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W.A.No.2878 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.12.2022**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.2878 of 2018
and CMP No.23860 of 2018

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

2. The Director of Town Panchayat,
Kuralagam,
Chennai 600 108.

.. Appellants/Respondents

Vs.

J.Devaraj

.. Respondent/Petitioner

Prayer: Writ Appeals filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P. No.34715 of 2015 dated 20.04.2018.

For Appellants : Mr.L.S.M. Hasan Fizal
Addl. Government Pleader

For Respondents : Mr.V.Vijayshankar



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J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The State is on Appeal aggrieved by the order of the Writ Court setting aside the very meagre punishment of stoppage of increment for a period of six months with cumulative effect.

2. At least three charges were made against the petitioner and enquiry was conducted. The Enquiry Officer who conducted the enquiry concluded that while charges 2 and 3 were proved, charge 1 alone was not proved. The Disciplinary Authority did not accept the report of the Enquiry Officer and ordered a further enquiry by the same Enquiry Officer in the presence of the officer from the Vigilance Cell. After the said enquiry, the Enquiry Officer returned a finding that none of the three charges were proved.

3. This was not accepted by the Disciplinary Authority and a Deviation Report was filed. A show cause notice was issued to the petitioner asking him to explain as to why he should not be proceeded against. After obtaining a reply, the Disciplinary Authority concluded that the first charge



relating to falsification of records were not proved, however the other two charges in relation to non-submission of diary was proved and the consequential charge violation of Government Servants Conduct Rules was also proved. Upon such finding the punishment as aforesaid was imposed.

4. This was challenged before the Appellate Authority i.e. the Government and the Government confirmed the punishment, after obtaining opinion from TNPSC, on 15.05.2015. Thereafter the petitioner approached this Court challenging the said punishment. Before the Writ Court it was contended that the Disciplinary Authority was not right in concluding that the charges 2 and 3 have been proved, inasmuch as there was no requirement in the Rules for an Executive Officer of the Town Panchayat to submit a Diary recording the daily activities to the Assistant Director of Town Panchayat. In the absence of such Rule, requiring submission of a diary the very Disciplinary Proceedings were without jurisdiction. It was also contended that there was no evidence for the alleged delinquency since one of the co-employees had deposed that she had seen the petitioner submitting a diary to the Assistant Director.



5. The Writ Court accepted the said contention on the ground that the Report of the Enquiry Officer is very cryptic and elusive. The Writ Court also held that the Enquiry Officer was right in relying upon the evidence of Junior Assistant tendered during the course of the enquiry as P.W.2. According to the Writ Court, the finding rendered by the Disciplinary Authority relying upon the evidence of a superior officer is not legally acceptable. The Writ Court also found that the order of the Appellate Authority is a non-speaking order and it was based on the opinion of the TNPSC. Further we find that the very disciplinary proceedings launched on the basis of a prevailing practice without there have been any legal requirement or a duty cast upon the employee to do a particular thing cannot be sustained.

6. The learned Additional Government Pleader fairly concedes that there is no requirement in the Rules regarding submission of diaries by the Executive Officers to the Assistant Director of Panchayat. In the absence of such requirement, we cannot fault the Writ Court for having held that the punishment is unsustainable.



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7. Hence the Writ Appeal fails and it is accordingly **dismissed**. It is

made clear that the petitioner will be entitled to all the benefits as directed by the Writ Court. While calculating the benefits, any promptional benefit will be assessed notionally. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) (S.S.K.,

J.)

20.12.2022

Index: No
Internet: Yes
Speaking order

jv

To

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