



W.P.No. 1055 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

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THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.No. 1055 of 2018

and

WMP.No.1274 & 1275 of 2018

S.Ananda Selvakumar

..Petitioner

Vs

1. The Commissioner,
Pollachi Municipality,
Pollachi.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai-5.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the second respondent in Na.Ka.No.38167/09/K3 dated 31.10.2017 and quash the same.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.L.S.M.Hazal Fizal, AGP R2

ORDER

The writ petition has been filed seeking to quash the impugned order issued by the second respondent dated 31.10.2017.



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2. Heard Mr.T.Ranganathan, learned counsel for the petitioner, Mr.B.Anand, learned counsel appearing for the first respondent and Mr.C.J.Ravindran, learned Additional Advocate General appearing on behalf of the second respondent and perused the materials available on record.

3. The case of the petitioner is that he was initially appointed as Attender in Pollachi Municipality on 16.08.1971 and subsequently, he was promoted as Bill Collector in the year 1973. The post of Bill Collector has been re-designated as Revenue Assistant. During the year 1999-2000, the petitioner was posted as Junior Assistant in Pollachi Municipality, since the post of Revenue Assistant and the Junior Assistant are inter changeable. During the year 2001, the petitioner was against posted as Revenue Assistant and permitted to retire from service on attaining superannuation on 31.03.2008 vide proceedings of the first respondent issued in Na.Ka.No.C1/1092/2008 dated 31.03.2008 without prejudice to the disciplinary proceedings pending against the petitioner.

4. It is the further case of the petitioner that he was issued a charge



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memo by the first respondent dated 12.10.2004 under rule 8(2) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 and framed five charges against the petitioner.

5. The petitioner has submitted his statement on 06.12.2004 defending that the charges levelled against him are only "lack of supervision" for which a charge memo under Rule 8(2) does not warranted as per the instructions of the Government in Letter No.14353/Per.N/93-1 P & AR dated 11.03.1993. The first respondent has also issued charge for some of the staff members in the first respondent municipality.

6. The first respondent issued charge memo to seven persons under Rule 8(2) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970. But the first respondent has appointed different enquiry officers without conducting a common enquiry proceedings. Further, one Mr.Ramamoorthy, Municipal Engineer appointed as Enquiry Officer has conducted the enquiry and submitted his report on 24.02.2005 itself. It seems that the second respondent has obtained another report from the



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enquiry officer for the same charge memo dated 20.03.2012, based on which, the second respondent has issued final orders imposing a penalty of pension cut of Rs.4,000/- per month for 5 years.

7. The learned counsel further contents that the petitioner was permitted to retire from service on 31.03.2008 on attaining the age of superannuation through the proceedings issued by the first respondent in Na.Ka.No.C1/1092/2008 dated 31.03.2008 without prejudice to the disciplinary proceedings pending. It has to be noted that once the petitioner is allowed to retire from service, the proceedings should be continued only under Rule 9(2) of the Tamil Nadu Pension Rules.

8. The learned counsel further submits that the second respondent has now issued the impugned proceedings dated 31.10.2017 imposing a penalty of pension cut of Rs.4000/- per mensum for a period of 5 years which is totally arbitrary, unfair and unreasonable and contrary to the settled principles and therefore, the said order is liable to be set aside.



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9. The learned counsel further contents that before issuing the impugned proceedings, the second respondent did not issue any show cause notice to the petitioner calling for his explanation, which is violation of principles of natural justice.

10. On the other hand, the learned Additional Advocate General appearing on behalf of the second respondent fairly submitted that the order impugned in this writ petition has issued without issuing any show cause notice to the petitioner.

11. As per the the submissions made by the learned Additional Advocate General and admittedly no show cause was notice issued before passing the impugned order by the second respondent. In the considered opinion of this Court, the order impugned in this writ petition will not sustain in the eye of law as it is against to the principles of natural justice and the same is liable to be set aside. Accordingly, this Writ petition is allowed with the following directions:

(i) the impugned order dated 31.10.2017 passed by the second



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respondent is hereby quashed;

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(ii) it is needless to say that if the respondents intend to proceed further against the petitioner, they are at liberty to do so, by following due process of law;

Consequently, connected miscellaneous petition is closed.

No costs.

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Index : Yes/No

Internet: Yes/No

Speaking order/ Non speaking order



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To
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1. The Commissioner,
Pollachi Municipality,
Pollachi.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai-5.



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BATTU DEVANAND, J

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