



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.17600 of 2014

L.Ashok Kumar

..Petitioner

Vs.

1.The Secretary to Government Municipal
Administration and Water Supply Department,
Fort. St.George, Chennai - 600 009.

2.The Commissioner of Municipal Administration,
6th floor, Ezhilagam,
Chepauk, Chennai - 600 005.

3.The Commissioner,
Namakkal Municipality,
Namakkal District.

..Respondents

Prayer : Writ 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 orders in Roc.No.82442/2000/VI, dated 08.05.2014 passed by the 2nd respondent and followed by the 3rd respondent in Na.Ka.No.289/2014/C1, dated 13.05.2014 and quash the same and thereby directing the respondents to reinstate the petitioner forthwith and pay all attendant benefits to the petitioner.

For Petitioner : Mr.A.R.Nixon

For R1 & R2 : Mr.T.Chezhiyan
Additional Government Pleader

For R3 : Mr.M.Rajamathivanan

ORDER

The petitioner herein was appointed as a Junior Draughtsman in the third respondent Municipality in the priority category of inter caste Marriage. On 11.10.2001, the second respondent herein, had framed charges against the petitioner stating that



the inter caste marriage certificate is a forged document. Based on the charges, an enquiry was conducted, in which the department has filed five documentary evidences. However, no witnesses were examined during the course of enquiry.

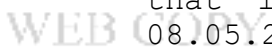
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(ii) On consideration of the oral and documentary evidences, the Enquiry Officer had filed his report on 29.03.2006, holding that the charges were not proved. However, the second respondent herein was of the view that a fresh enquiry requires to be conducted and on initiation of such steps, the petitioner had challenged the proceedings before this Court in W.P.No.8175 of 2009 and by an order dated 07.12.2011, this Court had found the procedure to be against law and therefore, directed the second respondent to give a notice to the petitioner, proposing his views for deferring with the Enquiry Officer's Report and consequently, directed him to pass appropriate orders, within a period of three months from the date of petitioner's explanation from such a notice.

(iii) In consequence to the orders of this Court, the second respondent herein, had issued a notice to the petitioner on 15.02.2012, which was replied by the petitioner herein on 08.03.2012, setting forth his objections. The second respondent was required to pass further orders on the petitioner's representation within a period of three months, commencing from 08.03.2012. However, after about three years, the second respondent had passed the impugned order dated 08.05.2014, dismissing the petitioner from his service. This order was implemented by the third respondent on 13.05.2014, by relieving the petitioner from the service. Both the orders of the second respondent dated 08.05.2014 and the relieving order of the third respondent dated 13.05.2014, are put under challenge in the present writ petition.

2. The learned counsel for the petitioner submitted that though this Court had specifically directed the second respondent to pass orders on the petitioner's representation within three months, the second respondent had prolonged further action for more than two years and on that ground, the consequential order of punishment requires to be quashed. He further submitted that when the Enquiry Officer had held the charges were not proved, the second respondent herein, had not taken into account that the department had not produced any oral evidence and therefore, the findings of the second respondent in the impugned order is baseless and cannot be sustained.

3. On the contrary, the learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that all the evidences before the Enquiry Officer were taken into account by the second respondent and proper reasonings have also been



4. The learned counsel for the third respondent submitted that in view of the orders of the second respondent dated 08.05.2014, they had properly relieved the petitioner from the services, through the proceedings dated 13.05.2014.

6. Whenever charges relating to certain documents are claimed to be forged, the department requires to establish the same by letting himself in oral and documentary evidences. In case, such documentary evidences are let-in, the contents of such documents also requires to be proved through oral evidences. Admittedly, in the instant case, no witnesses were examined on the part of the department. Though the five documents were produced during the course of enquiry by the department, the contents of those five documents were not proved by letting in oral evidence.

8. The Hon'ble Supreme Court in the case of Roop Singh Negi vs. Punjab National Bank and others reported in (2009) 2 SCC 570, had held that mere production of the documents in the enquiry is not sufficient and that the contents of such documents requires to be proved on the basis of oral evidences. The relevant portion of such an order reads as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

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9. The aforesaid extract is self-explanatory. When the respondents had not examined any witnesses on their side, the contents of the five documents produced by them is deemed to have been not proved at all and therefore, the consequential action on the part of the second respondent in placing reliance on such documents, cannot be sustained.

10. This apart, when the second respondent initially intended to conduct a fresh enquiry, this Court had found fault with such procedure and directed the second respondent to issue deferral notice to the petitioner seeking for explanation and further directed them to consider such explanation, within a period of three months from the date of such explanation. The relevant portion of the order reads as follows:

"14. In the result, the writ petition is allowed and the impugned proceedings are quashed with liberty to the first respondent to issue show cause notice to the petitioner indicating the grounds on which he proposes to disagree with the findings of the enquiry officer, as contained in the enquiry report dated 29.03.2006, and afford an opportunity to the petitioner to submit his explanation and thereafter proceeds further in accordance with law. The first respondent is directed to issue such notice to the petitioner within a period of eight weeks from the date of receipt of a copy of this order and after the petitioner submits his explanation, the disciplinary authority shall take a final decision in the matter within a period of three months from the date on which the petitioner submits his explanation. Hence, the writ petition is allowed to the extent indicated. No costs. Consequently, connected miscellaneous petition is ordered."

11. In the order of this Court, there was a specific direction for the second respondent to take a final decision within the stipulated time of three months, which commences from the date of the petitioner's explanation. It is not in dispute that the petitioner had given his explanation on 08.03.2012 and as such, the second respondent ought to have passed final orders atleast by 07.06.2012. However, it took almost more than 2 years for him to take further action and ultimately on 08.05.2014, the petitioner came to be dismissed from service.



12. At this juncture, the learned counsel for the petitioner submitted that during the interregnum, a panel for the post of junior engineers was drawn and when the petitioner sought for inclusion of his name in the panel, the second respondent had suddenly woke up and passed orders, dismissing him from the service.

13. The impugned order dated 08.05.2014, is in total violation of the direction of this Court, which stipulated three months period for consideration, which order was disobeyed and passed after an inordinate delay of two years. On this ground also, the impugned order of dismissal, cannot be sustained.

14. For all the foregoing reasons, the impugned order dated 02.05.2014, on the file of the second respondent is quashed. Consequently, the second respondent herein shall pass orders, reinstating the petitioner back into service together with all service and monetary benefits including the promotional benefits. In case the petitioner is entitled for promotion to the next higher post, his seniority would be suitably revised and such promotional orders shall be given on par with the petitioner's immediate junior. The second and third respondents, shall pass such orders within a period of six (6) weeks from the date of receipt of a copy of this order.

15. Accordingly, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

Pns

To

1. The Secretary to Government Municipal
Administration and Water Supply Department,
Fort. St. George, Chennai - 600 009.
2. The Commissioner of Municipal Administration,
6th floor, Ezhilagam,
Chepauk, Chennai - 600 005.



3.The Commissioner,
Namakkal Municipality,
Namakkal District.

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+2ccs to Mr.A.R.Nixon, Advocate SR.No.24451

+1cc to Mr.M.Rajamathivanan, Advocate SR.No.24457

+1cc to Government Pleader SR.No.25117

W.P.No.17600 of 2014

PA (CO)
GMY (22/04/2022)