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W.P.No.8686 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.04.2024

CORAM

**THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER
KUMAR**

W.P.No.8686 of 2018

K.Dhanasekaran

... Petitioner

Vs.

1. The Principal Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai – 600 009.

2. The Director of Town Plannings,
Kuralagam, Chennai – 600 108.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 2nd Respondent in Na.Ka. NO.8366/ 2013/ A5 dated 27.1.2016 as confirmed by the 1st Respondent in G.O (10 Years) No.379 MAWS (TP4) Department dated 18.09.2017 and quash the same.



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For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.M.Murali,
Government Advocate

ORDER

The petitioner herein while working as Executive Officer, Grade II, he was subjected to disciplinary proceedings under Rule 17-B of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules, 1978 and a charge memo dated 31.05.2013 was issued containing three charges. The basis of the charge, as indicated in the charge memo is that the petitioner has failed to take steps to fill up seven non-provincial posts in the Town Planning in question resulting in delay in filling up the said post. Basing upon the said allegation, three charges were framed. Firstly, on the ground that the petitioner delayed in filling up of the said post. Secondly, on the ground of not following orders passed by the Superior Officer and thirdly, neglecting his duties.

2. From the perusal of the three charges, it is evident that the entire allegation is of delay in filling up of seven non-provincial posts in the



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Town Planning in question. In response to the charge memo, the petitioner submitted his explanation explaining the steps that he has taken for filling up the said posts. From the explanation submitted by the petitioner and the statement of the petitioner, it is evident that through Proceedings No.4014/2014 dated 19.07.2006, the Director of Town Planning required the filling up of seven non-provincial sanitary worker posts in the Town Planning in question and in response to the same, the permission was sought from the District Collector concerned through letter dated 18.09.2012 and the District Collector granted necessary permission through proceedings dated 25.09.2012 and thereafter, the petitioner addressed the Employment Exchange concerned to sponsor the candidates for filling up the said posts through letter dated 07.12.2012. In response to the same, the Employment Exchange concerned has furnished the names of the candidates through Proceedings dated 22.02.2013 and interviews were scheduled on 15.03.2015, but no one appeared for the interviews and thereafter, again the process was commenced and finally, the six out of seven vacancies were filled up during the pendency of the disciplinary proceedings against the petitioner.



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3. After conducting the enquiry, the Disciplinary Authority imposed the punishment of punishment of stoppage of increment for one year with cumulative effect on the petitioner and in the appeal filed there against by the petitioner before the Appellate Authority, the said punishment was confirmed through order dated 18.09.2017. Aggrieved by the said punishment, the petitioner approached this Court by filing the present Writ Petition.

4. Mr. V.Vijay Shankar, the learned counsel for the petitioner contended that the respondents have failed to establish the charges levelled against the petitioner and the same is evident from their charge memo itself. He has drawn the attention of this Court to Annexure 2 and 3 of the charge memo, wherein the details of the documents and witness that are sought to be relied upon by the respondents are required to be furnished and but no such details are furnished in the charge memo and thus, she contended that there is no evidence in respect of the charges and therefore, the entire charges cannot be said to be proved. He also further contended that the Disciplinary Authority as well as the Appellate Authority accepted



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the report of the Enquiry Officer, but they have not furnished any reasons for accepting the report of the Enquiry Officer or to conclude that the charges levelled against the petitioner are proved. She also further contended that several grounds raised by the petitioner in the appeal filed before the Appellate Authority were not at all considered and no opportunity was afforded to the petitioner before the Appellate Authority.

5. Mr.M.Murali, learned Government Advocate appearing on behalf of the respondents contended that the petitioner himself accepted the delay in filling up the posts of sanitary workers and therefore, the question of proving the said charges does not arise and it is for the petitioner to show that he has taken immediate steps for filling up the posts of sanitary workers after the circular was issued by the Director of Town Planning. According to the learned counsel, it is for the petitioner to disprove the charges levelled against him, as there was admittedly delay in filling up the posts of sanitary workers. He would further contend that once the Disciplinary Authority as well as the Appellate Authority agree with the findings recorded by the Enquiry Officer, there is no necessity for them to give any reasons for accepting the said findings recorded by the Enquiry



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Officer and thus, he tried to sustain the orders passed by the Disciplinary Authority as well as the Appellate Authority.

6. This Court has thoroughly considered the submissions made on either side and also perused the materials available on record.

7. As already noted above, the basis for levelling three charges against the petitioner is one and the same i.e., delay in filling up the seven posts of sanitary workers in the Town Planning. Basing upon the very same alleged lapse on the part of the petitioner, three charges were framed as noted above. It is not in dispute that the Director, Town Planning required filling up of the posts of sanitary workers pursuant to a policy decision taken by the Government in the month of July 2013. In the month of September, a permission was sought from the District Collector concerned for filling up of the said post and the petitioner required the concerned Employment Exchange to sponsor the eligible candidates for filling up the said posts. Admittedly, when the interviews were scheduled, no candidate appeared for the interview for filling up the said posts. It is also not in dispute that six out of seven posts are filled up during the



pendency of the Disciplinary Proceedings against the petitioner.

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8. From the above, it is evident that it is not as if the petitioner has not taken any steps prior to the issuance of the charge memo but infact admittedly he has taken some steps by writing to the concerned Employment Exchange. However, there appears to be some delay on the part of the petitioner in taking immediate steps after the Circular was issued by the Director, Town Planning. Even assuming that there is some delay on the part of the petitioner in taking steps for filling up the posts of sanitary workers and assuming that the basis of the charges levelled against the petitioner are true, the imposition of punishment of stoppage of increment for one year with cumulative effect is disproportionate and the same will have impact on the pension of the petitioner as well.

9. In the considered view of this Court, the punishment imposed was shockingly disproportionate, especially in the context of the fact that the petitioner has worked for 29 years by then and there are no charges nor any disciplinary proceedings that were initiated against the petitioner during his entire service.



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10. In the light of the above, this Court is not inclined to go into the merits of the case but inclined to interfere with the impugned punishment only on the ground of disproportionality. In the normal circumstances, on having arrived at such conclusion that the punishment imposed is shockingly disproportionate to the nature of the charges levelled against the petitioner, this Court would have remanded the matter back to the Disciplinary Authority for imposing a lesser punishment commensurate with the charges framed against the petitioner. But taking into consideration the fact that the petitioner has already retired from service as early as on 30.04.2022, this Court is not inclined to remit the matter back to the respondents for passing orders afresh but instead is inclined to modify the punishment of stoppage of increment with cumulative effect to that of the punishment of stoppage of one increment without cumulative effect.

11. Accordingly, the impugned order of punishment dated 27.01.2016 shall stand modified as the one imposing the punishment of stoppage of one increment without cumulative effect. The order of



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punishment dated 27.01.2016 and the order passed by the Appellate Authority dated 18.09.2017 shall stand modified, accordingly, the Writ Petition is disposed of. The respondents are further directed to pass appropriate orders consequent upon the modification of the punishment as noted above, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

02.04.2024

skr

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

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MUMMINENI SUDHEER KUMAR, J.

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