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W.P.No.13151 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.12.2022

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The HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

**W.P.No.13151 of 2020**  
**and W.M.P.Nos.16276 & 16278 of 2020**

K.Selvam

.. Petitioner

Vs

1.The Secretary to Government,  
Municipal Administration and Water Supply Department,  
Secretariat,  
Chennai – 600 009.

2.The Commissioner of Municipal Administration,  
No.75, Santhome High Road,  
R.A.Puram, Chennai – 600 028.

3.The Commissioner,  
Avadi Municipality,  
Avadi, Chennai – 600 054.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the 2<sup>nd</sup> respondent in proceedings Roc.No.45049/2009/V1 dated 23.01.2019 and quash the same and consequently directing the second respondent to consider the name of the petitioner for promotion as Town Planning Officer, Grade- I in the panel prepared as on 01.07.2018, on par with his junior Thiru. Srinivasan, now working as Town Planning Officer in



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Hosur, with all monetary benefits and to pass any other appropriate order or direction as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.T.Ranganathan  
For Respondents : Mr.E.Sundaram  
Government Advocate  
for R1 & R2  
Mr.R.Gopinath for R3

### ORDER

This writ petition has been filed challenging the order dated 23.01.2019 passed by the second respondent imposing penalty of stoppage of increment for six months without cumulative effect on the petitioner.

2. The petitioner has challenged the impugned order on the following grounds:

- (a) It is a non-speaking order.
- (b) The charges were framed after six years from the date of the incident.
- (c) The enquiry report submitted by the enquiry officer has categorically held that the charges framed against the petitioner have not been proved. But despite the same the second respondent has passed the impugned order



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imposing the aforesaid punishment.

(d)The second respondent is not the competent authority as per Rule 4 of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1997. According to the petitioner, as per the said Rule, the third respondent is the competent authority.

3. A counter affidavit has been filed by the second respondent denying the allegations of the petitioner. They submitted that the petitioner has already preferred an appeal as against the impugned order passed by the second respondent which is pending on the file of the first respondent. Therefore, according to them, the present writ petition is not maintainable, as only in accordance with law, the impugned order has been passed by the second respondent, imposing punishment on the petitioner.

4. Heard Mr.T.Ranganathan, learned counsel for the petitioner, Mr.E.Sundaram, learned Government Advocate for respondents 1 and 2 and Mr.R.Gopinath, learned counsel for the third respondent.

5. As seen from the impugned order, no reasons have been given by the second respondent as to why the second respondent has



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rejected the enquiry report submitted by the enquiry officer wherein the charges framed against the petitioner have been found to be not proved. The charges framed against the petitioner are as follows:

*Charge No.1:*

*"That you Thiru.K.Selvam, Town Planning Inspector erstwhile working in Avadi Municipality colluded with Thiru.S.Murali, Town Planning Officer has issued planning permission in P.P.No.1051/2007/F2 of Avadi Municipality to Thiru.V.Devakumar in file S.D.No.188/2007/F2 without collecting OSR charges and caused loss to the Government to the tune of Rs.90,280/-.*

*Charge No.2:*

*"That you Thiru.K.Selvam, formerly Town Planning Inspector, Avadi Municipality, had allowed Thiru.Balakrishnamoorthy a private surveyor to handle the office files and write office notes in them which should have been personally written by him and thus hereby committed official misconduct.*

*Charge No.3:*

*"That you Thiru.K.Selvam, formerly Town Planning*



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*Inspector, Avadi Municipality, now Town Planning Inspector, Tambaram Municipality has failed to maintain absolute integrity and devotion to duty, thus hereby violated Rule 21 of Tamil Nadu Municipal Servant Conduct Rules 1979."*

6. The petitioner has pleaded innocence with regard to the aforementioned charges. He claims that he has been discriminated while framing the charges as he was only a junior officer and his superiors were Town Planning Officer and the Commissioner who have been absolved of any misconduct. He has also contended that the charges were framed against him only after a lapse of six years from the date of the alleged incident. The petitioner contended that the enquiry report was also not communicated to him. As seen from the impugned order of the second respondent, the second respondent has rejected the enquiry report and has held the petitioner guilty of the charges framed against him. However, as seen from the impugned order of the second respondent, excepting for extracting the respective contentions as well as the charges framed against the petitioner, an independent assessment has not been made by the second respondent for coming to the conclusion that the petitioner is guilty of the charges framed against him. After reproducing the respective contentions,



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without assigning any reason whatsoever, the second respondent has reversed the findings of the enquiry officer and has imposed the punishment of stoppage of increment for six months without cumulative effect.

7. This Court is of the considered view that the impugned order is a non-speaking order and has not considered the contentions raised by the petitioner in this writ petition. Further, the second respondent ought to have given reasons as to why he is differing with the view taken by the enquiry officer who has categorically held that the charges framed against the petitioner have not been proved. Being a non-speaking order and an order passed without considering the contentions of the petitioner, which have been raised in the disciplinary proceedings and without giving reasons as to why the second respondent has taken a different view from that of the enquiry officer, the impugned order has to be necessarily quashed and the matter has to be remanded back to the second respondent for fresh consideration on merits and in accordance with law.

8. Learned Government Advocate appearing for respondents 1 and 2, after referring to the counter filed by the respondents before



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this Court, would submit that insofar as the second charge is concerned, the petitioner has pleaded guilty before the enquiry officer. However, the contention of the petitioner before this Court is that he has not received the enquiry report submitted by the enquiry officer. Further, in the affidavit filed in support of the writ petition, the petitioner has not pleaded guilty of any of the charges.

9. The contention of the learned Government Advocate appearing for respondents 1 and 2 is that having filed an appeal as against the impugned order dated 23.01.2019 passed by the second respondent before the first respondent, the present writ petition is not maintainable. But the said contention has to be rejected by this Court on the ground that the impugned order is a non-speaking order and therefore the present writ petition is maintainable.

10. For the foregoing reasons, the impugned order dated 23.01.2019 is hereby quashed and the matter is remanded back to the second respondent for fresh consideration on merits and in accordance with law. The second respondent shall pass final orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. In case the second respondent



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decides in favour of the petitioner, the petitioner's request for promotion shall be considered on par with his juniors as on 01.07.2017.

11. The writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

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Index:Yes/No  
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**ABDUL QUDDHOSE,J.**

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