



W.P.No.3867 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>02.01.2023</i>
<i>Pronounced on</i>	<i>13.02.2023</i>

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.3867 of 2016
and W.M.P.No.3236 of 2016

K. Arumugam

... Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St. George,
Chennai – 09.

2.The Director,
Directorate of Town Panchayat,
Kuralagam Building,
Chennai – 108.

3.The Pottaneri Nallagoundan
Patty Town Panchayat,
Mettur Taluk,
Mettur Dam – 02.
Salem District,
Rep. by its Executive Officer.

... 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 of the first respondent pertaining to its proceedings in G.O.(D).No.706, MA & WS Department and that of the second respondent pertaining to his proceedings in Na.Ka.No.11270/2005/A4



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and quash the orders dated 09.12.2015 and 05.01.2008 respectively and consequently direct the first respondent to permit the petitioner to duly retire from his service along with all his pensionary benefits along with an interest at the rate of 18% from 30.06.2005.

For Petitioner : Mr.R. Sivakumar
For Respondents : Mr.M. Shajahan,
Special Government Pleader

ORDER

Heard Mr.R. Sivakumar, learned counsel appearing for the petitioner and Mr.M.Shahjahan, learned Special Government Pleader appearing for the respondents.

2. Among the 8 charges levelled against the petitioner herein, the first charge relates to an incident of issuance of No Objection Certificates on 26.07.2002. The petitioner, who was due to retire on 30.06.2005, was placed under suspension and a Charge Memo was also issued on 29.06.2005. Pursuant to the Charge Memo, whereby the charges 1 to 4 were held as 'not proved' and the charges 5 to 8 were held as 'proved', the Disciplinary Authority, after calling for further explanation for the purpose of deviating from the findings of the Inquiry Officer, had imposed the punishment of dismissal from service on 05.01.2008. The punishment came to be confirmed in



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appeal by the first respondent on 19.03.2008. Thereafter, when the petitioner had challenged the punishment order before this Court in W.P.No.24772 of 2011, the Writ Petition was dismissed on 30.08.2013, as against which, he had filed an appeal in W.A.No.2306 of 2013 and by an order dated 25.08.2014, the Hon'ble Division Bench had placed reliance on Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as 'the Rules') and had found that the Appellate Authority had not followed the procedure contemplated under Rule 23 and therefore, this Court had remitted back the matter to the first respondent herein. In consequence to such remittance, the present impugned order dated 09.12.2015 has been passed, which is under challenge in the present Writ Petition.

3. The learned counsel appearing for the petitioner predominantly raised a ground that when the petitioner had given a reasoning in his further explanations with regard to the factual mistakes in the charges, the same were not addressed by the Appellate Authority. The learned counsel submitted that as per the Government Orders and circulars, the date referred to in charge No.1 as 30.06.2002 refers only to the last date of application and therefore, issuance of No Objection Certificates after 30.06.2002,



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cannot be an infirmity. The learned counsel also submitted that 53 "No Objection Certificates" granted by the petitioner was pursuant to the resolution passed by the Council on the forenoon of 01.07.2002, whereas, he had joined duty on the forenoon of the same day and therefore, the grant of all 53 "No Objection Certificates", was pursuant to the resolution, passed by the Council. This apart, he also submitted that when all these aspects were referred to in his grounds of appeal and the Hon'ble Division Bench had also specifically directed the Appellate Authority to address the grounds before taking a final decision, the present impugned order does not make a reference to the objections raised by him in his further explanation and therefore, the order itself is liable to be set aside.

4. Per contra, the learned Special Government Pleader appearing for the respondents, by placing reliance on the reasoning adopted by the Appellate Authority, submitted that the impugned order is a speaking order, which is in compliance with the procedure contemplated under Rule 23 of the Rules. The learned Special Government Pleader also drew attention of this Court to the portion of the impugned order, wherein, the Appellate Authority had dealt with the charges with regard to the proof of sales being more than 30%, development charges, the applications made by the individual



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seeking for regularization and since the petitioner had violated the procedure for regularization, there is no infirmity in the impugned order.

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

6. When the petitioner was due to retire on 30.06.2005, the Charge Memo dated 29.06.2005 was issued and the suspension order was passed on 30.06.2005. The Inquiry Officer has held the charge Nos.5 to 8 as 'proved'. The 5th charge was that the petitioner had not issued account payee cheques to some 3rd party for an amount more than Rs.500/-. The 6th charge was that for the year 2004-2005, the account was not finalized till 15.05.2005. The 7th charge was that he had not prepared the Demand Register for tax and non-taxable items and the 8th charge was that he had failed in his duties and responsibilities.

7. While the Charge Memo dated 29.06.2005 was framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal)



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Rules, two documents dated 27.06.2005 and 20.03.2002, were enclosed in Annexure 3 to support the charges. However, in Annexure 4, the list of witnesses to support the charges during inquiry, were shown as 'Nil'. Perusal of the inquiry report dated 28.06.2006 would reveal that, while the charge Nos.5 to 8 were held to be proved, there is absolutely no reference to any witnesses having been examined during the course of inquiry. This apart, though two documents were shown in Annexure 3 to the Charge Memo, the Inquiry Officer had not even referred to these documents for holding the charges as proved.

8. The Hon'ble Supreme Court, in the case of **Roop Singh Negi Vs. Punjab National Bank and others** reported in **2009 (2) SCC 570**, has held that the contents of the documents produced before an Inquiry Officer requires to be substantiated through oral witnesses and in the absence of the same, the inquiry proceedings itself will stand vitiated. The relevant portion of the judgment reads as follows:-

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been



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proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

9. In the instant case, it is not in dispute that no documents were produced and that the Inquiry Officer had not examined any oral witnesses. On the other hand, the Inquiry Officer seems to have given his personal opinion only based on the written explanation rendered by the petitioner. Such a procedure is alien to a disciplinary action initiated under Rule 17(b) of the Rules. In other words, the Inquiry Officer is required to deal with the charges, on the basis of oral and documentary evidences and not on the explanation rendered by the Delinquent Officer, since it would amount to expression of personal views of the Inquiry Officer, on the basis of



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the delinquent's written explanation. Thus, this procedural irregularity would vitiate the entire inquiry proceedings and the consequential punishment imposed, cannot be sustained.

10. This apart, this is the second round of litigation. When originally the respondents have imposed a punishment of dismissal from service through their order dated 05.01.2008, the petitioner had challenged the punishment before this Court in WP.No.24772 of 2011 and as against the order passed in the Writ Petition, Writ Appeal No.2306 of 2013 was preferred. An Hon'ble Division Bench of this Court, had passed final orders holding that the order of the Appellate Authority was not in conformity with Rule Nos.23 & 24 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and thereby, remitted back the matter, with an observation that the Appellate Authority should go into the merits of the matter and give his independent view, as to whether the facts on which the order was based have been established; whether the facts established afford sufficient ground for taking action; and whether the penalty was proportionate to the charges. While holding so, the Bench had set aside the original order of punishment dated 28.06.2011.

11. On remand, the Government has now passed the impugned



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order dated 09.12.2015, in which the directions of the Hon'ble Division Bench has been totally disregarded. The Appellate Authority has not addressed any of the specific grounds raised by the petitioner herein, for the purpose of holding, as to whether the facts on which the order was based have been established or not and whether such facts established afford sufficient grounds for taking action. On the other hand, there is a vague sentence with regard to the violation of the guidelines for regularization of unapproved plots in Survey No.90 measuring Acres 2.80. Incidentally, this observation would reveal that there is absolutely non-application of mind on the part of the Appellate Authority since the charge relating to issuance of No Objection Certificates on regularization of unapproved plots in Charge No.1, was held as not proved. Thus, the order of the Appellate Authority requires to be set aside.

12. Since the petitioner had reached the age of superannuation way back on 29.05.2006, no useful purpose will be served by remitting back the matter to the Appellate Authority. Above all, such a remission has already been exercised by this Court in the earlier round of litigation and where the first respondent had totally disregarded the directions given therein and passed the present non-speaking order.



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13. For all the foregoing reasons, the impugned order dated 09.12.2005 passed by the first respondent, is hereby quashed. In view of the quashing of the impugned order, the first respondent herein shall pass appropriate orders, notionally retiring the petitioner from services, with effect from 30.05.2006 and thereby, disburse all the service and monetary benefits, including his pensionary benefits. Such orders shall be passed atleast within a period of four (4) weeks from the date of receipt of a copy of this order.

14. Accordingly, the Writ Petition stands allowed. No costs. Connected miscellaneous petition is closed.

13.02.2023

Speaking Order
Neutral Citation: Yes
Index : Yes
Internet: Yes

Sni/DP

To

1.The Secretary to Government,
Municipal Administration & Water Supply Department,



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Fort St. George,
Chennai – 09.

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- 2.The Director,
Directorate of Town Panchayat,
Kuralagam Building,
Chennai – 108.
- 3.The Executive Officer,
The Pottaneri Nallagoundan Patty Town Panchayat,
Mettur Taluk, Mettur Dam – 02,
Salem District.



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M.S.RAMESH,J.

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Pre-delivery Order in
W.P.No.3867 of 2016

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