IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.2910 of 2018

R.Karthikeyan …. Petitioner

-Vs-

1.The Principal Secretary to Government
of Tamil Nadu, Municipal Administration
and Water Supply Department,
Fort St.George, Chennai 600 009.

2.The Commissioner of Municipal Administration
Chepauk, Chennai. …. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in ROC No.2018/2008/VI dated 22.03.2017 and the consequential order passed by the 1st respondent in G.O.(D) No.428, Municipal Administration and Water Supply Department dated 26.10.2017 and quash the same and consequently direct the respondents to reinstate the petitioner back into service with all attendant and consequential benefits.

(Prayer amended as per order dated 01.03.2018 by TRJ in WMP No.4889/2018)

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.J.C.Durairaj
Additional Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in ROC No.2018/2008/VI dated 22.03.2017 and the consequential order passed by the 1st respondent in G.O.(D) No.428, Municipal Administration and Water Supply Department dated 26.10.2017 and quash the same and consequently direct the respondents to reinstate the petitioner back into service with all attendant and consequential benefits.

2. The petitioner was appointed as Junior Assistant in the Erode Municipality on 16.03.1979 on compassionate grounds pursuant to the death of his father, who was also working as Pharmacist in the said Municipality. In the year 1998, he was further promoted as Assistant. While he was working in that capacity at Gobichettipalayam Municipality, there was a charge memo issued by the Tribunal / disciplinary authority in T.D.P.No.3 of 2008 containing one article of charge.

3. The sum and substance of the charge was that, during the check period from 01.07.1999 to 30.06.2003, the petitioner was found to have been in possession of assets disproportionate to his known sources of income. Pursuant

to which, the disciplinary proceedings by the Tribunal concluded and they gave a finding against the petitioner stating that, if the assets of the petitioner or the assets standing in the name of the petitioner alone is taken into account during the check period, it is not disproportionate assets to the known source of income of the petitioner. However, if the assets standing in the name of the wife of the petitioner is taken into account, it would be Rs.5,01,729/-, which would be 56% of the combined income of the family and therefore it would be disproportionate income to the known source of income of the petitioner. Therefore on that ground, charges framed against the petitioner were considered to be proved. Accepting the same, the disciplinary authority, by order dated 22.03.2017, has inflicted the maximum punishment of removal from service against the petitioner.

4. As against which, when the petitioner preferred an appeal before the appellate authority ie., the Government, they by G.O.Ms.No.428, Municipal Administration and Water Supply Department dated 26.07.2017, has confirmed the said punishment. Aggrieved over these orders passed by the disciplinary authority as well as the appellate authority / Government, the petitioner has moved the present writ petition.

5. Heard Mr.Vijay Shankar, learned counsel for the petitioner, who would submit that it is the categorical finding given by the Tribunal / Enquiry Officer

that, insofar as the income and the assets of the petitioner during the check period is concerned, there are no disproportionate assets during the check period. However, they went further and stated that, if the assets and income of both the petitioner as well as the family ie., wife of the petitioner is taken into account, a sum of Rs.5,01,729/- which is 56% of the combined income of the petitioner and his wife and that would be disproportionate to the income of the petitioner. In order to give such a finding, the actual accounting of the petitioner's wife should have been considered, for which enquiry should have been conducted involving the petitioner's wife also, he contended.

6. In this context, the learned counsel for the petitioner would submit that, it is not only the petitioner, but also the petitioner's wife was a working woman as she was working as teacher for long years. That apart, the parents of the petitioner as well as the mother-in-law of the petitioner were erstwhile Government employees and they became pensioners. Therefore, all these sources of income since poured in the joint family of the petitioner consisting of his wife, parents and mother-in-law and these facts should have been taken into consideration and miserably the respondents failed to consider the same.

7. Learned counsel would also point out that, before the check period, Income Tax Returns consisting of cash-in-hand of Rs.3698/- and the family

property was sold by the petitioner along with other family members, out of which the worth of the property since was Rs.8,25,000/- for which it was sold, the petitioner since was entitled to get 1/3rd share of the sale proceeds, that would come to more than Rs.2,00,000/- whereas during the check period, the sale proceeds of 1/3rd share of the said property in which the petitioner's share was taken into account as only Rs.63,835/-.

8. These kind of discrepancies even though were there and it was brought to the notice of the respondents ie., the disciplinary authority as a second chance or as a second representation pursuant to the report of the Tribunal / Enquiry Officer, the same has not been considered by the disciplinary authority.

9. In this regard, the learned counsel for the petitioner invited the attention of this Court to the impugned order dated 22.03.2017 and pointed out that, it is only a recording or reproduction of the enquiry officer's report as well as the defence statement given by the delinquent officer ie., the petitioner. Absolutely there is no consideration or discussion of such defence taken by the petitioner. Even before considering the defence taken by the petitioner, the disciplinary authority has straight away come to a conclusion inflicting the punishment and as such, the order is infirm on that ground itself.

10. He also invited the attention of this Court to the appellate authority's order ie., G.O.(D) No.428 dated 26.10.2017 and pointed out that, the appellate authority also, without considering all of these aspects, simply by a cryptic order rejected the appeal filed by the petitioner by confirming the order of the disciplinary authority. Therefore both the orders are infirm on this ground itself and the learned counsel for the petitioner seeks the indulgence of this Court to set aside those orders.

11. Heard Mr.J.C.Durairaj, learned Additional Government Pleader appearing for the respondents, who would submit that the charge made against the petitioner is with regard to the alleged assets disproportionate to the known source of income during the check period.

12. Insofar as the check period between 01.07.1999 and 30.06.2003 is concerned, the assets that stood in the name of the petitioner as well as the wife of the petitioner were taken into account since the petitioner as well as the wife of the petitioner are one family and the income and expenditure could have been share by both them. Therefore, whatever the property acquired in the name of the petitioner or his wife were taken into account as the family income of both and if sources are known for acquiring such property, there may not be any

disproportionate income. However, if we take up the assets acquired in the name of the wife ie., purchasing of plot and construction of house etc., the expenditure incurred for purchasing of the plot and construction of the house should have stated properly either from the source of the petitioner or the source of the wife of the petitioner. However, that source since has not been shown as per the accounting of the petitioner as well as the wife, the Enquiry Officer ie., the Tribunal, after going into all these aspects has come to the conclusion that there were assets in the name of the wife of the petitioner, which is disproportionate to the known sources of the wife, as she is part of the combined family of the petitioner. Therefore, the charge framed against the petitioner during the check period was proved and based on the proven charges, having considered the same the disciplinary authority has decided to inflict the maximum punishment of removal from service, which has been confirmed by the appellate authority. Therefore, both the impugned orders do not require any interference from this Court, he contended.

13. I have considered the submissions made by the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondents.

14. The only charge is that there was disproportionate income or assets acquired by the petitioner during the relevant point of time ie., the check period, which is disproportionate to the known source of income of the petitioner.

15.In this context, even though there was a finding by the Tribunal in the following terms.

> " *6. There are disproportionate assets to the tune of Rs.5,36,468/- on the count of the family of accused officer. If accused officer alone is considered without taking into account of assets in the name of his family, there is no disproportionate assets. If I consider the assets, income and expenditures of both accused officers and his family proportionate assets would be Rs.5,01,729/- which would be 56% of the combined income of the family."*

16. The Tribunal has gone into the assets standing in the name of the petitioner's wife and had come to a conclusion that, there was disproportionate assets to the extent of Rs.5,01,729/- which constituted 56% of the combined income of the family. If at all within the check period the assets acquired by the petitioner is to be verified, then the assets stood in the name of the petitioner alone should have been verified. If they want to expand it to the family of the

petitioner including the wife of the petitioner, who is an individual assessee under the provisions of the Income Tax Act, for which separate accounting has been shown in every assessement year, proper opportunity should have been given to the wife of the petitioner also.

17. Nevertheless, if at all they came to the conclusion that if the income of the petitioner as well as the wife of the petitioner are taken into account combinedly and accordingly if they came to a conclusion that there will be disproportionate assets to the known source of income, then an opportunity should have been given in this regard to the wife of the petitioner to explain the source as to how she acquired the property.

18. The reason being that, the wife of the petitioner is also a working person as a teacher and she was getting a regular salary for several years and from that source of income what was the savings of the petitioner's wife at the end of closing of every assessment year ought to have been taken into account not only for the check period but also immediately prior to the check period.

19. It is in fact pointed out by the learned counsel for the petitioner stating that, in the Income Tax Returns which is prior to the check period in the name of the petitioner, only Rs.1,28,000/- cash in hand was available. That apart,

the Savings Bank account opened on 04.11.1999 in Indian Bank Erode Main Branch has also been brought to the notice of this Court, where some credits have been made to more than Rs.1,50,000/- during the check period and this amount has been withdrawn and utilized for the construction of the house in the name of the wife. If at all any doubt had arisen in the mind of the Enquiry Officer, they could have verified the source of the amounts which were credited in the name of the wife of the petitioner. Without verifying all these aspects since findings have been given as if that the charges are proved and based on which when defence statement was given by way of second representation by the petitioner, this Court feels that the same has not been considered in proper perspective and in fact it has not at all been considered by the disciplinary authority except to reproduce the same in the impugned order dated 22.03.2017. Hence, the order passed by the disciplinary authority requires reconsideration.

20. After recording or reproducing the Enquiry Officer's report as well as the representation given by the petitioner, the conclusion arrived at by the disciplinary authority is in one para, which reads thus,

> *" The charge memo, report of the enquiry officer and further defence of Thiru.R.Karthikeyan, now Accountant, Gobichettipalayam has been perused along with connected records. For the proven charges involving disproportionate assets*

> *to the known source of income. Thiru.R.Karthikeyan, formerly Assistant, Erode Municipality now Accountant. Gobichettipalayam is awarded a punishment of removal from service."*

21. Even in this one para consisting of five or six lines, nothing has been stated by the disciplinary authority as to how he came to the conclusion that the charges framed against the petitioner was proved and how he brushed aside or rejected the defence or representation given by the petitioner because no such findings were made by the enquiry officer and therefore for all these reasons also, this Court feels that the order impugned passed by the disciplinary authority is to be interfered with.

22. Turning to the appellate authority's order, he also passed a cryptic order in one paragraph, which reads thus,

> " *The Government have examined the appeal petition of Thiru.R.Karthikeyan, formerly Accountant (Removal from service) Gobichettipalayam Municipality carefully along with the connected records. The appellant has mainly concentrated to blame the Inquiry Officer and Disciplinary Authority. However, no new facts are brought out in his appeal petition and hence there are no reasons to interfere with the order of the Disciplinary Authority (ie.,) Commissioner of Municipal Administration. Accordingly, it is hereby ordered that the appeal petition of*

Thiru.R.Karthikeyan, formerly Accountant (Removal from service) Gobichettipalayam Municipality against the punishment imposed by the Commissioner of Municipal Administration in RoC No.2018/2008/V1 dated 22.03.2017 be rejected."

23. The appellate authority has stated that no new facts have been brought in by the petitioner for intervening in the order of the disciplinary authority. Very often this Court finds that, whenever appellate authorities passes an order, these kind of reasons are given that no new facts have been brought to the appellate authority. They conveniently omit to note that the appeal is the continuation of the original proceedings and so whatever is order by the original authority that has to be considered by the appellate authority as to on what basis the original authority has come to such conclusion prejudicial to the interest of the person concerned or delinquent concerned.

24. If at all only new facts are brought in then only the appellate authority can show its indulgence, and if this rule is to be followed as has been followed in the present case, then it would be nothing but a review of the order passed by the same authority. The appeal cannot be converted as a review because the appellate authority, sitting over the order passed by the original authority and after applying their mind, then must see whether the original authority has passed appropriate order or not. Therefore, that reason stated in Para 5 of the

order passed by the appellate authority as cited supra is also untenable and hence for all these reasons this Court feels that this matter can be remitted back to the original authority for reconsideration.

25. In the result, the following orders are passed in this writ petition.

- That the impugned orders are set aside, remitting back the matter to the disciplinary authority before whom, it is open to the petitioner as well as the petitioner's wife to make an additional defence statement to give defence as to how the source of income was available for the petitioner as well as the wife to acquire the properties both movable and immovable during the check period and accordingly, after giving such opportunity to the petitioner and his wife, it is open to the disciplinary authority to consider the same and pass appropriate orders on merits and in accordance with law, as indicated above.

- The needful as indicated above shall be undertaken by the disciplinary authority within a period of three months from the date of receipt of a copy of this order.

26. With the above directions, this writ petition is disposed of. No costs.

27.07.2022

Index : Yes/No
Internet : Yes/No
KST

To

1.The Principal Secretary to Government
of Tamil Nadu, Municipal Administration
and Water Supply Department,
Fort St.George, Chennai 600 009.

2.The Commissioner of Municipal Administration
Chepauk, Chennai.

R. SURESH KUMAR, J.

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