



W.P.(MD)No.5516 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.5516 of 2023

and

W.M.P.(MD)Nos.5133 and 5134 of 2023

R.Pandiaraj

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by the Additional
Chief Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Director of Municipal Administration,
Chepauk, Chennai – 600 005.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in G.O.(D)No.66 MAWS (ME4) Department dated 20.02.2023 of the first respondent and quash the same and directing the respondents to consider and include petitioner's name in the proposed panel for promotion to the post of Assistant Executive



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Engineer called for vide Lr.No.Na.Ka.No.676/2023/F1, dated 08.02.2023

of the second respondent.

For Petitioner : Mr.M.Sricharan Rangarajan, Senior Counsel,
For Mr.C.Jeganathan.

For Respondents : Mr.R.Baskaran,
Addl. Advocate General,
Assisted by Mr.K.Balasubramani,
Spl. Government Pleader.

ORDER

Heard the learned senior counsel for the writ petitioner and the learned Additional Advocate General assisted by the learned Special Government Pleader for the respondents.

2.The writ petitioner was appointed as Overseer in the year 1998 in the Municipal Office, Srivilliputhur. The petitioner was promoted as Assistant Engineer. In the year 2012, the petitioner had prepared estimates for the supply and fixing of “welcome and thanks boards” at municipal boundaries. The work order was issued to a private entity which quoted the lowest tender amount. The work was also completed.



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Subsequently, on 10.01.2018, major penalty proceedings were initiated against the petitioner. The charge against the petitioner was that he had prepared the estimate as per local market rate instead of standard schedule rate and thereby caused loss to the municipal funds. The petitioner offered his reply dated 21.08.2018. An enquiry officer was appointed. The enquiry officer examined 17 witnesses. As many as 14 documents were marked. On 23.03.2022, the enquiry officer rendered finding that the charge was proved. Copy of the enquiry report dated 23.03.2022 was served on the petitioner and the petitioner gave his further representation dated 18.04.2022. Thereafter, the impugned G.O.(D)No.66 Municipal Administration and Water Supply Department dated 20.02.2023 was passed concurring with the finding of the enquiry officer and imposing the punishment of stoppage of increment for two years without cumulative effect. Challenging the same, the present writ petition has been filed.

3.The learned senior counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned government order and grant relief as prayed for.



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4.The respondents have filed counter affidavit and the learned Additional Advocate General took me through its contents. The learned Additional Advocate General submitted that the petitioner can very well file review before the Government and he need not have rushed to this Court for relief. In the alternative, he submitted that on account of the petitioner's conduct, substantial loss was caused to the municipality. As per the schedule of rate 2012 – 2013 which came into effect on 01.05.2012, the rate per board should have been around Rs.17,000/- whereas the petitioner had estimated the rate at over Rs.29,000/- and that it caused loss to municipal funds. The argument of the learned Additional Advocate General is that in matters such as this, the Writ Court will not be justified in re-appreciating the evidence. There is no complaint that the enquiry officer did not comply with the principles of natural justice. When the enquiry officer after thorough examination has submitted a reasoned report that the charge has been proved and the Government had also concurred with the same, the question of this Court exercising jurisdiction under Article 226 of the Constitution of India in favour of the writ petitioner does not arise. He pressed for dismissal of the writ petition.



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5.I carefully considered the rival contentions and went through the materials on record. The charge against the petitioner is as follows:-

“That Tr.R.Pandiyaraj, while working as Junior Engineer in Sivakasi Municipality, had prepared the detailed estimates for the supply and fixing of Name and Welcome boards in Sivakasi Municipal boundaries as per local market rate instead of Standard ate and thereby caused loss to the Municipal fund.

6.The specific stand of the disciplinary authority is that when standard rates were available, the petitioner chose to ignore the same and went by the local market rate and thereby caused loss to the municipal funds. In the enquiry report itself, it has been stated that the estimate was prepared in April 2012, whereas the standard rates came into effect only on 01.05.2012. The learned Additional Advocate General had certain doubts regarding this finding. The matter was adjourned on more than one occasion to enable the learned Additional Advocate General to find out when the standard schedule of rate for basic items for the year 2012 – 2013 came into the force. It is now admitted that the standard schedule of rate came into effect only on 01.05.2012. I wanted the respondents to verify the original file and make a statement as to when the petitioner



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7.The enquiry officer in his report had framed quite a few points for determination. If really loss was caused to municipal funds, certainly it would have been quantified in the enquiry report itself. After careful perusal of the entire enquiry report, I am not able to come to the conclusion that charge has been established. Questioning the correctness of the findings set out in the enquiry report, the petitioner had submitted a detailed representation. However, in the impugned government order, the petitioner's contentions have been summarily brushed aside. Looked at from any angle, the impugned government order cannot be sustained. It stands quashed. As regards the consequential relief, it is for the competent authority to consider the petitioner's request. Since the petitioner has been exonerated of the charge framed against him, the petitioner is permitted to submit a fresh representation for any consequential relief and the second respondent is directed to pass order thereon within a period of eight weeks after its receipt.

8.This writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

14.06.2023

NCC : Yes / No
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G.R.SWAMINATHAN,J.

Ias

To:-

- 1.The Additional Chief Secretary,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St.George,
Chennai – 600 009.
- 2.The Director of Municipal Administration,
Chepauk, Chennai – 600 005.

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