



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.277 of 2015

R.Partheeban

... Petitioner

Vs.

1.The Commissioner of Municipal Administration,
Chepauk, Chennai - 5.

2.The Principal Secretary to Government,
Municipal Administration & Water Supply (NT1) Department,
Fort St George, Chennai - 9.

3.The Regional Director of Municipal Administration,
Vellore - 12.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the respondents in connection with the impugned orders passed by the 1st respondent in Na.Ka.No.36347/2009/K2 dated 29.08.2013 and confirmed by the 2nd respondent in G.O. (D) No.197, Municipal Administration & Water Supply (NP-1) Department dated 26.05.2014 and G.O.(D).No.407, Municipal Administration & Water Supply (NP-1) Department dated 7.11.2014 and quash the same.

For petitioner : Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.L.S.M.Hasan Fizal,
Additional Government Pleader

ORDER

This Writ Petition has been filed to call for the records of the respondents in connection with the impugned orders passed by the 1st respondent in Na.Ka.No.36347/2009/K2 dated 29.08.2013 and confirmed by the 2nd respondent in G.O. (D) No.197 Municipal Administration & Water Supply (NP-1) Department dated 26.05.2014 and G.O.(D).No.407, Municipal Administration & Water Supply (NP-1) Department dated 7.11.2014 and quash the same.

2. The case of the petitioner is that he was appointed



as Junior Assistant on compassionate ground on 09.01.1984. He was promoted as Assistant in May 2002. According to him, his name was included in the panel of the Class IV Officer/Manager/Accountant and at that time, he was issued with the charge memorandum dated 08.03.2010, under Rule 8(2) of Tamil Nadu Municipal Employees General Service Rules. The charge memorandum contained 5 articles of charges which read as follows:-

- " 1) Personnel Register (Register of Letters) not produced for inspection.
- 2) The appeal preferred by the Maternity Assistant have not been properly sent to the higher officials which resulted in delay.
- 3) The disciplinary proceedings of the Assistant, Shanmugam was not send to the higher officials properly, thereby caused delay.
- 4) The disciplinary proceedings against the retired employee, Accountant John Jacob was not sent to the enquiry officer, there caused delay.
- 5) Refused to receive the order of municipal administration, entered leave voluntarily, refused to receive the order of Director of Municipal Administration transferring him and entered medical leave."

3. Although the petitioner's name was found at Serial No.7, in the panel for promotion to the next higher grade for the year 2009 - 2010, as Class IV Officer, his name could not be considered, in view of the pendency of the charge memorandum. An enquiry was ordered into the charges and in the course of the enquiry, the Enquiry Officer examined the petitioner on 02.05.2012. The petitioner gave his statement and very strangely, no witnesses were examined nor any documents were marked in support of the charges.

4. According to the petitioner, the Enquiry Officer acted as a prosecutor and cross examined him in respect of each charge and recorded his answer. Thereafter, a report was submitted holding the charges 1 to 3 proved and charges 4 and 5 not proved. The petitioner, in response to the report of the Enquiry Officer, also submitted his explanation on 25.08.2012.

5. The disciplinary authority, over looking the factual, legal infirmities in the conduct of the enquiry, passed an order imposing a punishment of stoppage of next increment for one year without cumulative effect vide order dated 29.08.2013. The petitioner preferred an appeal against the punishment order and the Government rejected the same in G.O.(D)No.197 MA & WS NT1 Dept dated 26.05.2014. Against the said order, a review had been preferred by the petitioner before the 2nd respondent on



31.07.2014 and the same was rejected by G.O.(2D) No.407 MA & WS NT1 Dept on 07.11.2014. Challenging the orders of the authorities, the petitioner is before this Court.

6. In the grounds as raised in the affidavit, the petitioner focused on the crucial legal aspects on the fundamental defects in the conduct of the enquiry. The procedure contemplated for major penalty proceedings had been thrown to the wind and no semblance of proper procedure had been followed while concluding the enquiry and rendering of the findings on the charges.

7. The learned Senior Counsel, Mr.K.Venkataramani, appearing for the petitioner, reiterated the above facts and would submit that the entire disciplinary proceedings is vitiated on account of not following the mandatory procedure as contemplated in the rules and in terms of the settled legal principles on the subject matter. According to him, it is an admitted fact that no witnesses were examined and no documents were marked in support of the charges.

8. The learned counsel has also drawn the attention of this court to the impugned proceedings, wherein, this Court could appreciate considerable force in the submissions of the learned Senior Counsel that the Enquiry Officer appeared to have not examined any witnesses nor the prosecution attempted to mark any documents in support of the charges. It appeared that on the basis of the submissions made by the petitioner himself and the examination by the Enquiry Officer, the findings have been rendered.

9. The learned Senior Counsel would submit that in view of the defective enquiry proceedings, the subsequent punishment imposed on the petitioner by the disciplinary authority as well as the appellate and review authorities, cannot be sustained in law. According to the learned Senior Counsel, the authorities have failed to appreciate the invalid conduct of the enquiry proceedings, as the Enquiry Officer failed to follow the mandatory procedure for conduct of major penalty proceedings.

10. Mr.L.S.M.Hasan Fizal, the learned Additional Government Pleader entered appearance on behalf of the respondents. According to the learned Additional Government Pleader that the charges framed against the petitioner were serious in nature and therefore, an enquiry was initiated and the Enquiry Officer, on the basis of whatever evidences that were made available, found three charges proved and two charges not proved. Thereafter, the disciplinary authority imposed only minor penalty against the petitioner which was rightly confirmed by the higher authorities.



11. As far as the main legal contention raised on behalf of the petitioner that the mandatory procedure contemplated under the rules has not been followed by the Enquiry Officer, the learned Special Government Pleader would have no valid answer, as the defective conduct of the enquiry is clearly reflected in the proceedings of the Enquiry Officer itself.

12. As rightly contended by the learned Senior counsel for the petitioner that the conduct of the enquiry has been deeply flawed and under no circumstances, such conduct of the enquiry could be countenanced in law. As a corollary to such conclusion, the findings rendered on the basis of such defective enquiry can never be construed as proper findings in the eye of Law. Further, the punishment ordered by the disciplinary authority in the face of such defective finding, cannot also be countenanced in law.

13. It is needless to mention that when the defects were pointed out by the petitioner in his explanation to the findings, without appreciating the same, mechanical imposition of penalty by the disciplinary authority is to be held unsustainable on the ground that the order suffer from total non-application of mind. The disciplinary authority has completely failed in his statutory duty in overlooking the grave infirmities that have crept in, in the conduct of the enquiry. Moreover, both the appellate and the review authorities have also overlooked the glaring infirmities and rejected the appeal and review filed by the petitioner, perfunctorily.

14. On the whole, this Court finds that the entire disciplinary action from the point of conduct of the enquiry, finding, imposition of penalty, rejection of appeal and review, stood vitiated. In the circumstances, the impugned orders are liable to be interfered with.

15. For the above stated reasons, this writ petition stands allowed and the impugned orders passed by the 1st respondent in Na.Ka.No.36347/2009/K2 dated 29.08.2013 and confirmed by the 2nd respondent in G.O. (D) No.197 Municipal Administration & Water Supply (NP-1) Department dated 26.05.2014 and G.O.(D).No.407 Municipal Administration & Water Supply (NP-1) Department dated 7.11.2014, are hereby set aside.

16. The respondents are consequently directed to consider the claim of the petitioner for promotion to the next higher grade which was withheld, in view of the pendency of the disciplinary action.



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17. The respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this Order. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gsk/mpl

To

- 1.The Commissioner of Municipal Administration,
Chepauk, Chennai - 5.
- 2.The Principal Secretary to Government,
Municipal Administration & Water Supply (NT1) Department,
Fort St George, Chennai - 9.
- 3.The Regional Director of Municipal Administration,
Vellore - 12.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.7933
+1cc to the Government Pleader, S.R.No.8334

W.P.No.277 of 2015

GMR (CO)
SB(01/04/2022)