



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.01.2022
CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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W.P (MD) Nos.11630 and 20214 of 2021
and
W.M.P. (MD) Nos.9144, 9145, 16358/21
in
WP (MD) No.11630/21 and 16886 of 2021
in
WP (MD) No.20214 of 2021

W.P. (MD) No.11630 of 2021

E.Gnanasekar

... Petitioner

versus

The Commissioner and Special Officer,
Thoothukudi City Municipal Corporation,
Thoothukudi.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of writ of certiorarified mandamus, to call for the records from the respondent relating to the impugned order in C1/17170/2002 dated 30.06.2021 and quash the same as illegal and consequently, direct the respondent to grant periodic promotion with all other attendant and monetary benefits payable to the petitioner within the time stipulated by this Court.

For Petitioner : Mr.VR.Shanmuganathan
For Respondent : Mr.S.Saji Bino,
Special Government Pleader

W.P. (MD) No.20214 of 2021

N.Sermakani

... Petitioner

versus

The Commissioner,
Tuticorin Municipality,
Tuticorin.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of writ of certiorari, to call for the records relating to the impugned order passed by the respondent in his proceedings C1/17170/2002 dated 13.09.2021 and quash the same as illegal, arbitrary and in violation of principles of natural justice.



For Petitioner : Mr.B.Saravanan
For Respondent : Mr.S.Saji Bino,
Special Government Pleader

COMMON ORDER

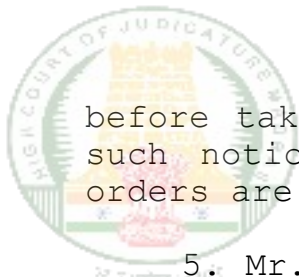
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These writ petitions are filed against the orders of punishment dated 30.06.2021 and 13.09.2021, in and by which, the respondent ordered for recovery of a sum of Rs.7,85,679/- and Rs.3,14,979/-.

2. The petitioners were slapped with a charge memo dated 24.04.2006, alleging that while they were working as Junior Assistant, they failed to collect rent from the lessees and thereby caused loss of Rs.92,49,537/- to the Exchequer of the erstwhile Thoothukudi Municipality. They also submitted their explanation to the respondent denying all the charges. Thereafter, an enquiry was conducted and the Enquiry Officer submitted his enquiry report, by holding that among six charges, five charges are not proved and one charge alone is partly proved. Instead of taking decision on the enquiry report submitted by the Enquiry Officer, the Disciplinary Authority, vide his proceedings dated 13.03.2018, ordered for re-enquiry by appointing another Enquiry Officer. The same was under challenge in W.P.(MD)No.674 of 2019. This Court, vide order dated 26.02.2021, allowed the writ petition by setting aside the charge memo dated 24.04.2006 and the consequential proceedings of re-enquiry dated 13.03.2018. Aggrieved by the same, the respondent Corporation filed an appeal in Writ Appeal (MD) No.882 of 2021 before this Court. A Division Bench of this Court, vide Judgment dated 23.04.2021, partly allowed by setting aside the proceedings of re-enquiry dated 13.03.2018 and granted liberty to the disciplinary authority to proceed with the enquiry report dated 28.05.2013 and to pass a fresh order. Accordingly, the impugned orders have been passed. Aggrieved by the same, the present writ petition is filed.

3. Since the issue involved in both the writ petitions are one and the same, both the writ petitions are taken up together for final disposal.

4. The learned counsel for the petitioners submitted that the impugned orders have been challenged on two grounds. The first ground is that the disciplinary authority is the Director of Municipal Administration, but, the impugned orders have been passed by the incompetent authority, namely, the Commissioner of Tuticorin Corporation. Therefore, on that ground, the impugned orders are liable to be set aside. The second ground is that the Enquiry officer submitted his report by holding that among six charges, five charges are not proved and one charge alone is partly proved. While so, when the respondent has intended to deviate from the findings of the Enquiry Officer, in all fairness, he ought to have issued second show cause notice, calling for explanation from the petitioners,



before taking any decision. But, the respondent has not issued any such notice to the petitioners. On these grounds, the impugned orders are liable to be set aside.

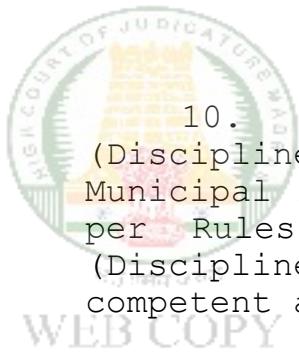
5. Mr.S.Saji Bino, learned Special Government Pleader appearing for the respondent Corporation submitted that since the petitioners caused huge revenue loss to the tune of Rs.92,49,537/- to the Corporation, the charge memo dated 24.04.2006 was issued to the petitioners and for the said charges, enquiry was also conducted by appointing an Enquiry Officer and the Enquiry Officer also submitted the enquiry report. Being not satisfied with the enquiry report, the respondent, vide proceedings dated 13.03.2018, ordered for re-enquiry. Thereafter, pursuant to the Judgment of the Division Bench of this Court in W.A.(MD)No.882 of 2021, the impugned orders came to be passed.

6. With regard to the jurisdiction, the learned Special Government Pleader submitted that the disciplinary proceedings was initiated in the year 2006. The Thoothukudi Municipality was upgraded as Thoothukudi City Municipal Corporation in the year 2008. Therefore, as on that date, the Commissioner of Municipal Corporation is the competent authority.

7. This Court paid its anxious consideration to the rival submissions made.

8. The petitioners were slapped with a charge memo dated 24.04.2006 by framing six charges. The respondent Corporation appointed an Enquiry Officer in the year 2011 and after conducting the enquiry, the Enquiry Officer submitted the report in the year 2013, by holding that among six charges, five charges are not proved and one charge alone is partly proved. The disciplinary authority ought to have passed an order based on the enquiry report. Instead of that, the respondent Corporation, vide his proceedings dated 13.03.2018, ordered for re-enquiry by appointing another Enquiry Officer, that too after five years. The same was challenged before this Court in W.P.(MD)No.674 of 2019, which was allowed by this Court, vide order 26.02.2021, setting aside the order of re-enquiry, against which, the respondent Corporation filed an appeal in W.A.(MD)No. 882 of 2021. The Division Bench of this Court, vide Judgment dated 23.04.2021, partly allowed the writ appeal, by setting aside the order of re-enquiry.

9. If the disciplinary authority intended to deviate from the findings of the Enquiry Officer, in all fairness, he ought to have issued a second show cause notice to the petitioners and afford an opportunity to submit their explanations, if any and thereafter only, he has to proceed with the disciplinary proceedings. In this case, the respondent has not issued any such notice.



10. As per Rule 4(b) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970, the Commissioner/Director of Municipal Administration, Chennai is the appointing authority. As per Rules 4(3) and 6 of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970, the appointing authority is the competent authority to impose penalty.

11. It is not disputed by the respondent that the appointing authority is the Director of Municipal Administration. Therefore, the competent disciplinary authority would be the Director of Municipal Administration, Chennai. But, in this case, the respondent/Commissioner of Thoothukudi Municipal Corporation, instead of referring this matter to the competent authority, viz., the Commissioner/Director of Municipal Administration, Chennai, decided the issue on his own and passed the impugned orders, that too without issuing second show cause notice to the petitioners. Therefore, on these two grounds, the impugned orders are set aside.

12. Accordingly, both the writ petitions are allowed with liberty to the respondent to refer these matters to the competent authority, namely, the Director of Municipal Administration, Chennai. The Director of Municipal Administration, Chennai, shall proceed with the disciplinary proceedings based on the enquiry report dated 28.05.2013 and pass orders in accordance with law. The disciplinary authority, if intends to deviate from the findings of the Enquiry Officer, shall take a decision afresh, after affording opportunity of hearing to the petitioners and pass orders within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AE)

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/ /2022

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Commissioner and Special Officer,
Thoothukudi City Municipal Corporation, Thoothukudi.

Copy To:

The Director of Municipal Administration, Chennai.

+1. C.C. to Mr.B.SARAVANAN, Advocate SR.No.943

W.P(MD)Nos.11630 and 20214 of 2021

07.01.2022