



W.A.No.753 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDERS RESERVED ON : 04.04.2022

ORDERS PRONOUNCED ON : 06.06.2022

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
and
THE HON'BLE MRS. JUSTICE N.MALA

W.A.No.753 of 2022

1.Pushpa Pallanee
2.V.P.Jaghan Kamal
3.Arunalalith Pallanee ... Appellants

VS.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Municipal Administration &
Water Supply Department,
Fort St. George,
Chennai – 600 009.
2.The Commissioner of Municipal
Administration,
Ezhilagam Annexe,
Chepauk, Chennai – 600 005. ... Respondents

Prayer: Writ appeal filed under Clause 15 of Letter's Patent, to set aside the order dated 23.11.2021 passed by this Hon'ble Court in W.P.No.4932 of 2009.



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For Appellants : Mr.R.Syed Mustafa

For Respondents : Mr.Stalin Abhimanyu
Additional Government Pleader

* * * * *

J U D G M E N T

[Order of the Court was made by S.VAIDYANATHAN and N.MALA, J.]

The Writ Appeal is filed by the legal heirs of the original writ petitioner Mr.T.V.Pallanee, who died during the pendency of the writ petition.

2.The Writ Appeal is filed challenging the order dated 23.11.2021 passed by the learned Judge in W.P.No.4932 of 2009, whereby the learned Judge dismissed the writ petition filed by the deceased writ petitioner challenging the order dated 07.09.2006 of the first respondent in G.O.(D).No.369, Municipal Administration and Water Supply (ME II) Department, in and by which, a punishment of cut-in pension of Rs.200/- per month for a period of twelve months was imposed.

3.In the writ petition, it was contended by the deceased writ petitioner that he retired as a Municipal Commissioner of the Tambaram Municipality.

While he was in service, he was served with the charge memorandum dated



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30.12.1998, under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and two articles of charge were framed against him which are as follows:

Charge No.1:

"that Thiru T.V.Palani, while functioning as Municipal Commissioner, Tambaram was responsible for having placed purchase order of Bleaching powder from M/s.The George Town Electrical, Electronics Allied Products and Servicing Industrial Co-operative Society Ltd., Chennai – 79 (discussed in Annexure of this memorandum) in violation of the procedure laid down in G.O.Ms.No.708, Finance (BFE) Department, dated 22.8.1994".

Charge No.2:

"that while functioning as Municipal Commissioner, Tambaram, Thiru T.V.Palani has issued purchase order for purchase of bleaching powder (as discussed in charge No.1) at a higher rate of Rs.24.15 per Kg. Without verifying the prevailing market rates at that time in violation of the procedure prescribed in Municipal Manual".



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4.The deceased writ petitioner denied the charges and submitted his defence statement dated 18.06.1999. The deceased writ petitioner explained that to avert re-occurrence of Cholera there was immediate need to purchase bleaching powder as there was no stock. So a purchase order for three Metric Tonnes of bleaching powder was placed by invoking the emergency provision of Section 15 of the Tamil Nadu District Municipal Act, 1920. As the emergency provision was invoked the normal procedure of placing tenders and calling for quotation could not be followed. The invocation of the emergency provision was done with a view to guard against the deadly disease and in the interest of the public. The Enquiry Officer gave a report exonerating the deceased writ petitioner of both the charges. The Disciplinary Authority concurred with the enquiry officer's finding as regards charge No.2 but decided to differ with the Enquiry Officer's findings on charge No.1 and so issued a letter dated 11.04.2003, calling upon the deceased writ petitioner to furnish his explanation against charge No.I. The deceased writ petitioner through his representation dated 21.06.2003, furnished a detailed explanation reiterating the defence statement made before the Enquiry Officer. However the first respondent without assigning



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any reasons for rejecting the explanation dated 21.06.2003 passed the impugned order in G.O.(D).No.369, Municipal Administration and Water Supply (ME II) Department dated 07.09.2006 imposing the punishment of cut of a sum of Rs.200/- per month from the pension for a period of one year.

5.The respondents filed their counter and stated that the invocation of Section 15 of the Tamil Nadu District Municipalities Act, 1920 was not justified and that the emergency provision could not be invoked for purchase of materials on day to day basis. It was the respondents further case that the Municipality ought to have taken advance action to stock adequate quantity of bleaching powder for water chlorination following the usual procedure.

6.The learned Single Judge found favour with the respondents and hence the above writ appeal.

7.The counsel for the appellants submitted that the deceased writ petitioner had given justifiable reasons for invoking the emergency provision and that to avoid re-occurrence of Cholera it was incumbent on the deceased writ petitioner to act swiftly in the interest of public health and safety. The learned counsel further submitted that under similar circumstances and with



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reference to some other works of the same Municipality and the same deceased writ petitioner, this Hon'ble Court in W.P.NO.37803 of 2005 vide order dated 23.12.2020 was pleased to quash G.O.(D).No.256, Municipal Administration and Water Supply (ME) Department, dated 24.06.2005, wherein a similar punishment of cut-in pension of Rs.200/- per month for a period of 12 months was imposed. The learned counsel submitted that in the aforesaid W.P. this Hon'ble Court commended the deceased writ petitioner for his prompt action in fulfillment of public need. The learned counsel submitted that no reasons were assigned for rejecting the writ petitioner's explanation and that the impugned order is the mere ipsi dixit of the respondents.

8.The learned counsel for the respondents pleaded that the impugned order needs no interference and therefore prayed to dismiss the writ appeal.

9.Heard the learned counsel on both sides. The records were also perused.



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10. The short point for consideration in this writ appeal is whether the punishment imposed by the first respondent of a cut in pension of Rs.200/- per month for 12 months is justified and sustainable.

11. We find force in the contentions of the learned counsel for the appellants. The Enquiry Officer in his report exonerated the deceased writ petitioner on both the charges levelled against him. The respondent vide the communication dated 11.04.2003, sought explanation from the deceased writ petitioner as the respondents decided to deviate from the finding of the Enquiry Officer on charge No.1. The said explanation was furnished by the deceased writ petitioner vide the letter dated 21.06.2003. The respondent thereafter passed the impugned order imposing the punishment of cut off Rs.200/- from the monthly pension of the deceased writ petitioner for a period of one year. The first respondent in his letter dated 11.04.2003 gave following reasons for deviating from the Enquiry Officer's report on charge No.1.

“1) There was no justification recorded for purchase of huge quantity of bleaching powder,

2) On foreseeing the need of the bleaching powder quantity the Municipality ought to have taken



advance action to stock adequate quantity of bleaching powder for water supply chlorination,

3) There was no necessity to purchase the bleaching powder in huge quantity incurring an abnormal expenditure and

4) the purchase should have been done by following the relevant procedures.”

12.For the aforesaid reasons the deceased writ petitioner gave a detailed explanation vide his letter dated 21.06.2003. The explanation *inter alia* was that it was not known how the Disciplinary Authority could say that the purchase was huge, without ascertaining the factual position and without collecting the data or conducting a study before arriving at the conclusion.

13.The deceased writ petitioner further stated that when compared to the other Municipalities the quantity procured was only minimum and moreover one tonne of bleaching powder was diverted to the Public Health Department Wing for the sanitary purpose for the post cholera operation. On the allegation that advance action to stock adequate quantity of bleaching powder should have been taken, the deceased writ petitioner



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explained that the lapse was on the part of the Municipal Engineer and the Junior Engineer, who failed to verify the stock. The emergency provision was invoked keeping in view the general public interest as he felt that the public should not be penalised for the fault of the lower level officials. The deceased writ petitioner explained that there was no loss to the Municipality as the purchase was made from the place where the Municipality Administration and Water Supply Department purchased and at the rates purchased by them. On the issue of nil stock the deceased writ petitioner reasoned that the Disciplinary Authority had not disputed the nil stock position and in spite of such admission he observed that the relevant procedure was not followed which procedure to his knowledge was a long drawn one.

14.Despite the detailed explanation as extracted above the respondent in the impugned order stated as follows:

“3.The Government have examined the charges framed against Thiru.T.V.Pallanee, formerly Municipal Commissioner, Tambaram Municipality, his explanation and further findings of the Inquiry officer and the further representation of the Delinquent Officer



on the deviation of the Government carefully and independently along with the connected records and have decided to hold the charge 1 as proved and charge 2 as not proved. Hence for the proven charges, the Government have provisionally concluded to impose a punishment of cut of Rs.200/-) Rupees two hundred only) per month from his pension for a period of one year. Accordingly willingness of the delinquent officer was called for under rule 9(2) of the Tamil Nadu Pension Rules 1978 in the Government letter sixth read above.”

15.It is seen from the impugned order extracted above that the explanation of the deceased writ petitioner was not at all considered by the respondents. When a detailed explanation was submitted, the respondents ought to have considered the same. The failure to consider the explanation vitiates the impugned order. The non-consideration of the explanation leads to an inference that the respondent had not applied it's mind to the issue and had mechanically passed the order. It is further seen that the respondent has not assigned any reasons for its conclusion that Charge No.1 was proved.

16.In this context, it is relevant to refer to the Judgment of this



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Hon'ble Court in W.P.No.37803 of 2005 dated 23.12.2020 authored by one of us. This Hon'ble Court under similar circumstances and with reference to the very same deceased writ petitioner was pleased to allow the writ petition by quashing the order of the respondent on the ground that the order was a non-speaking order and hence unsustainable. This Hon'ble Court relied on the Apex Court Judgment in the case of ***Kranti Associate Private Limited and others V/s. Masood Ahamed Khan and other*** reported in ***2010 (9) SCC 496***, wherein the Hon'ble Supreme Court held that an order passed by a quasi judicial body or even an administrative authority affecting the rights of parties must be a speaking order.

17.In ***S.N.Mukherjee Vs. Union of India (AIR 1990 SC 1984)*** the Hon'ble Supreme Court has explained that reasons are necessary links between the facts and the findings recorded in the administrative orders, which visit a party with evil civil consequences. In the absence of reasons such an order cannot be permitted to stand.

18.Useful reference can be made to the Judgment of the Hon'ble



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Supreme Court in the case of ***Allahabad Bank Vs. Krishna Narayan Tewari***

reported in ***2017 (2) SCC 308***. The Hon'ble Supreme Court held as under:

“Non application of mind by the Enquiry Officer or the disciplinary authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ Courts are justified in interfering with orders of punishment.”

19.We have held in the pre para's that the impugned order is sans reasons, cryptic and reflects total non application of mind to the facts of the case and is made in total disregard of the detailed explanation given by the deceased writ petitioner.

20.In factual matrix of the case and on the basis of the law laid down by the Hon'ble Supreme Court the irresistible conclusion is that the impugned G.O.No.369 Municipal Administration and Water Supply ME(II) Department dated 07.09.2006 is unsustainable. As we have set aside the impugned order we direct the respondents to refund the amounts collected from the deceased employee to the appellants within a period of eight weeks



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from the date of receipt of a copy of the order.

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21.In the light of the above, we are inclined to allow the writ appeal with the above direction. There shall be no order as to costs.

[S.V.N.,J.] [N.M.,J.]
06.06.2022

Index : Yes / No
Internet : Yes / No
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To

- 1.The Secretary to Government,
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Water Supply Department,
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- 2.The Commissioner of Municipal
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S.VAIDYANATHAN, J.
&
N.MALA, J.

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PRE DELIVERY JUDGMENT
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