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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.12.2021

PRONOUNCED ON : 11.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.28777 OF 2017

V.Kumar

... Petitioner

Vs.

The Deputy Commissioner (Works),
Greater Chennai Corporation,
Rippon Buildings,
Chennai-600 03.

... Respondent

PRAYER:

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent herein in his proceeding G.D.C.No.E4/8210/2008 dated 18.09.2017 of the respondent and to quash the same and to issue direction to the respondent to reinstate the petitioner in service with all consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondent : Mrs.Karthikaa Ashok
Standing Counsel
for Chennai Corporation

O R D E R

The present Writ Petition is heard on 23.12.2021.

2. Through the impugned order dated 18.09.2017, the petitioner, who was employed as a Junior Engineer under the Chennai Corporation was dismissed from services on the basis of the inquiry report received from the Tribunal for Disciplinary Proceedings (TDP) in TDP Case No.19 of 2012, by the Deputy



Commissioner of Greater Chennai Corporation, who is the respondent herein. The order of dismissal is challenged by the learned counsel for the petitioner, predominantly on three grounds.

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2.1) Firstly, the Authority Competent to impose a penalty in respect of the officers of the Municipal Corporation would be the Commissioner under Rule 10(c) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 [hereinafter referred to as "DPT Rules"] and such powers cannot be delegated to sub-ordinate officers.

2.2) Secondly, no reasons have been assigned in the impugned order of dismissal and hence, is deemed to be a non speaking order and therefore cannot be sustained.

2.3) Thirdly, the petitioner was earlier subjected to similar charges which came to be dropped at the intervention of the orders of this Court wherein strictures came to be passed against the officials of the Chennai Corporation and therefore the subsequent dismissal order is "malice in law" and amounts to victimization.

2.4) The learned Standing counsel for the respondent would submit that the Deputy Commissioner was empowered to pass orders in view of the Government Order in G.O.(2D) No.54, Municipal Administration & Water Supply Department, dated 01.08.2016 on the basis of the report of the Commissioner of Disciplinary Proceedings, pursuant to which the charges came to be framed. By placing reliance on the proceedings of the Commissioner dated 03.03.2016, she would submit that, as per Rule 6 of the Chennai Corporation, Class III & IV Services (Discipline & Appeal) Bye-laws 1983, the Commissioner of Chennai Corporation is the disciplinary authority, who had delegated his powers of awarding punishments specified in the bye-laws to the Deputy Commissioner in his proceedings dated 03.03.2016 and hence the Deputy Commissioner was well within his jurisdiction to pass the impugned order. By drawing attention to the impugned order, the learned counsel submitted that the basis for arriving at the decision was on the records available in the TDP case and therefore, it cannot be termed as a "non speaking order". Lastly, the learned counsel for the respondent would submit that the charges against the petitioner are very serious in nature, relating to possession of disproportionate assets and in view of the Government's recommendations to conduct an enquiry before the Disciplinary Proceedings Tribunal, the impugned order came to be passed and therefore, this is not a case of victimization.

3. I have given careful consideration to the submissions made by the respective counsels.



4. The object and scope of Latin Maxim "delegatus non potest delegare" has been dealt with time and again by the Hon'ble Supreme Court in various decisions and it has been consistently held that sub delegation of powers vested with an authority under a statute is impermissible in law, unless the legislature provides for it. In A.K.Roy & Another Vs. State of Punjab and Others reported in 1986 (4) SCC 326, the Hon'ble Supreme Court had reiterated this ratio in the following manner:

"10. ... Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the Legislature in enacting s. 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise.

....

12. In the case of statutory powers the important question is whether on a true construction of the Act, it is intended that a power conferred upon A may be exercised on A's authority by B. The maxim delegatus non potest delegare merely indicates that this is not normally allowable but the Legislature can always provide for sub-delegation of powers. The provision contained in ss. 24(2) (e) enables the State Government to frame a rule for delegation of powers and functions under the Act but it clearly does not envisage any sub-delegation. ...
"

The aforesaid proposition has also been reiterated by the Hon'ble Supreme Court in the case of Sahni Silk Mills Private Ltd., & another Vs. Employee's State Insurance Corporation reported in 1994 (5) SCC 346, as well as in the case of State of Bombay Vs. Shivabalak Gaurishankar Dube reported in AIR 1965 SC 661. Thus, the very foundational defense taken by the respondent that he had passed the impugned order of punishment in view of the powers delegated to him by the Commissioner, cannot be sustained since such powers to punish are vested with the Commissioner of Municipal Corporation in view of Rule 10(c) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules.

5. Even otherwise, tracing the powers of the Deputy Commissioner to award punishments/penalties to the field staffs



through the proceedings of the Commissioner dated 03.03.2016, is misconceived. The aforesaid proceedings dated 03.03.2016, does not specifically sub-delegate the powers of the Commissioner to award punishments in the proceedings initiated under Rule 10(b) of the DPT Rules. Moreover, Section 10(c) of the DPT Rules specifically authorizes the Commissioner of the Municipal Corporation to impose a penalty in respect of the employees of Classes III & IV and further mandates the Commissioner to follow the procedure prescribed in Rule 10(b). There is no reference to the proceedings initiated under Rule 10(b) in the delegation proceedings dated 03.03.2016 and apparently, this proceedings does not relate to the action taken under the DPT Rules.

6. The second ground raised by the petitioner pertains to the impugned order being a "non speaking order". I find some force in such a submission. Though the impugned order of dismissal runs to 15 pages, the findings rendered therein is in a single sentence stating that based on the enquiry report of the Commissioner of DPT and perusal of the further explanations, the Deputy Commissioner has accepted the findings and accordingly, imposed the punishment. The remaining portion of the impugned order only extracts the defense and the additional explanations made by the petitioner and nothing more. The Deputy Commissioner has not substantiated as to how the defense statements and the further explanations were overruled and on what basis the enquiry report was accepted. Thus, the order itself is deemed to be a "non speaking order".

7. When the Deputy Commissioner had deviated from the procedure contemplated under DPT Rules by relying on the irrelevant delegatory powers and had not rendered his findings for imposing higher punishment of dismissal from service, the third ground raised by the petitioner that the punishment itself is by way of victimization, gains significance. The manner in which the case of the petitioner was dealt with by the respondent from the inception indicates "malice in law". The petitioner was originally proceeded with the TDP Case No.19 of 2012, which came to be dropped on 12.08.2015. Thereafter, on 21.03.2017, similar charges came to be framed by DPT. When the second charge memo was challenged by the petitioner in W.P.No.8195 of 2017, this Court on 13.04.2017, had expressed its anguish in the following manner:-

"5. When final orders were already passed on 12.08.2015, dropping action against the petitioner relating to the previous charge memo dated 19.06.2013 and the TDP proceedings are also pending on the same set of charges, it is not known as to how the Deputy Commissioner (Works) proceeded to issue the present charge memo dated



receipt of a copy of this order. The Writ Petition stands allowed accordingly. There shall be no orders as to costs.

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Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

DP

To

The Deputy Commissioner (Works),
Greater Chennai Corporation,
Rippon Buildings,
Chennai-600 03.

+1cc to Mr.M.Ravi, Advocate, S.R.No.2118
+1cc to Mrs.Karthikaa Ashok, Advocate, S.R.No.2321

W.P.No.28777 of 2017

SMI (CO)
PM/21/01/2022