IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2023

PRONOUNCED ON : 26.02.2024

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

W.P.No.27627 of 2010

C.Susai . . . Petitioner

Vs

1.The Secretary to Government,
Department of Municipal Administration,
& Water Supply, Secretariat,
Fort St., George, Chennai – 600 009.

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

3.The Municipal Commissioner
Tiruppattur Municipality
Tiruppatur – 635 601
Vellore District. . . . Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for records relating to the impugned orders issued by the first respondent vide GO.Pa.No.507, dated 27.09.2004 finding the petitioner guilty of the charges and his subsequent order GO.(Ten Years) No.45 Municipal Administration and Water Supply (No.1) Department dated 08.02.2010 confirming the findings against the petitioner and the consequential order of the third respondent vide his proceedings in Na.Ka.No.9047/1995/H1, dated 17.07.2010, seeking to deduct petitioner's pension amount, quash the same and further direct the respondents to pay the petitioner his full pension, death-cum-retirement benefits and other admissible attendant benefits, and pass such further or other suitable orders.

For Petitioner : Mr.P.Godson Swaminathan

For Respondents : Mr.A.M.Ayyadurai GA for RR1 & 2
Mr.P.Srinivas for R3

ORDER

The Writ Petition has been filed challenging the order passed by the first respondent, dated 27.09.2004 by holding that the petitioner guilty of charges and and his subsequent order 08.02.2010, confirming the findings against the petitioner and the consequential order of the third respondent, dated 17.07.2010, confirming the order seeking to deduct petitioner's pension amount and further seeking to direct the respondents to pay the petitioner's full pension, death-cum-retirement benefits and other admissible attendant benefits.

2. Heard, Mr.P.Godson Swaminathan, learned Counsel appearing for the petitioner, Mr.A.M.Ayyadurai, learned Government Advocate appearing for first and second respondents and Mr.P.Srinivas, learned counsel appearing for the third respondent.

3. The learned counsel appearing for the petitioner would submit that, the petitioner was employed as a driver in the Tiruppathur Municipality from 15.10.1972. He would contend that the charges were framed against the petitioner alleging that the petitioner and three other persons namely S.Janakiraman, L.Ramakrishnan and Paranthaman Bhaskaran who were working as drivers and operating vehicles bearing Registration Nos.TN 23/WO-452, TN 237, TN 2067, respectively in Tiruppatur Muncipality had swindled the money by manipulating various approved indents during the period 1995-1996 and 1996-1997 by overstating the fuel requirement and consumption. He would submit that charge memos were issued against the petitioner by the third respondent on 02.04.1997, 15.04.1997 and 16.04.1997 respectively and the petitioner was placed under suspension and by an order of the second respondent dated 25.12.1997 another charge memo was issued and based on the same, the earlier charge memos issued by the third respondent were revoked.

4. He would further submit that the petitioner has given his explanation to the second respondent dated 17.01.1998 denying all the charges and he has stated in his reply that he had kept the indent books in his custody from the period 1972 to 1993 only and during such period no complaints were raised or received. Thereafter the indent books were kept in the custody of the Sanitary Inspector and Junior Assistant and at that point of time, the indents were prepared by them. In the year 1994, the Sanitary Inspector had directed that only the Junior Assistant should maintain the records such as indent books and the trip sheets, entries of opening and closing kilometers etc.

5. He would submit that for the purchase of fuel, there are certain procedures to be followed such as the Sanitary Inspector must be informed to check the fuel level and if required, after seeking permission of the Commissioner or Manager to fill up the same. Thereafter, the Sanitary Inspector and the Junior Assistant would go to the petrol bunk with the indents and the counterfoil of the indents to be kept in the office. Once the bills were prepared by the petrol bunk, the same would be sent to the office directly by them. The payments will be made at the end of the month. This

was the procedure adopted from 1994, and the payments will be made only after verification and after obtaining signatures from the officials.

6. He would submit that the petitioner had filed an O.A. No.4869 of 1999 before the Tamilnadu Administrative Tribunal, Chennai against the order of suspension and by order dated 20.09.1999, the order of suspension was set aside and further directed the second respondent to dispose of the disciplinary proceedings and pass final orders within a period of four months and the third respondent by order dated 13.10.1999 revoked the order of suspension and reinstated the petitioner into service. He would further submit that the petitioner attained the age of superannuation on 30.04.2000 and got retired from his service. He would further submit that even after a lapse of four years the disciplinary proceedings against the petitioner was not dropped or attained finality, therefore the petitioner was denied the payment of terminal benefits like Provident Fund Gratuity, Pension Commutation, Salary Arrears for about 2 years i.e., *(22 ½ months*) of suspension, earned leave encashment, Pongal Allowance, etc,.

7. He would submit that the first respondent has sent a communication, dated 07.06.2004 to the petitioner stating that all the

charges framed against him were proved, and that the Government has decided to deduct/recover for a sum of Rs.100/- from the petitioner's pension every month for a period of one year as punishment and if the petitioner is agreeable to the said punishment, then the same could be done and that the consent of the petitioner should be communicated to the Government within 15 days. Therefore, the petitioner vide letter dated 12.07.2004 had given his consent for the above said arrangement. He would further submit that, apart from this deduction to pension amount, the Government had issued a Government Order in GO. Pa No.507, dated 27.09.2004, to recover a sum of Rs.2,40,538/- after deduction of Rs.60,532/- the amount on which the petitioner was forced to pay, from the actual loss of Rs.3,01,070/-.

8. He would submit that the petitioner had made a representation before the first respondent on 11.01.2006, but the same did not evoke any response, thereafter the petitioner filed a Writ Petition in W.P.No.33900 of 2006 seeking for a direction to dispose of the representation, dated 11.01.2006 and this Court by its order dated 15.11.2006 directed the respondents to consider the representation of the petitioner within a period of eight weeks, which was also not considered by the respondents. He

would submit that the first respondent through GO.No.45 Municipal Administration and Water Supply (No.1) Department, dated 08.02.2010 confirmed the order passed by the first respondent in GO.Pa.No.507, and hence, rejected the appeal of the petitioner.

9. He would submit that the proceedings of the third respondent in Na.Ka.No.9047/1995/H1 dated 17.07.2010, is contrary to the Pension Rules as the third respondent has ordered that the penal amount for a sum of Rs.100/- to be recovered for every month for a period of one year from the petitioner's pension and further a sum of Rs.2,40,538/- will be deducted for the loss caused to the Municipality from his death-cum-retirement benefits, as already a sum of Rs.89,700/- was deducted towards the incurred loss of Rs.2,40,538/- and the remaining amount will be deducted from the pension of the petitioner on sixty equal instalments, which comes to around a sum of Rs.2,514/- per month. Therefore he would pray this Court to allow this Writ Petition by setting aside the orders passed by the first and third respondents.

10. Countering his arguments, the learned counsel appearing for the first and second respondents would submit that the petitioner was a Driver of Thiruppathur Municipality and that he was charged with four charges

framed under Rule 5(2) of the Tamil Nadu Municipality Public Health Employment Rules (Disciplined and Appeal) 1977 for misappropriations of funds of the Municipality. He would contend that as regard to the first charge the collusion of the petitioner with other staffs of the Municipality and the petitioner had got approval of indent for lesser quantity of fuel of Rs.1,01,805/- and created false records, as he had purchased higher quantity of fuel of Rs.4,02,875/- by tampering indents and swindled the Municipality fund to a tune of Rs.3,01,070/- in collusion with Achuthan Automobile company and had caused heavy financial loss to the Municipality. Secondly, the petitioner had prepared and submitted indents frequently, when there was no actual requirement of fuel, in order to cheat the Municipality. Thirdly, he would submit that the petitioner had failed to record the actual distance travelled with reference to the purchase made in the log book. Fourthly, the petitioner had failed to handover the counterfoils of indents to the Municipal office and he would submit that all these would show the lethargic attitude of the petitioner in discharging his legitimate duties as a responsible driver.

11. He would submit that based on the said charges, the Managing Director of Municipal Administration Vellore Zone, was appointed as an

Enquiry Officer and during the enquiry all the charges that were framed as against the petitioner was found to be proved. He would further submit that the Government had carefully examined the punishment independently with appropriate documents. He would further submit that based on the misappropriation, it was found that the petitioner had caused a loss of Rs.3,01,070/- to the Municipality and the petitioner has repaid a sum of Rs.60,532/- towards the same and he would contend that the Government had ordered the punishment in GO.(Pa) No.507 dated 27.09.2004 to deduct a sum of Rs.100/- from the monthly pension of the petitioner for a period of one year, and to further deduct for a sum of Rs.2,40,538/- towards the loss caused to the Municipality from the death cum retirement gratuity, that is payable to the petitioner and the same has been confirmed in Go.(Ten years) No.45 dated 08.02.2010. He would further submit that the third respondent vide proceedings in R.C.No.9047/1995/H1, dated 17.07.2010, had stated that the amount to be deducted from the death-cum-gratuity amount comes to a tune of Rs.2,40,538/- and after the adjustment of gratuity of Rs.89,700/- the balance amount that the petitioner is liable to be paid is Rs.2514/- in sixty equal monthly instalments. Therefore he would submit that there is no infirmity in the orders passed by the first and third respondents and would seek to dismiss this Writ Petition.

12. I have considered the submissions made by the learned counsel appearing on either side and perused the materials available on record.

13.The challenge to the proceedings is a punishment that had been imposed against the petitioner as well as the order of recovery. An enquiry report had been furnished by the Enquiry Officer on 09.06.2001. On a perusal of the said enquiry report, it is seen that the procedure for the payment of bill normally that has been followed by the Department, had been explained by the Enquiry Officer. For better appreciation, the relevant portion of the enquiry report is extracted hereunder:-

> *Normally the Driver should submit indent to the Manager through Sanitary Inspector/after exhausting the fuels already purchased. As soon as the fresh indent is received from the Driver the S.I/J.A should verify the indents with reference to entries made in Log book regarding running of kilometers whether the fuel already purchased has been actually utilized and satisfy himself the genuineness of the requirement.*

14.The petitioner is admittedly a Driver of the Department vehicle.

Even though the Enquiry Officer had given various dates of enquiry in his enquiry report namely 30.04.1998, 18.05.2000, 30.05.2000, 31.07.2000, 07.08.2000, 18.09.2000, 03.10.2000, 05.10.2000 & 27.11.2000, in paragraph 9 of the said report, the Enquiry Officer had indicated that the delinquent officer had denied all the charges that were framed against him along with the defence statement that has been given by the petitioner only on 05.10.2000. Thereafter as per the enquiry report, only one day i.e., 27.11.2000, the enquiry had been conducted. A thorough reading of the enquiry report do not suggest as to examination of any witnesses in the case of the petitioner, so that the petitioner would have had an opportunity to cross examine such witnesses to substantiate his claim. But on the other hand, the Enquiry Officer had relied upon the evidence of the Manager of Achuthan Automobile company in a different disciplinary proceedings against one Junior Assistant Thiru.Abhai. Similarly reliance has been placed upon by the Enquiry Officer to the evidence of then Sanitary Inspector Sriramulu, which has also been recorded not in the disciplinary proceedings against the petitioner, but against the said delinquent. Such reliance in my view ought not to have been made by the Enquiry Officer to come to such a conclusion that the charges that had been framed against the petitioner have all been proved.

16.Further a reading of the charge memo also do not give any list of witnesses, who are sought to be examined during the enquiry. Annexure 3 relates to log books, vouchers, indents and counterfoils of the indent books. It is also not explained in the enquiry report as to how the Enquiry Officer, on the basis of the said documents listed in the annexure 3 had come to a conclusion that the petitioner had committed irregularities.

17.In such view of the matter, I am of the considered view that the entire enquiry proceedings initiated against the petitioner has been made wholly without any materials available, particularly against the petitioner and the findings of the Enquiry Officer is therefore perverse.

18.The punishment that had been imposed against the petitioner and the order of recovery that is sought to be effected as against the petitioner based upon findings of the Enquiry Officer, in my view would also have to fail. Even, the disciplinary authority while imposing the order of punishment and the order of recovery had not given any independent findings to come to such a conclusion that the petitioner was involved in the delinquency. I do not appreciate the order of punishment to the extent that any such consideration had been made, when the disciplinary authority had imposed the punishment.

19.In such view of the matter, I am of the view that the disciplinary proceedings initiated against the petitioner would have to be interfered with and the orders impugned herein would have to be set aside. Even though it is imperative upon coming to the aforesaid findings that the proceedings ought to have been relegated back to the authority, considering the age of the petitioner, I do not propose to relegate the matter back to the respondents for fresh consideration.

20.In fine, the Writ Petition is allowed and the orders impugned in this Writ Petition are set aside. The petitioner would be entitled to all monetary benefits that would have been available to him on his date of superannuation. Such exercise shall be done by the respondents, within a period of eight weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.

26.02.2024

Pbn
Index/ Yes/No

Speaking order: Yes/No
Neutral citation: Yes/ No

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& Water Supply, Secretariat,
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K.KUMARESH BABU,J.

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A Pre-delivery order made in

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