IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 9.3.2022

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THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.3082 and 3086 of 2020
W.M.P.Nos.3617, 3620, 3621, 3629 & 3631 of 2020

1 J.K.Balaji ...Petitioner in both W.Ps

.Vs.

1 The Commissioner,
Greater Chennai City Municipal Corporation
Ripon Buildings, Chennai 600 003.

2 The Regional Deputy Commissioner (Central),
Chennai City Municipal Corporation,
Shenoy Nagar, Chennai 600 030.

3 The Assistant Commissioner
Greater Chennai City Municipal Corporation,
Ripon Buildings, Chennai 600 003.
...Respondents in both W.Ps

Prayer in W.P.No.3082 of 2020:

The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned memorandum issued by the 3rd respondent in G.D Na.Ka.No.E5/26449/2019 dated 27.1.2020 and quash the same and consequently direct the 1st Respondent to revoke the suspension order and to restore the petitioner to duty as Assistant and consequently treat the entire period of suspension as duty since the criminal case and also the departmental enquiry haven been ended in acquittal.

Prayer in W.P.No.3086 of 2020:

The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of suspension issued by the Commissioner (in-charge) in GDC No.E5/10076/2010 dated 24.4.2010 and quash the same and consequently direct the 1st Respondent to revoke the suspesion order immediately in the light or the orders issued by the Apex Court in C.A.No. 1912 of 2015 dated 16.2.2015 (Ajay Kumar

Choudhary Vs Union of India) and to permit the Petitioner to rejoin duty and consequently treat the entire period of suspension from 24.4.2010 till the date of rejoining duty as under the Fundamental Rules.

For Petitioner in both W.Ps.	:	Mr.T.Ranganathan
For Respondents in both W.Ps.	:	Mr.R.Gopinath Standing Counsel

COMMON ORDER

Though two writ petitions are filed by the petitioner challenging the impugned suspension order and the impugned show cause notice, the issue involved in both writ petitions are one and the same and therefore, common order is being passed.

2. According to the petitioner, the petitioner was working as Assistant in the respondent Corporation and he was placed under suspension on 24.4.2010 by the first respondent on the ground that a criminal case in No.RC110/2009 LB/CC- was under investigation by the Vigilance and Anti Corruption, Chennai City based on the complaint given by one Tmt.R.Alphonsa @ Nirmala. Based on the aforesaid complaint and on investigation, the petitioner was arrayed as 3rd Accused in C.C.No.107 of 2011 after obtaining sanction orders and prosecuted for the offence punishable under the provisions of Prevention of Corruption Act. However, the petitioner was acquitted by the judgment dated 30.10.2018 made in C.C.No.107 of 2011 on the file of Special Court for the cases under prevention of Corruption Act. According to the petitioner, after the lapse of 10 years, the respondent has proceeded against the petitioner by issuing charge memo and the petitioner submitted detailed explanation. The enquiry officer submitted a report by holding that the charges as against the petitioner was not proved. However, the third respondent disagree with the findings of the enquiry officer, issued the impugned show cause notice, dated 27.1.2020 to the petitioner. Challenging the said show cause notice, the petitioner has filed W.P.No.3082 of 2020 and to revoke the suspension order, the petitioner as filed W.P.No3086 of 2020 before this Court.

3. Common counter affidavit has been filed by the third respondent wherein it is stated that based on the complaint given by one Tmt.Alphonsa @ Nirmala, a beneficiary under the Marriage Assistance Scheme, Directorate of Vigilance and Anti Corruption had registered F.I.R. and caught red handed one R.Baskar who obtained illegal gratification of Rs.5,000/- through one middleman Thiru C.Naganathan to hand over the cheque

to the beneficiary Tmt.Alphonsa through trap organised by the D.V.A.C. Subsequently, based on the investigation, the petitioner was arrayed as accused-3 and the D.V.A.C. had prosecuted all the three accused under the Prevention of Corruption Act, 1988 r/w Schedule 109 of I.P.C. In C.C.No.107 of 2011 before the Special Court for the cases under Prevention of Corruption Act. However, the petitioner was acquitted by the judgment dated 30.10.2018 made in C.C.No.107 of 2011 on the file of Special Court for the cases under prevention of Corruption Act. A Charge memo was issued by the Regional Deputy Commissioner to the petitioner as per Rule 9(2) of Chennai Corporation Class III and IV Employees (Discipline and Appeal) Bye-laws and the petitioner submitted his explanation to the charge memo on 26.6.2019. The enquiry officer has given his finding that charge framed as against the petitioner is not proved.

4. Heard the rival submissions of the parties and perused the materials available on record.

5. The learned counsel appearing for the petitioner would contend that the enquiry officer found that there was no evidence or record to show that the cheque payable to Tmt.Alphonsa was handed over to Baskar by the petitioner, thereby charge framed as against the petitioner was not proved. The third respondent cannot take a deviated view, according to the petitioner who is an incompetent authority. Further, the learned counsel appearing for the petitioner would submit that the third respondent has not assigned any reasoning to disagree with the findings of the enquiry officer. Further, the charge memo dated 18.6.2019 itself is unsustainable on the ground of inordinate delay of over 9 years. In support of his contention, he placed reliance on the unreported judgment of this Court in THE SECRETARY TO GOVERNMENT, COMMERCIAL TAXES & REGISTRATION DEPARTMENT, FORT ST. GEORGE, CHENNAI - 600 009 AND ANOTHER VS. S.GURUNOORTHY AND ANOTHER [W.A.Nos.953 and 954 of 2015 dated 23.7.2015].

6. The learned Standing Counsel appearing for the respondents would submit that the third respondent being a Competent Authority need not accept the findings of the inquiry officer. In a departmental proceedings, the principle of preponderance of probability is sufficient to hold the charges against the petitioner as proved and the punishment is awarded to the petitioner only after considering the gravity of the offence committed by the petitioner. Therefore, the impugned orders are sustainable in law.

7. The petitioner was placed under suspension on 24.4.2010 on the ground that a criminal case against the petitioner was

under investigation and an enquiry officer was appointed and the petitioner also participated in the enquiry proceedings. The enquiry officer submitted his report in the year 2019 by holding that the charge as against the petitioner is not proved. When the criminal case in C.C.No.107 of 2011 for which departmental proceedings was initiated against the petitioner, was ended in acquittal on 30.10.2018, the impugned show cause notice was issued to the petitioner on 27.1.2020. When the alleged delinquency had taken place in the year 2010, this Court could not understand why the respondent Corporation has taken such a long 10 years period for conducting departmental proceedings, when the Government has issued circular instructions to all the departments to proceed departmental proceedings as well as the criminal proceedings simultaneously. The respondent Corporation following the guidelines issued by the Government should take appropriate action against the concerned officials for dragging the departmental proceedings for 10 years against the petitioner.

8. In sofar as the disagreement with the findings of the enquiry officer by the disciplinary authority, this Court already decided the similar issue in A.Arumuga Navaraj, S/o.M.Arumugam Vs. The Additional Chief Secretary to Govt., Commercial Tax and Registration (K) Dept., Fort St.George, Chennai-9 [W.P.No.13392 of 2017 dt.10.1.2020] by placing reliance on the judgment of the Hon'ble Supreme Court and the Division Bench of this Court, has held as under:

> ''9. The Division Bench of this Court in THE SECRETARY TO GOVERNMENT, COMMERCIAL TAXES & REGISTRATION DEPARTMENT, FORT ST. GEORGE, CHENNAI-9 AND ANOTHER VS. S.GURUNOORTHY AND ANOTHER [W.A.Nos.953 and 954 of 2015 dated 23.7.2015], held as under:
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> ''7. The charge No.3, on reading itself, appears to be week and vague. A common charge has been levelled against all the three accused. Finding of unaccounted cash in one corner of the office cannot be attributed to any particular person or to all persons working in the office. The learned Single Judge has rightly come to the conclusion that the said charge was proved on the basis of no evidence and that the charge was rightly set aside and the writ petitions were allowed.''
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> 10. Further, the Hon'ble Supreme Court in National Fertilizers Ltd. Vs. P.K. Khanna, [(2005) 7 SCC 597] held as follows:

''9. Apart from misreading the enquiry officer's report, the High Court also misapplied the law. The various decisions referred to in the impugned judgment make it clear that the disciplinary authority is required to give reasons only when the disciplinary authority does not agree with finding of the enquiry officer......

10. It is apparent from sub-rule (2) that the disciplinary authority is not required to record its reasons if it concurs with the enquiry officer's findings in contradiction with the situation in which the disciplinary authority disagrees with the findings of the enquiring authority. Only in the latter case does sub-rule (2) expressly mandate that the disciplinary authority shall, if it disagrees with the findings of the enquiry officer record its reasons for such disagreement as well as its own findings on such charges.

11. In Punjab National Bank v. Kunj Behari Misra [(1998) 7 SCC 84] the Hon'ble Supreme Court laid down a law as follows:

''19. .... whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.''

12. Considering the facts and

> circumstances of the case and the decision cited supra, the impugned order passed by the second respondent in proceedings No.51745/V2/2011, dated 8.12.2015 and the consequential order passed by the first respondent in G.O.(D) No.370, Commercial tax and Registration Department, dated 14.10.2016 are quashed.
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> 13. Accordingly, the writ petition is allowed. No order as to cost. Connected miscellaneous petition is closed.''

9. In the light of the judgments cited supra, the impugned show cause notice dated 27.1.2019 issued by the third respondent is quashed and consequently, the suspension order issued by the first respondent, dated 24.4.2010 is also quashed. Taking into consideration of the fact that the alleged delinquency occurred in the year 2010, it is inappropriate for this Court to remand the matter to the authorities concerned to consider afresh, after the lapse of 12 years. Therefore, considering the gravity of the charges and the criminal case ended in acquittal, the first respondent is directed to consider the representation of the petitioner for reinstatement into service and pass appropriate orders within a period of 12 weeks from the date of receipt of copy of the order.

10. In fine, both the writ petitions are allowed with the above observations. No Costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1 The Commissioner,
Greater Chennai City Municipal Corporation,
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+1cc to M/s.T.Ranganathan, Advocate, S.R.No.15936

+1cc to M/s.R.Gopinath, Advocate, S.R.No.16048 [11/05/2022]

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RSI(CO)
RN(23/03/2022)