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W.A.No.704 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**W.A.No.704 of 2019
and C.M.P.No.5787 of 2019**

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.

3.The District Collector
Dharmapuri District, Dharmapuri.

... Appellants

-Vs-

K.Devarajan

... Respondent

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in
W.P.No.9997 of 2014 dated 29.06.2018.

For Appellants : Mr.K.V.Sajeev Kumar
Special Government Pleader
For Respondents : Mr.V.Vijay Shankar



W.A.No.704 of 2019

WEB COPY

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

As against the respondent herein, disciplinary proceedings were initiated by the appellant Department, where, based on the enquiry officer's report dated 18.02.2005, the disciplinary authority has inflicted the punishment of dismissal from service, which was appealed, where also it was confirmed. Against the said order, revision was filed, which also confirmed the punishment, as against which the writ petition was filed. Learned Single Judge allowed the writ petition through the impugned order 29.06.2018, as against which the present writ appeal has been filed.

2. Assailing the impugned order, the learned Special Government Pleader appearing for the appellants submits that, the charge itself is with regard to the misappropriation of funds of the Municipality and for such a serious charge, the maximum punishment was inflicted against the employee. It cannot be found fault with by the learned Single Judge on the alleged reason that the chance of cross examination has not been given to the delinquent and only on that ground since the learned Single Judge has taken the view that the entire enquiry proceedings which culminated in the punishment is vitiated, this approach on the part of the learned Judge may not be justifiable as it is erroneous. Hence, he seeks the indulgence of this Court.



W.A.No.704 of 2019

WEB COPY

3. We have heard the learned counsel appearing for the respondent / delinquent employee. We have gone through the materials placed before this Court, including the charge as well as the enquiry officer's report and the impugned order.

4. The learned Judge has factually found that there was only one witness on behalf of the Department and even that witness has not deposed anything except giving a statement. That statement is taken into account by the enquiry officer as it is a supporting evidence towards the department to prove the charge framed against the delinquent. The said witness who has given the statement has not been examined by the enquiry officer and by virtue of that, the chance of cross examination was denied to the delinquent. This factual position cannot be denied by the appellants' side.

5. After taking note of this, the learned Judge found fault with the approach of the appellate authority as well as the revisional authority for not following Rule 27 of the relevant Rules of Tamil Nadu Civil Service (Discipline and Appeal) Rules, which stipulates that, each and every charge, if it is denied and the defence that has been taken by the delinquent officer after the second show cause notice shall be taken into account by the disciplinary authority or the appellate authority and based on that fact, they may give reasons as to why they rejected the defence taken by the



W.A.No.704 of 2019

delinquent and accepted the enquiry officer's report. This aspect has also been found by the learned Judge in favour of the employee. The relevant portion of the order of the learned Single Judge reads thus,

" 12. This Court has considered the rival submissions of the learned counsel appearing for the parties and perused the materials and pleadings placed on record. What emerges in clear terms is the fact that the disciplinary action commencing from the conduct of the enquiry, passing of order of penalty by the disciplinary authority and confirmation of the penalty by the appellate authority and revisional authority, stands vitiated for more than one reason.

13. Firstly, the enquiry which was conducted against the petitioner, did not follow the mandatory procedure of examining the witness and allowing the petitioner to cross examine the witness in order to establish his innocence. In this case, admittedly, it appears that only one witness was examined, that too, mere statement was taken from her by the Enquiry Officer. This Court does not see on what basis the Enquiry Officer could have come to the conclusion against the petitioner in respect of the charges framed against him. The report of the Enquiry Officer holding the charges proved are completely erroneous and unacceptable both legally and factually, since no acceptable evidence was let in, in the enquiry in order to establish the charge. In the absence of any worthwhile material which was placed for consideration in the enquiry, this Court does not see on what basis such conclusion could be arrived at by the Enquiry Officer. Therefore, this Court holds that the findings of the Enquiry Officer is unsupported by any material evidence. Therefore, the same is gravely flawed.

14. Secondly, the disciplinary authority who passed the impugned order of penalty of dismissal from service, has gravely failed in his duty to



W.A.No.704 of 2019

appreciate the infirmities which crept in, in the conduct of the enquiry by the Enquiry Officer and had chosen to merely accept the findings blindly and mechanically without any reasons set forth in the penalty order. From the perusal of the order passed by the disciplinary authority, it could be seen that there appears to be complete lack of application of mind on the part of the disciplinary authority.

15. As rightly contended by the learned counsel for the petitioner that the disciplinary authority has merely chosen to incorporate the charges and the explanation of the petitioner and thereafter concluded that the charges were proved without referring to a piece of evidence or material which was placed for consideration in the departmental enquiry. Such approach on the part of the disciplinary authority is completely at variance with the mandatory procedure contemplated in the service rules and with the well established legal principles on the subject matter.

16. Further, the appellate authority passed the order confirming the penalty imposed by the disciplinary authority, has completely abdicated his statutory duty under Rule 27 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Under the said Rule, the appellate authority is expected to give reasons for every valid and legitimate objection. But, in this case, on perusal of the appellate authority order, it is once again to be seen that the appeal has been considered quite casually and without any seriousness with the clear motive of just confirming the order passed by the disciplinary authority."

6. The said finding given by the learned Judge, in our considered opinion, cannot be said to be erroneous one. The reason being that, the learned Judge, having taken note of the factual matrix and after having gone through the enquiry



W.A.No.704 of 2019

officer's report, where such opportunity since has been denied to the delinquent, held that the entire proceedings was vitiated. That was the finding given by the learned Judge, of course, rightly.

7. Even though in this context, the learned Special Government Pleader appearing for the appellants submits that, on that ground if at all this Court comes to the conclusion that the order passed by the learned Judge has to be approved, the order can be modified to that extent and instead of setting aside the punishment, the matter can be remitted back to the enquiry officer once again to go into the enquiry afresh.

8. We are not inclined to accept the said view expressed by the learned Special Government Pleader appearing for the appellants because, all this has happened prior to 2014 and long years have gone. More over, as a first instance the appellate authority in fact had remanded the matter back to the enquiry officer and only after remand, the second enquiry has been conducted and such a finding has come now. If that is so, even if any such infirmities are there, the question of remanding the matter once again does not arise. That apart, if the age of the petitioner is taken into account, he is a senior citizen already retired from service long back. Therefore, at this age, it may not be justifiable to put him under enquiry once again at the hands of the appellant Department.



W.A.No.704 of 2019

WEB COPY

9. Therefore, for all these reasons, the order passed by the learned single Judge which is impugned herein is to be sustained. Accordingly, the writ appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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

09.08.2023

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WEB COPY



W.A.No.704 of 2019

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