

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM

THE HON'BLE MR.JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

W.A.No.2359 of 2021
and
C.M.P.No.15053 of 2021

1. The State of Tamil Nadu
Rep. By Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai - 600 009.
 2. The Director,
Rural Development and Panchayat Raj Department,
Panagal Maligai,
Saidapet, Chennai - 600 015.
 3. The District Collector,
Nagapattinam District,
Nagapattinam. ..Appellants
- Vs
- E.Sivakumar .. Respondent

Appeal preferred under Clause 15 of Letters Patent against the order dated 03.12.2020 made in W.P.No.12633 of 2014.

Prayer in W.P.No.12633 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying this court to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 2nd respondent in proceedings Na.Ka.No. 88932/08/DPC-1-1 dated 31.7.2013 and the proceedings of the 3rd respondent in Na.Ka. No.10655/2008/RD-3 dated 10.11.2008 and quash the same and to direct the first respondent herein to include the name of the petitioner in the appropriate place in the panel for promotion to the post of Executive Engineer for the year 2009-2010 as issued in G.O.Ms.(P)No.533 dated 14.10.2009 (Original date 14.9.2009) and to consequently promote the petitioner in the said post with retrospective effect from the date of promotion of his immediate junior and to grant all consequential benefits to the petitioner herein.

For Appellants : Mr.Abishek Moorthy
Government Advocate

For Respondent : Mr.M.Ravi

JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

1.Challenge in this appeal is made to the order dated 03.12.2020 recorded on W.P.No.12633 of 2014. This appeal is by the State Authorities.

2.Learned Government Advocate for the appellant has submitted that, the petitioner had not challenged the institution of the disciplinary proceedings for years together and in any case, learned Single Judge, in exercise of powers under Article 226 of the Constitution of India could not have classified the gravity of the charge against the petitioner warranting minor penalty instead of major penalty. It is submitted that this aspect be examined in this appeal. It is submitted that this appeal be entertained.

3.On the other hand, learned advocate for the respondent/ original writ petitioner has submitted that, the discretion exercised by learned Single Judge, in the facts of this case, is not only justified, going by the stand of the State there was no other option but to accept the case of the petitioner since the reason not to give promotion to the writ petitioner was the so-called institution of disciplinary proceedings by the District Collector, who at the best, can be said to be competent authority to take out the proceedings against the petitioner when he was working in the cadre of Assistant Executive Engineer for minor penalties prescribed under the Rules and even if that was kept as it is, going by the Rules could not be termed to be an adversity against the writ petitioner. It is submitted that, therefore no interference be made and this appeal be dismissed.

4.Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:-

4.1 The prayer clause in the writ petition reads as under:-

"Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent in proceedings Na.Ka.No.88932/08/DPC-1-1 dated 31.07.2013 and the proceedings of the 3rd respondent in

Na.Ka.No.10655/2008/Rd-3 dated 10.11.2008 and quash the same and to direct the first respondent herein to include the name of the petitioner in the appropriate place in the panel for promotion to the post of Executive Engineer for the year 2009-2010 as issued in G.O.Ms.(P) No.533 dated 14.10.2009(original dated 14.09.2009) and to consequently promote the petitioner in the said post with retrospective effect from the date of promotion of his immediate junior and to grant all consequential benefits to the petitioner herein."

4.2It is not in dispute that institution of disciplinary proceedings against the writ petitioner was by the District Collector.

4.3It is also not in dispute that the District Collector is not the appointing authority for the post of Assistant Executive Engineer nor can be said to be Disciplinary Authority or Appointing Authority for the post of Executive Engineer.

4.4Even if the charge memo against the petitioner is accepted on its face value, the assessment of learned Single Judge that, at the best, this was the case of minor penalty, in the facts of this case, need not be interfered with, and consequence thereof would be that the case of the petitioner could not have been excluded from consideration for promotion on the post of Executive Engineer.

4.5Further, para : 6 of the order impugned reads as under:-

"6.It is an admitted legal position that an enquiry is to be conducted against any person in strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges and enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable nor the same should be based on conjunctures and surmises. There is a distinction between proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact. In the present case, the charge memo was issued, which reveals vague

allegations against the petitioner alleging various delinquencies. The sum and substance of the charge is that the petitioner has not performed his work diligently and has not discharged his official responsibilities between 2007-08 in a satisfactory and clean manner, which culminated in the issuance of the charge memo in the year 2008. However, a perusal of the charge memo reveals that no annexure is mentioned relating to the documents to be relied on or the witnesses, who are to be examined. It is trite that without placing reliance on documents and examining the witnesses, delinquency cannot be proved, more so in a case in which charge has been framed for major penalty. The decision relied on by the learned counsel for the petitioner is squarely applicable to the case on hand. However, it is open to the respondent to proceed against the petitioner in respect of the charges under Rule 17(a) not under Rule 17 (b)."

4.6 Examining the matter from any angle, we find that, the final conclusion arrived at by learned Single Judge need not be interfered with. Some observations in the order under challenge, where the grievance voiced on behalf of the State may be justified also, can not be said to be a precedent which needs to be taken care of. We note that, the final conclusion arrived at by learned Single Judge, in the facts of this case, can not be said to be an error, much less an error apparent on face of record, which may call for any interference under Clause 15 of Letters Patent. This appeal therefore needs to be dismissed.

5. For the above reasons, this writ appeal is dismissed. No costs. C.M.P.No.15053 of 2021 would not survive.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai - 600 009.
2. The Director,
Rural Development and Panchayat Raj Department,
Panagal Maligai,
Saidapet, Chennai - 600 015.
3. The District Collector,
Nagapattinam District,
Nagapattinam.

+1cc to M/s.M.Ravi, Advocate, S.R.No.40250

+1cc to the State Government Pleader, High Court, Madras
S.R.No.40735

W.A.No.2359 of 2021

JP-II (CO)
RGA(13/07/2022)