

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.NO.1547 OF 2022
AND
C.M.P.NO.10193 OF 2022

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Chennai - 9.
2. The Commissioner of Municipal Administration,
Ezhilagam Annexe Building,
VI Floor, Chepauk,
Chennai - 5. ... Appellants

.Vs.

M.Rajarithnam ... Respondent

PRAYER:-

Appeal filed under Clause 15 of the Letters Patent against to set aside the order dated 12.08.2020 in W.P.No.8374 of 2013 and allow this Writ Appeal.

PRAYER IN W.P.NO.8374 OF 2013:-

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the First Respondent in G.O.(1D) No.591, Municipal Administration & Water Supply Department, dated 04.12.2007 and quash the same and direct the Respondents to refund the amount deducted from the Petitioner's pension and grant him all consequential benefits.

For Appellants : Mr.Abishek Moorthy
Government Advocate

JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order dated 12.08.2020 recorded on W.P.No.8374 of 2013. This appeal is by the respondents in writ petition - State Authorities.

2. Learned Government Advocate has submitted that the punishment of reduction of pension of Rs.200/- for 12 months was challenged by the writ petitioner, years after the punishment period was over and therefore the writ Court ought not to have exercised discretion. It is submitted that the punishment order was in due compliance of the statutory provisions and principles of natural justice and therefore the writ petition should not have been allowed. It is submitted that this appeal be entertained.

3. Having heard learned Government Advocate for the appellant and having considered the material on record, this Court finds as under:-

3.1 It is not in dispute that the writ petitioner had attained the age of superannuation on 31.03.2002. He retired from the post of Revenue Inspector which is indicated to be Class II post. For that post, Commissioner of Municipal Administration - second respondent in the writ petition is stated to be the disciplinary authority. For the alleged misconduct of the period prior to the year 2000, the writ petitioner was issued with a charge memo on 15.11.2000. On conclusion of the departmental enquiry, enquiry officer recorded finding to the effect that the charges against the writ petitioner are not proved. The authorities sat tight over that enquiry report. The writ petitioner retired on 31.03.2002. In spite of that, on one hand neither the enquiry report, wherein finding was recorded by the enquiry officer in favour of the writ petitioner was being acted upon, and on the other hand his retirement dues were also not being paid to him. It is under these circumstances, the writ petitioner approached this Court by filing W.P.No.6888 of 2006, on which this Court, on 10.03.2006 gave direction to take appropriate decision with regard to pending departmental enquiry. The State readily obliged. Within ten days, the State passed an order to the effect that it differs with the finding recorded by the enquiry officer in the year 2002 and final order was passed on 04.12.2007 ordering reduction of pension of Rs.200/- for 12 months.

3.2 We have not examined the impugned order from the view point of the quantum of punishment but the sustainability of the said punishment order is examined from the view point of it being just and proper in procedure, and whether it is in compliance of the rules holding the field. Learned single Judge has found the impugned punishment order unsustainable on the ground that it is the second respondent - Commissioner, who was the competent authority (disciplinary authority) and therefore, the order passed by the Secretary to the Government was, in substance, usurping the powers of the disciplinary authority by the appellate authority and therefore the said order is bad and it is set aside. We find that this reason is unsustainable. Once the concerned employee has retired, the only punishment which can be imposed is reduction of pension and that punishment can not be imposed by any authority, other than Government. Had that order been passed by the Commissioner, it would have been termed as an order passed by an incompetent authority. Had that order been passed by the Commissioner thought of imposing any punishment other than reduction of pension, such a contingency is not contemplated under the Rules and after the retirement, no other punishment could have been imposed. Therefore, we do not agree with the reasons recorded by learned single Judge to set aside the punishment order.

4. Though, as noted above we do not agree with the reasons recorded by learned single Judge, we also record that the final conclusion arrived at by learned single Judge, in the facts of this case, need not be interfered with. It is for the following reasons.

4.1 The punishment of reduction of pension by the State needs to be preceded by consultation with the Tamil Nadu Public Service Commission. The same is not done in this case. Therefore, there is breach of statutory provision, to be precise, Rule 9 of the Tamil Nadu Pension Rules.

4.2 There is an additional factor. The punishment is imposed in the departmental enquiry, where there was already finding by the enquiry officer to the effect that the charges against the writ petitioner are not proved. Had the competent authority - Commissioner or State as the case may be, were concerned for writing dissenting view with the finding of the enquiry officer, which was well within their right, they could have done it at the relevant time. However, inaction on the part of the respondent authorities was questioned before this Court by filing W.P. No.6888 of 2006, on which order was passed on 10.03.2006 and within ten days, the authorities decided to defer with the finding recorded by the enquiry officer. We find that this was arbitrary exercise of power.

4.3 We further find that, the nature of allegations against the writ petitioner were such, where, whether there should have been departmental enquiry at all, is also an issue, however not only the departmental enquiry was conducted, that was treated to be so grave that it was kept pending even years after his retirement. We find that, on facts, this could not have been done by the State.

4.4 We also find that, though the finding of the enquiry officer was in favour of the writ petitioner, before passing the final punishment order no notice was given to the petitioner to put his case qua the dissenting view recorded by the Government in that regard. The punishment order was therefore in breach of principles of natural justice.

4.5 On conjoint consideration of the above we arrive at the conclusion that, the punishment order dated 04.12.2007 was in breach of statutory rules, was in breach of principles of natural justice and in any case was arbitrary exercise of power by the authorities.

4.6 For all the above reasons, we hold that the impugned punishment order dated 04.12.2007 is unsustainable and is rightly set aside by learned single Judge.

5. For the above reasons, though we dismiss this writ appeal, we note that the punishment dated 04.12.2007 needs to be set aside for the reasons recorded above and not for the reasons which are recorded by the learned single Judge in the order under challenge.

6. This writ appeal is dismissed in above terms. No costs. Connected miscellaneous petition would not survive.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Secretariat, Chennai - 9.

2. The Commissioner of Municipal Administration,
Ezhilagam Annexe Building,
VI Floor, Chepauk,
Chennai - 5.

+1cc to the Government Pleader, S.R.No.42553

W.A.NO.1547 OF 2022

SKM(CO)
PBS/14/07/2022