



W.P.No.10096 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:30.06.2023

Delivered on: 04.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.10096 of 2019

&

W.M.P.Nos.10660 and 10663 of 2019

K.Janarthanan

... Petitioner

Vs.

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

2.The Commissioner of Municipal Administration
Chepauk, Chennai-600 005

3.The Commissioner
Erode City Municipal Corporation, Erode

... 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 impugned orders passed by the 2nd respondent, the Commissioner of Municipal Administration in Na.Ka.No.30696/2019/F4 dated 27.02.2019 as amended in his letter Na.Ka.No.30696/2019/F4 dated



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05.03.2019 and the consequential order passed by the Commissioner, Erode City Municipal Corporation in Na.Ka.E4/5417/2018 dated 05.03.2019 and quash the same and consequentially to direct the Commissioner of Municipal Administration to settle the salary treating the suspension period from 13.01.1997 to 09.02.2017 as duty as under the Rules, within a reasonable period as may be fixed by this Court.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.S.Silambanan, AAG-II

Assisted by
Mr.T.Chezhian, AGP for R1 and 2

Mr.M.Rajamathivanan for R3

ORDER

The Writ Petitioner seeks issuance of a Writ of Certiorarified Mandamus to quash the order of the 2nd respondent dated 27.02.2019 and amended by letter dated 05.03.2019 and the consequential order passed by the 3rd respondent on 05.03.2019 and to direct the 2nd respondent to settle the petitioner's salary treating the suspension period from 13.01.1997 to 09.02.2017 as duty period.



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2. The case of the petitioner is that he was originally appointed as an Overseer in the year 1983 and he joined at Salem Municipality on 03.02.1983. He was thereafter promoted as Junior Engineer and he served in various Municipalities across Tamil Nadu. Thereafter, he was appointed as Additional Junior P.A to the Hon'ble Minister for Local Administration at Chennai and he joined the said post on deputation from 08.06.1993 and continued there till 12.05.1996. Subsequently, on 21.05.1996, he was posted at Kadayanallur Municipality as a Junior Engineer, where the petitioner was placed under suspension with effect from 04.11.1996 vide proceedings dated 13.01.1997 consequent to criminal proceedings initiated against the petitioner in Crime No.21/1996 (Special C.C.No.15 of 1997). The petitioner was paid subsistence allowance from 04.11.1996 to 30.04.1997 and again from 01.05.1997 to 30.06.1998 and for the further period upto 31.08.1999. Though the petitioner requested for enhancement of the subsistence allowance as the suspension period extended beyond six months, no action was taken by the Commissioner of Municipal Administration in that regard, in violation of Rs.53(1) (C) of the Fundamental Rules.



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3. It is further stated by the petitioner that the Magistrate Court convicted the petitioner imposing five years imprisonment together with a fine of Rs.10,000/-, which, if not paid, would further increase the period of imprisonment by three months. The petitioner filed C.A.No.456 of 2000 before this Court and this Court acquitted the petitioner in and by an order dated 21.08.2009. Consequent to the said order of this Court, even the fine amount paid by the petitioner was refunded to him.

4. The petitioner placing reliance on the orders of this Court passed on 21.08.2009, made a representation to the 1st respondent on 12.10.2009 seeking revocation of suspension and to post him in any of the Municipalities. However, it is the specific case and grievance of the petitioner that the 2nd respondent did not take any action which necessitated further representations be given by the petitioner on 27.01.2014, 01.08.2014, 04.05.2015 and 17.11.2015. The petitioner was constrained to file W.P.No.32531 of 2016 seeking directions to pass orders on the last representation which was dated 29.01.2016. The said Writ Petition came to



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be allowed on 19.09.2016, directing the Commissioner of Municipal Administration to consider the petitioner's representation dated 29.01.2016. Only thereafter, the suspension order was revoked and the petitioner was posted as Junior Engineer in Erode City, Municipal Corporation. The petitioner joined duty on 10.02.2017. However, the grievance of the petitioner is that his period of service from the date of suspension viz., 13.01.1997 to 09.02.2017 was not regularised which necessitated the petitioner to file W.P.No. 5946 of 2017. This Court directed the Commissioner of Municipal Administration to pass orders within 12 weeks from the date of receipt of a copy of the order. The petitioner also filed another Writ Petition in W.P.No. 26890 of 2017, seeking promotion as Assistant Executive Engineer and Executive Engineer on par with his junior, as his promotion was deferred only because of the criminal case which subsequently ended in acquittal. The said Writ Petition is pending before this Court.

5. In the meantime, the 2nd respondent vide proceedings dated



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20.09.2017, has informed the petitioner that his request for regularisation of the period of suspension could not be complied as departmental proceedings were pending right from July 2017.

6. It is the case of the petitioner that the charge memo issued under R.8(2) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 was a deliberate and motivated action of the 2nd respondent, that too after 21 years, for the same misconduct against which the criminal case was filed against the petitioner. However, the 2nd respondent dropped the charges after enquiry. The petitioner subsequently submitted an application to go on voluntary retirement with effect from 21.08.2019. The said application of the petitioner dated 14.11.2019 was forwarded by the Commissioner, Erode City Municipal Corporation to the 2nd respondent and the 2nd respondent also issued a no objection certificate allowing the petitioner to go on voluntary retirement on 28.02.2019, subject to three conditions. However, it is the specific case of the petitioner that the said proceedings was not served on the petitioner on the date of his retirement on 28.02.2019 and came to be



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communicated to him only on 05.03.2019, after his retirement 28.02.2019.

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7. It is the specific grievance of the petitioner that the 2nd respondent has no right to unilaterally modify the relieving order when the petitioner was allowed to retire voluntarily without any conditions. On these grounds, the petitioner has filed the present Writ petition.

8. The 2nd respondent has filed a counter stating that the charges against the petitioner were grave in nature viz., illegal gratification of huge amounts and therefore his services were not regularized. It is admitted in the counter affidavit that NOC was issued to permit the petitioner to voluntarily retire on 28.02.2019. However, it is stated that subsequently after receiving a communication from the Erode Municipal Commissioner on 22.08.2019, the amendment order came to be issued on 05.03.2019, imposing conditions on the petitioner going on voluntary retirement. It is the stand of the respondents that the petitioner is bound by the conditions imposed and therefore when the action of the respondents are within Rules and Regulations, no interference is



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warranted under Article 226 of the Constitution of India. Similar counter affidavit was filed by the 3rd respondent. The petitioner filed independent reply affidavits to the counter affidavits filed by the 2nd respondent as well as 3rd respondent stating that the 2nd respondent has issued a charge memo after 21 years, which is not permissible under law, that too when the departmental proceedings also ended as not proved.

9. It is also stated by the petitioner that despite the order of acquittal in the criminal case on 21.08.2009, the respondent chose to reinstate the petitioner only on 12.01.2017, after a delay of more than 8 years, for which there is absolutely there is no justification or explanation whatsoever. It is also stated that the three months notice period contemplated, expired on 28.02.2019 and the modified order served on the petitioner on 05.03.2019 is non-est in the eye of law and cannot be relied on by the respondents. The petitioner has narrated several violations on the part of the respondents and prayed for the Writ Petition being allowed.



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10. Heard Mr.T.Ranganathan, learned counsel for the petitioner and Mr.S.Silambanan, learned Additional Advocate General-II assisted by Mr.T.Chezhian, Additional Government Pleader for the respondents 1 and 2 as well as Mr.M.Rajamathivanan, learned counsel for the 3rd respondent.

11. At the outset, it is a very unfortunate case where the petitioner, though suspended for alleged criminal offences under IPC which subsequently ended in favour of the petitioner in C.A.No.456 of 2000 by this Court on 21.08.2009, for the reasons best known to the respondents, the petitioner was reinstated only on 12.01.2017. The petitioner was continued to be placed under suspension for which absolutely no acceptable reasons have been assigned by the 2nd respondent. It is one another grievance of the petitioner that even the subsistence allowance was not properly paid to the petitioner. However, the same is not the subject matter of this Writ Petition and the petitioner is always at liberty to initiate appropriate action or take such legal steps with regard to payment of subsistence allowance in accordance with law. The petitioner has placed reliance on R.54(b), Sub-Rule



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10 of the Tamil Nadu Government Fundamental Rules, which states that a Government servant who was suspended and subsequently fully exonerated of the charges, then the period of suspension shall be treated as duty poeriod and he shall be entitled to pay and allowances for the entire period of suspension. He would also rely on Schedule 11-Part A, Rule II (1) which states that on exoneration or acquittal from charges, a member of service shall be considered for promotion or appointment with retrospective effect, from the date on which his immediate junior was promoted, if he is otherwise qualified.

12. It is appalling to note that only on 05.03.2019, the 2nd respondent unilaterally takes a decision to treat the entire period of suspension from 13.01.1997 to 09.02.2017 as leave period. No notice was issued to the petitioner prior to imposing such conditions. What is further shocking is the fact that having allowed the petitioner to go on voluntary retirement and such voluntary retirement also taking effect on 28.02.2019, it was not open to the 2nd respondent to thereafter issue any amendments to the earlier proceedings



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by incorporating conditions, which is clearly violative of principles of equity and fairplay. The petitioner's fundamental rights have been clearly infringed and violated by the high handed and arbitrary action of the 2nd respondent, that too belatedly.

13. This Court is also convinced with regard to the contentions raised by the counsel for the petitioner placing reliance on the fundamental rules. The rules and regulations are very clear and the petitioner's suspension period has to be treated as one on duty and infact the petitioner was also entitled for promotion or appointment with retrospective effect as and if applicable. Unfortunately, the 2nd respondent has violated the Fundamental Rules in place governing and binding on the 2nd respondent. One another compelling circumstance to allow the writ Petition is that the impugned order is sought to be imposed against the petitioner after he was allowed to retire from service. Moreover, this Court has also noticed the lethargic attitude of the 2nd respondent and inspite of a specific direction by this Court in W.P.No.32531 of 2016 dated 19.09.2016, directing the 2nd respondent to pass orders within



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a period of six weeks, the revocation of suspension was made only on 12.01.2017, after a lapse of about four months. The belated charge memo issued on 21.07.2017, after a lapse of more than two decades is clearly illegal and non-est in the eye of law. It is one another reason for the said proceedings also being dropped subsequently.

14. The justification sought to be made by the respondents that the NOC letter issued by the 2nd respondent to the 3rd respondent was in ignorance and without noticing the fact that the petitioner was a Municipal employee on deputation in the 3rd respondent Corporation and therefore the said proposal was returned on 28.02.2019 to the 2nd respondent, consequent to which the impugned order came to be passed on 05.03.2019 also cannot be accepted. These communications have all taken place behind the petitioner's back and the action of the respondents is also clearly hit by the principles of promissory estoppel. Admittedly, after the petitioner is allowed to retire on 28.02.2019 without any conditions whatsoever, the impugned order dated 05.03.2019 cannot be sustained in the eye of law, especially when it has



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originated clearly after the date of retirement of the petitioner.

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For all the above reasons, the Writ Petitioner is entitled to succeed.

Accordingly, the Writ Petition is allowed as prayed for.

04.08.2023.

Internet: Yes

Index: Yes/No

Neutral Citation: Yes/No

Speaking/Non-speaking order

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To

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

2.The Commissioner of Municipal Administration
Chepauk, Chennai-600 005

3.The Commissioner
Erode City Municipal Corporation, Erode



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P.B.BALAJI, J.,
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Pre-delivery order in
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