BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.10693 of 2020

and

W.M.P.(MD)No.9409 of 2020

S.Ramasundaramani : Petitioner

Vs.

1.The Principal Secretary to Government,
Municipal Administration and
Water Supply Department,
Chennai - 600009.

2.The Commissioner
Municipal Administration,
Chennai - 600028.

3.The Commissioner
Kuzhithurai Municipality,
Kuzhithurai,
Kanyakumari District. : Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the 1st respondent in the proceedings G.O.(pa).No.81 dated 02/03/2020 confirming the order passed by the 2nd respondent in his proceeding Na.Ka.No.30367/2017/k2 dated 22/09/2019 and quash the same

For Petitioner	: Mr.PT.S.Narendravasan
For Respondents	: Mr.S.P.Maharajan, - for R1 Special Government Pleader No Appearance - R2 Mr.P.Athimoolapandian - for R3

ORDER

This writ petition has been filed to quash the 1st respondent proceedings G.O.(pa).No.81 dated 02/03/2020 confirming the order passed by the 2nd respondent in his proceeding Na.Ka.No.30367/2017/k2, dated 22/09/2019.

2. The The learned counsel for the petitioner submitted that the petitioner has initially appointed as Noon Meal Organizer in the Chief Minister's Nutritious Noon Meal Scheme in the year 1983 and worked from 01.02.1983 to 15.03.1984. Thereafter, the petitioner joined as Junior Assistant in the office of Puliyankudi Municipality and subsequently, he ousted from service on 23.04.1984 and he filed a writ petition before the Principal Bench seeking direction to appoint the petitioner as Junior Assistant and the writ petition was disposed of with a direction and based on the direction, the petitioner was appointed as Junior Assistant in Thoothukudi Municipality. Thereafter, the petitioner transferred to various Municipalities. Subsequently, the petitioner was promoted as Assistant by order, dated 04.02.2014 and posted in Tenkasi Municipality. On 09.01.2015 the petitioner transferred to Virudhunagar Municipality. While he was working as Revenue Inspector during the period from 09.01.2015 to 16.09.2015, again the petitioner was transferred to Kadaiyanallur Municipality. During his tenure, he was suspended from service by order, dated 06.10.2015 and subsequently, the suspension order was revoked on

19.06.2017. Thereafter, finally the petitioner transferred to Kuzthithurai Municipality and served as Revenue Inspector, at the time, the second respondent vide proceedings, dated 16.04.2018 suspended the petitioner from service stating that enquiry into grave charges against the petitioner is pending and subsequently, the second respondent appointed the Commissioner, Nagercoil Municipality as Enquiry Officer and the Enquiry Officer conducted an enquiry and enquiry report, dated 02.12.2018 was served to the petitioner on 20.12.2018. The finding of the Enquiry Officer is that Charge Nos.1 and 3 have been proved and Charge No.2 has not been proved. After receipt of the same, the petitioner has submitted his further explanation to the second respondent on 26.12.2018. However, even after the enquiry, the second respondent not passed any order, hence, the petitioner filed a writ petition before this Court in W.P.(MD)No.14133 of 2019 and this Court by order, dated 27.06.2019, issued a direction to the second respondent to pass final orders within a period of four months. Thereafter, the second respondent vide proceedings, dated 22.09.2019 passed final orders imposing a punishment of stoppage of increment for one year with cumulative effect. Challenging the said order of punishment, the petitioner preferred an appeal before the first respondent on 14.10.2019. However, the first respondent passed G.O.(pa)No.81, dated 02.03.2020, simply confirmed the order passed by the second respondent and served the copy of said G.O. to the petitioner on 03.04.2020 through the third respondent. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner further submitted that though the petitioner was issued with three charges, the sum and substance of the charges is that the petitioner has assessed the property tax to a lessor extent and without assessing the major portion of the house property, for which, a charge memo has been issued and the petitioner has given proper explanation to the Enquiry Officer and the Enquiry Officer drawn a proven minute in respect of charges 1st and 3rd charges. However, the Enquiry Officer held the charge No.2 is not proved, however, without considering the petitioner's explanation properly and further explanation to the show cause notice for the major punishment, the Original Authority, namely, the second respondent imposed a punishment of stoppage of increment, is not sustainable one and the said punishment was issued without application of

mind and the same was confirmed by the first respondent, is not sustainable one. Accordingly, he prayed for allowing the writ petition.

4. The learned Special Government Pleader appearing for the first respondent has filed a counter affidavit denying all the averments made in the Writ Petition except those are specifically admitted. The Petitioner's appointment as Assistant in Puliyankudi Municipality and the subsequent transfer are admitted. Thereafter the Petitioner was suspended from service on 227.5.1997 for having remanded to custody in a criminal case in O.R.No. 1/97-98 filed against him by the Forest Circle, Kovilpatti and then revoked from suspension in view of the acquittal in the above case. For the irregularities committed in the Professional Tax Collection while he was in service in Paramakudi Municipality charges were framed under sub-rule (2) of Rule 8 of Tamil Nadu Municipal Service(Discipline and Appeal) Rules and awarded with punishment of stoppage of increment for two years with cumulative effect and confirmed by the Government. Thereafter the Petitioner has filed various writ petitions for appropriate relief. The charges levelled against the Petitioner are very serious in nature and had caused

huge loss to the Municipality. The Petitioner was suspended from service on 16.4.2018 for having committed serious lapses in Kuzhithurai Municipality with a condition that he shall not leave the headquarters without obtaining prior permission from the second respondent. But the Petitioner left the head quarters without the permission of the second respondent. Hence the Commissioner of Kuzhithurai Muncipality sent a memo to the Petitioner and requested him to obtain Nativity Certificate from the Revenue Department and then only payment of subsistence allowance will be considered. Since no nativity certificate was submitted, the payment of subsistence allowance is stopped by the third respondent. Thereafter the Petitioner had filed an appeal against the order of the second respondent to the appellate authority and the said appeal was rejected stating that the Petitioner has failed to submit the related documents and also to make effective arguments to justify his act. Therefore the averments in the Petitioner are baseless and not true.

5. Heard the learned counsel on either side and perused the materials available on record.

6. The facts in present case are not in dispute. Admittedly, the petitioner while he was worked as Revenue Inspector in the Kuzthithurai Municipality, he was issued with a charge memo under Rule 8(2) of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules for improper assessment of property tax in certain Tax Assessment numbers in Kuzthithurai Municipality collection and illegal gratification received from the public for lessor assessment of taxation and the sum and substance of the charges as follows :

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1	502, 503, 506	2250	4489	2239
2	501, 504, 505	2250	4489	2239
3	508, 509, 510, 511, 512, 513, 514, 515	6960	10149	3189

7. The Second charge is for illegal gratification of reassessment and called for the individual house owners and give false assurance that

they will reduce the re-assessment tax and the third charge is that the petitioner has violated the Tamil Nadu Government Servant Conduct Service Rules.

8. This Court had perused the explanation submitted by the petitioner. The charges against the petitioner is originally the Tax Assessment Order Nos.502, 503, 506, the petitioner had assessed for 2250 square feet, whereas, the Commissioner on his inspection, assessed 4489 square feet and it is alleged that the petitioner has not assessed the property tax for an extent of 2239 square feet. Similarly, Tax Assessment Tax Nos. 501, 504, 505, the petitioner assessed 2250 square feet, whereas, the Commissioner assessed 4489 square feet and it is alleged that the petitioner not assessed the property tax for an extent of 2239 square feet. The third charges against the Tax Assessment Order Nos.508, 509, 510, 511, 512, 513, 514, 514 the petitioner assessed 6960 square feet, whereas, the Commissioner assessed 10149 square feet and it is alleged that the petitioner has not assessed the property tax for an extent of 3189 square feet.

9. However, the explanation offered by the petitioner that some of the extent was earmarked for common usage was measured by the Municipality Commissioner for which larger extent was measured by the Municipality Commissioner and further, the petitioner claimed that at the time of measurement, the petitioner measured the property in the year 2017, at the time, there are ground floor, first and second floor and subsequent to the measurement, the land owner constructed third floor, for which, the petitioner claims that he is not responsible for the higher extent. However, admittedly, the petitioner had measured the property in the year 2017, whereas, the charge memo was issued to the petitioner in the year 2018 and this Court is unable to understand, as to how within a period of one year or six months the third floor will be constructed without any approval and even if it is an unauthorised construction for the third floor, the petitioner has to report the higher official for taking appropriate action and further, the petitioner claims that he left the common area for measurement, whereas, the Commissioner included the common areas also in the measurement however, it is the duty cast upon the Revenue Inspector to measure the entire constructed area portion and he don't have any discretion to leave

some portion of the area within the constructed portion and further the allegations made against the petitioner that he received illegal gratification for assessing the property tax leaving the major extent, however, the punishment imposed is only for one year with stoppage of increment and which was confirmed by the Appellate Authority and the fact finding Authority arrived a conclusion and imposed a minimum punishment of one year, though the allegations made against the petitioner are grave in nature. Hence, the punishment imposed by the Original Authority and the Appellate Authority cannot be interfered with.

10. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.01.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

RM

To

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2.The Commissioner
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M.DHANDAPANI, J.

RM

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