the proven charges, he was imposed with the punishment of stoppage of increment for a period of two years without cumulative effect.

3. Aggrieved by the same, the petitioner preferred an Appeal dated 17.04.2007 before the Appellate authority, the second respondent and by order dated 09.01.2008, the Appeal was partly allowed by modifying the punishment as stoppage of increment for a period of one year without cumulative effect.

4. The petitioner filed a further Appeal to the first respondent which was rejected by the impugned order dated 10.09.2009.

5. Impugning the orders of punishment and the Appeal, the present Writ Petition is filed with consequent prayer to grant all the service and monetary benefits upon quashing the punishment and Appeal orders.

6. The Writ Petition is resisted by the respondents by filing a detailed counter affidavit, where under it is contended that, for the lapse which came to the notice of the disciplinary authority, charges were framed and as per clause 3 and clause 4 of the Chennai Corporation Service (Discipline and Appeal) By-laws, the enquiry was duly conducted and the punishment order was imposed. The Appellate authority, taking a lenient view of the matter had even reduced the punishment from stoppage of increment for a period of two years to stoppage of increment for a period of one year. The enquiry officer has given detailed and conjoint reasons as to why the charges were held to be proved.



Therefore, no ground is made out to interfere by way of the present Writ Petition.

7. Heard Mr.G.Thangavel, learned counsel appearing for the petitioner, Mrs.E.Renganayaki, Additional Government Pleader appearing for the first respondent and Mr.M.Ganesan, learned counsel appearing for the second respondent.

8. The primary contention of the learned counsel for the petitioner is that, for each and every charge, the petitioner has submitted detailed representation conjointly and categorically explaining as to how the petitioner is not responsible for the act. As a matter of fact, he would submit that it is only the Medical Officer who has repaid the amount and absolutely no fault can be found with the petitioner. He would further submit that, as far as the six charges are concerned, two are already held to be not proved and even charge Nos.4 and 6 are also ancillary and incidental charges. As far as first charge is concerned, even though it is found that on inspection, he was not found in work place, there is no positive evidence that he did not visit the Head Office for which he has written permission. As a matter of fact, the evidence of the inspection authority in this regard cannot be relied upon, because by the time he reached the Head Office after inspection, it would have been easily beyond 6 p.m, by which time the petitioner had returned from the Head Office. As far as charge No.2 is concerned, the learned counsel for the petitioner would submit that there was no misappropriation whatsoever and the amounts which are duly received from the Government, has to be utilized to the maximum possible limit. However, it was duly returned, that too only by the Medical Officer and not by the petitioner. Therefore, this charge is also not proved and therefore he would submit that the entire findings are perverse in nature.

9. Per contra, the learned counsel appearing for the second respondent / Corporation would take this Court through the enquiry report and submit that even in respect of charge No.2, the categorical finding is that eventhough the petitioner has received the total amount for a particular period and part of the amount having been utilized and the part of the amount remained unutilized and eventhough there is no particular time limit for returning the unutilized amount, but when further amounts have been claimed for the subsequent periods, the previous amounts should have been returned and the account should have been reconciled. The very fact that upon the inspection, the very next day, hastily, these amounts were returned, would itself prove the slackness on the part of the petitioner. He would submit that it is not a case of permanent misappropriation, but, the negligence in duty is alleged and



therefore, just because the amount has been refunded from the hands of the Medical Officer, that does not absolve the petitioner from the responsibilities and having failed in his devotion to his duties, he has been rightly tried for the charges and upon being found that the charge has been proved, the punishment was imposed. The Appellate authority even took a liberal view to reduce the punishment also. Under these circumstances, he would submit that no ground is made out to interfere in this Writ Petition.

10. I have considered the rival submissions made on behalf of both sides and perused the material records of the case.

11. The only ground raised in the Writ Petition is that the petitioner has given valid explanation in respect of each and every charge. The findings of the enquiry officer are perverse and without considering the materials available on record. To appreciate the said contention, a bare perusal of the enquiry report in respect of charge No.2, it would be clear that the balance amounts have been immediately deposited after inspection, which would show that the amounts have been retained without any reason. The ground of maximum utilization is unacceptable as amounts are claimed for subsequent period. Therefore, when the finding of the enquiry officer is based on some evidence, this Court cannot re-appreciate the evidence or determine the adequacy of evidence and conclude in the present Writ Petition that the charge is not proved. When the enquiry officer, the disciplinary as well as the Appellate authority have come to a plausible conclusion, basing their findings on the materials available on record, this Court by way of judicial review, cannot re-appreciate the evidence, upturn the findings by substituting its own conclusions on the basis of the evidence available on record. Therefore, the grounds raised by the learned counsel for the petitioner are without any merits. Therefore, the present Writ Petition stands dismissed. No Costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of Tamil Nadu,
Municipal Administration and
Water Supply Department
Fort St.George, Chennai - 600 009.

2. The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

+1cc to Mr.G.Thangavel, Advocate SR. No. 27205

+1cc to Government Pleader SR. No. 27686

+1cc to Mr.M.Ganesan, Advocate SR. No.27086

W.P.No.15333 of 2010

KV (CO)

PR (29/04/2022)