



WEB COPY



W.A.No. 954 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

W.A.No.954 of 2021

A.Sivakumaran,
S/o. M.Arumugam,
Plot No.234, 23rd Cross Street,
Nelambur, Chennai-600 037.

..Appellant

-VS-

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Housing & Urban Development Department,
Fort St.George,
Chennai-600 009.
2. Tamil Nadu Housing Board,
(Board Secretariat), Nandanam,
Chennai-600 035.
3. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.

...Respondents

Prayer : Writ Appeal is filed under Clause 15 of the Letter Patent, praying to set aside the order passed by this Hon'ble Court in W.P.No.16782 of 2014 dated 21.12.2020.



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For Appellant : Mr.S.Parthasarathy
For R1 : Mr.E.Sundaram
Government Advocate
For R2 and R3 : Mr.D.Veerasekaran
Standing Counsel for TNHB

COMMON ORDER

The present Writ Appeal is filed against the order of the learned Judge passed in W.P. No. 16782 of 2014 dated 21.12.2020, whereby the writ petition was dismissed on the premise that the appellant herein had approached the court after a long delay and such delay has not been properly explained.

2. Before proceeding to examine the contentions raised in the Writ Appeal, it may be relevant to set out the facts briefly:

(a) The appellant joined the service of the Tamil Nadu Housing Board, as an Assistant Engineer and retired from service on 31.07.2013. During his service, he was issued with a Charge Memo dated 03.08.2003. The primary charge was that the appellant while working as an Assistant Engineer, Defunct Sites and Service Division-II, during the period from 08.09.1992 to 10.11.1997, had procured materials in excess of actual requirements for Tirur



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S&S scheme, resulting in accumulation of dead stocks thereby causing loss to the extent of Rs.5,01,221/-. Due to the same, the appellant was charged as having violated Regulation 20 of the Tamil Nadu Housing Board Officers and Servants Conduct Regulation, 1963 and Regulation 32(A) of the Tamil Nadu Housing Board Service, 1969.

(b) The appellant submitted his explanation dated 20.10.2003 stating that he was promoted as Junior Engineer vide proceedings dated 30.09.1992 and the Executive Engineer/S&S II had issued the order of posting as in-charge of Completion Report Cell. Two years thereafter, the appellant was posted in Perumal Pattu Scheme work of Drains and Culverts. Thus, the above charge was contrary to the facts and materials available on record inasmuch as the appellant was allocated work in Perumal Pattu Scheme and not in Tirur. Further, the period during which the appellant actually worked in said Division was between 26.07.1994 and 10.11.1997. The enquiry report also found that the charges were not proved. However, the 3rd respondent deviated from the enquiry report and held the charges as proved and awarded a punishment of recovery of sum of Rs.2,50,611/- as well as stoppage of increment for the period of 5 years with cumulative effect,



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exclusive of the periods, if any, spent on leave, *vide* Proceedings No.DC1/23577/2003 dated 29.10.2004.

(c) Aggrieved, the appellant preferred an appeal before the 2nd respondent. The 2nd Respondent *vide* order dated 09.03.2007 modified/reduced the punishment to that of stoppage of increment for a period of two years without cumulative effect, besides recovery of Rs.2,50,611/- from the appellant's salary.

(d) Further appeal was filed by the appellant on 11.07.2007 before the 1st respondent to set aside the order of the punishment (modified) by the 2nd respondent. By order dated 02.05.2014, the 1st respondent, after close to 7 years, rejected the appeal on finding that the same is not maintainable against the order of the 2nd respondent.

3. The appellant preferred the Writ Petition against the order of the 2nd respondent dated 09.03.2007, while also challenging the order of the 1st respondent dated 02.05.2014, *inter alia* on the following grounds:

(i) That the Respondents ought to have seen that the enquiry officer conducted a detailed enquiry and held that the charges framed against the appellant were not proved.



(ii) That though the appellant gave a detailed reply to the charges, the same was not considered by the respondents and thus, the proceedings stood vitiated.

(iii) That there was no loss to the Board as all the materials purchased by the appellant were utilized.

(iv) That the enquiry charges and the order of the punishment were made on the grounds different from each other. Thus, the respondents ought to have conducted fresh enquiry and in the absence thereof, the proceedings stands vitiated.

(v) That there was non-application of mind to the objection raised by the appellant that the disciplinary proceedings after a lapse of 12 years from the date of alleged occurrence, vitiate the proceedings on the ground of undue delay.

(vi) That the impugned proceedings also suffer from non-application of mind inasmuch as the appellant had worked in the Division from 26.07.1994 to 10.11.1997, and thus, the very basis of the charges made on the basis of alleged occurrence during the period from 08.09.1992 to 10.11.1997 suffers from gross misconception and error apparent on the face of the record.

(vii) That in similar cases, this court was pleased to quash the



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punishment and thus, the appellant would submit that there must be parity in treatment. Reliance was sought to be placed on the order of this court dated 30.12.2007 passed in W.P No 19225 of 2007 in this regard.

4. The writ petition was dismissed primarily for the reason that the same was filed with inordinate delay and the reason for such delay has not been explained. Challenging the said order of the learned judge dated 21.12.2020, this writ appeal is filed by the writ petitioner / appellant.

5. The learned counsel for the appellant would submit that the learned judge ought to have seen that the appellant has preferred an appeal on 11.07.2007 challenging the order of the 2nd respondent dated 09.03.2007. The appellant was informed about the non-maintainability of the said appeal only on 02.05.2014 and immediately, he had filed the writ petition in June 2014 and thus, the assumption of the learned judge that the writ petition was filed after a long delay without any explanation, is contrary to the material on record and hence, the order passed by the learned Judge in dismissing the writ petition on the ground of delay, is liable to be set aside.

6. On the other hand, the learned counsel for the respondents would



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submit that the order of the learned judge does not warrant any interference as it is made on examination of the facts and circumstances of the case.

7. Heard both sides. Perused the materials on record.

8. We are of the view that the order of the learned judge warrants interference inasmuch as he was carried away by the fact that there was delay on the part of the appellant in approaching the writ court under Article 226 of the Constitution of India and the reasons were not adduced explaining such delay. As found supra, a perusal of the affidavit filed in support of the writ petition would reveal that the appellant in fact narrated the above sequence of events which are self explanatory of the reasons leading to delay in filing the Writ Petition. The 1st respondent after receiving the appeal on 11.07.2007, had kept the same pending for more than 6 years and it was only vide order dated 02.05.2014 that the appellant was informed that the said appeal was not maintainable. We find that within 2 months thereafter, the appellant had filed the Writ Petition in W.P. No. 16782 of 2014 which would reveal/indicate that the appellant had acted *bona fide*. These reasons have not been examined by the learned judge nor has the learned judge examined any of the grounds raised by the appellant, some of which go to the



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root of the case and if found valid, may well vitiate the impugned proceedings. Thus, the order of the learned judge having failed to examine the factors/ aspects that are relevant, stands vitiated.

9. In such view of the matter, we are inclined to remit the matter to the learned judge for reconsidering the same on merits afresh, inasmuch as we find that the delay in approaching the Writ Court in challenging the order of the 2nd Respondent dated 09.03.2007 was only in view of *bona fide* challenge of the same before the 1st Respondent, though the same was not maintainable. Accordingly, the order of the learned Judge is set aside and the matter is remitted to the learned Judge for re-consideration afresh, on merits and in accordance with law.

10. The Writ Appeal stands disposed of on the above terms. No Costs.

[R.M.D., J.] [M.S.Q., J.]
21.12.2023

Index: Yes/No
Speaking order / Non speaking order
Neutral Citation: Yes/No
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To



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1. The Secretary,
Government of Tamil Nadu,
Housing & Urban Development Department,
Fort St.George,
Chennai-600 009.
2. Tamil Nadu Housing Board,
(Board Secretariat), Nandanam,
Chennai-600 035.
3. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.



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