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W.P. No. 3724 of 2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 23.09.2024

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**THE HONOURABLE MR.JUSTICE BATTU DEVANAND**

W.P. No. 3724 of 2018  
and  
W.M.P. No. 4536 of 2018

A. Srinivasan

... Petitioner

Vs.

The Commissioner,  
O/o. Salem Corporation,  
Salem.

... Respondent

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records on the file of the respondent in Ref.Na.Ka.No.M.7/936/2014 dated 24.08.2017 and quash the same.

For Petitioner : Ms. D. Bharathy

For Respondent : Ms. N. Devi, Standing Counsel

**ORDER**

This Writ Petition has been filed for the issue of writ of certiorari, to call for the records on the file of the respondent in Ref.Na.Ka.No.M.7/936/2014 dated 24.08.2017 and quash the same.



2. The case of the petitioner is that, he was appointed as Sanitary Worker at Division No.47 in the respondent Corporation. He was placed under suspension during the year 2014 and subsequently, he was allowed to join duty during the year 2015. While so after completion of two years, after the suspension period, without any valid reason, the respondent issued charge memo to the petitioner on 17.05.2017. After receipt of the charge memo, the petitioner submitted his explanation and an enquiry was conducted against him.

3. On completion of the enquiry, the enquiry officer submitted his report. On the basis of the enquiry report, the respondent has passed the impugned order on 24.08.2017 imposing punishment of withholding of increment for a period of two years with cumulative effect and denied salary for 551 days without any valid reason. Aggrieved by the same, the petitioner filed the present writ petition.

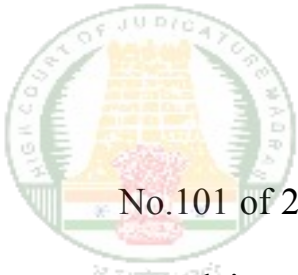
4. On behalf of the respondent, a counter affidavit has been filed. It is stated in the counter affidavit that, the petitioner was working as a Sanitary Worker in Salem Corporation. He was arrested on 02.04.2014 in the case of a dispute over fetching drinking water near his house. As per The Tamil Nadu Municipal Works (Disciplinary Action and Appeal) Rules, 1970 and Coimbatore Municipal Works (Disciplinary Action and Appeal) Rules, 1986 Rule No.8(2), the petitioner was temporarily dismissed from duties with effect from 03.04.2014. Further, FIR was



registered and the case was taken on file by the Judicial Magistrate Court No.3, Salem. The Judicial Magistrate, by order dated 26.12.2014 acquitted the petitioner from all the charges. As per the order of the Court, the petitioner sought for his reinstatement. Accordingly, the respondent Corporation allowed the petitioner to rejoin the duty from 07.10.2015.

5. It is further averred in the counter affidavit that on 17.05.2017, the petitioner was charged under Rule 8(2) of the Tamil Nadu Municipalities (Disciplinary Action and Appeals) Act, 1970 and Coimbatore Municipal Corporation (Disciplinary Action and Appeals) Act, 1986 and the enquiry officer was appointed and the charges were framed against the petitioner. According to the enquiry report of the said enquiry officer, all the charges against the petitioner are proved and therefore, by proceedings dated 24.08.2017, the petitioner's annual salary increment was withheld for two years with cumulative effect and his dismissal period from 03.04.2014 to 07.10.2015 is treated as loss of pay without pay. Further, it is averred that the petitioner has not filed any appeal against the said charge memo before the Directorate of Municipal Administration, Chennai, who is the Appellate authority. Hence, sought to dismiss the writ petition.

6. Learned counsel for the petitioner would submit that a false case was initiated against the petitioner by the Inspector, Sevvapettai Police Station in CC



No.101 of 2014 on the file of the Judicial Magistrate III, Salem. Basing on the said complaint, the petitioner was suspended on 21.04.2024. The petitioner was acquitted in CC No.101 of 2014 as per the judgment dated 26.12.2014. Thereafter, the petitioner's suspension order was revoked and the petitioner was permitted to join duty vide order dated 07.10.2015.

7.The learned counsel for the petitioner further submits that after completion of two years after the suspension period, without any valid reasons, the respondent issued charge memo dated 17.05.2017, and the petitioner submitted his explanation on 22.05.2017. He further submits that an enquiry was conducted against the petitioner and the enquiry officer submitted a report and based on the same, the impugned order came to be passed on 24.08.2017, imposing two punishments without any substantial reasons.

8.The learned counsel for the petitioner would contend that the enquiry officer conducted an enquiry without affording an opportunity to the petitioner to substantiate his case. He further contends that the impugned order came to be passed after two years of revocation of suspension order with malafide intention to victimise the petitioner without valid reasons and the punishment imposed is excessive in respect of the charges and illegal due to the reason that two punishments have been imposed for a single incident, which is not reasonable and sought to set aside the



impugned order.

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9. On the other hand, the learned Standing counsel appearing for the respondent would submit that basing on the report of the enquiry officer, the impugned order was passed and as such, there is no infirmity in the order passed by the respondent. She further contends that a statutory appeal lies before the Appellate Authority i.e., the Director of Municipal Administration, Chennai, against the order passed by the respondent, imposing the punishment against the petitioner and without exhausting such remedy, the petitioner directly filed the present Writ Petition, which is not permissible under law and sought to dismiss the Writ Petition.

10. Having heard the submissions of the respective learned counsels and on careful perusal of the materials available on record, the admitted facts in this case are that the petitioner was suspended on 21.04.2014 on registering of a criminal case against the petitioner in Sevapettai Police Station. The said criminal case in CC No.101 of 2014 on the file of the learned Judicial Magistrate III, Salem was dismissed by the judgment dated 26.12.2014 and the petitioner was acquitted. Thereafter, on the representation of the petitioner, the suspension order was revoked and by order dated 07.10.2015, the petitioner was permitted to join duty. On 17.05.2017, a charge memo was issued to the petitioner calling for explanation and the petitioner submitted his explanation on 22.05.2017. Thereafter, an enquiry officer



was appointed and he submitted a report on 17.07.2017. Basing on the enquiry report, the respondent passed the impugned order dated 24.08.2017. On perusal of the material available on record, it is clear that after dismissal of the criminal case, wherein, the petitioner was acquitted by the competent authority vide judgment dated 26.12.2014, for the same charges, the respondent issued charge memo after more than two years of revocation of the suspension order. The said fact was brought to the notice of the respondent in the petitioner's explanation dated 22.05.2017. Without considering the said explanation in a proper manner, an enquiry officer was appointed and basing on his report, the impugned order came to be passed.

11. On perusal of the order impugned in this Writ Petition, it appears that the second respondent, considering the enquiry report dated 17.07.2017 submitted by the enquiry officer, wherein, it was found that all the charges have been proved against the petitioner and accordingly, imposed punishment of withholding of increment for two years with cumulative effect. In the impugned order, it is further stated that the suspension period from 03.04.2014 to 07.10.2015 for the total period of one year, 6 months and 6 days, in total 551 days leave without salary. On bare perusal of the impugned order, this Court noticed 3 procedural irregularities. Those are (i) after receipt of the enquiry report, the respondent ought to have provided an opportunity to the petitioner to submit his explanation against the findings recorded in the enquiry report. For that purpose, the respondent ought to have furnished a copy of the



enquiry report to the petitioner, (ii) while passing the order of punishment, the respondent ought to have recorded the reasons for accepting the enquiry report after giving due opportunity to the petitioner to putforth his case, (iii) in the impugned order two punishments were imposed, one is withholding of increment for two years with cumulative effect and the second one is treating the total suspension period of 551 days as leave without salary.

12.It is settled law that without furnishing enquiry report to the delinquent employee and without providing an opportunity to him to putforth his version, before passing the order of punishment is clearly in violation of the principles of natural justice. Imposing two punishments against the petitioner vide impugned order is also not permitted under law and it is definitely disproportionate. The order passed by the respondent imposing punishment against the petitioner without assigning any reasons and simply basing on the report of the enquiry officer, is illegal, arbitrary, unjust and unsustainable in the eye of law.

13. For the aforesaid reasons, this Court is of the considered view that the petitioner has made out a case against the respondent for interference of this Court. Hence, the order impugned in this Writ Petition is unsustainable under law and as such, it is liable to be set aside.



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14. Accordingly, this Writ Petition is allowed and the order in Ref.Na.Ka.No.M.7/936/2014 dated 24.08.2017, issued by the respondent is hereby set aside.

No costs.

Consequently, connected miscellaneous petition is closed.

**23.09.2024**

Index :Yes/No  
Neutral Citation :Yes/No  
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To  
The Commissioner,  
O/o. Salem Corporation,  
Salem.



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**BATTU DEVANAND, J.**

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