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W.A.No.1829 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.03.2024

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THE HON'BLE Mr. JUSTICE R. MAHADEVAN  
AND  
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.1829 of 2023  
AND  
C.M.P.No.16047 of 2023

1.The Principal Secretary to Government of Tamil Nadu  
Municipal Administration & Water Supply (MAWS) Department  
Fort St. George, CHennai 600 009

2.The Director of Town Panchayats  
Directorate of Municipal Administration  
MRC Nagar, Raja Annamalaipuram  
Chennai, Tamil Nadu 600 028

.. Appellants

Vs.

Berline Jenova Mary

.. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 27.01.2022 passed by the learned Judge in W.P.No.32332 of 2019.

For Appellants : Mr.S.Silambanan  
Additional Advocate General  
Assisted by Mrs.S.Anitha  
Special Government Pleader  
For Respondent : Mr.V.Vijayashankar



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### **JUDGMENT**

(Judgment of the court was delivered by R. MAHADEVAN, J.)

Challenging the order dated 27.01.2022 passed by the learned Judge in W.P.No.32332 of 2019, the appellants /Government have preferred this intra-court appeal.

2. The necessary facts leading to the filing of this writ appeal are as under :

The respondent / writ petitioner was initially appointed as Bill Collector and posted to Mannachanallur Town Panchayat. Thereafter, she got promotion as Head Clerk in the year 2007 and posted to Musiri Town Panchayat. Subsequently, in the year 2013, she was transferred to Koothappar Town Panchayat, where she was working as Executive Officer, and was placed under suspension on 03.12.2014. Based on the audit objection raised by the local fund audit, she was issued with a charge memo dated 24.12.2014 containing 5 Articles of charges. The essence of the charge is that she had neglected her duties cast upon her, by incurring expenditure towards jungle clearance and desilting of drainage, without proper estimation from the authorities concerned and also for not following the procedures, thereby, causing loss to the Town



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Panchayats. She submitted her statement of defence on 21.02.2015 denying the charges framed against her. Thereafter, she was directed to appear for enquiry on 23.12.2015. On the said date, she appeared and answered the questions raised by the Inquiry Officer. Consequently, she was issued with the proceedings dated 05.01.2017 of the 2<sup>nd</sup> appellant/disciplinary authority, enclosing a copy of the inquiry report dated 14.12.2016. Following the same, the 2<sup>nd</sup> appellant, *vide* proceedings dated 08.03.2018, imposed the penalty of removal from service on the respondent. Aggrieved by the said order, the respondent preferred an appeal to the 1<sup>st</sup> appellant on 11.04.2018 and the same was also rejected by order dated 26.07.2019. Challenging the orders dated 08.03.2018 and 26.07.2019 passed by the appellant authorities, she filed W.P.No.32332 of 2019. The learned Judge, by order dated 27.01.2022, allowed the writ petition by directing the appellants to reinstate the respondent with all the benefits on notional basis, with liberty to pursue disciplinary action, if there are sufficient materials against her. Feeling aggrieved, the appellants are before this court with the present appeal.

3. The grounds raised by the appellants as against the order of the learned Judge passed in the writ petition, are that the learned Judge ought to have considered that based on the special audit report dated 13.10.2014, charge



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memo with 5 charges was issued to the respondent on 31.12.2014, to which, she submitted her explanations on 06.01.2015 with a request to consider the same as preliminary explanation and sought one month time to submit her detailed explanations. Accordingly, time was granted. After perusal of all the documents on 08.02.2015, the respondent submitted her detailed explanations on 21.02.2015. After detailed analysis of the same, the authorities decided to continue with the departmental action against the respondent, as the explanations submitted by her, were not found satisfactory. Thereafter, Inquiry Officer was appointed on 10.08.2015, notice on enquiry was issued on 07.12.2015 and enquiry was conducted on 23.12.2015, on which date, the respondent participated and informed that the entire process of inquiry was satisfactory, she had no further evidence either oral or documentary and no witnesses to examine. Based on the available materials, the Inquiry Officer concluded that all the 5 charges against the respondent were held as proved and submitted a report on 14.12.2016. Subsequently, *vide* communication dated 05.01.2017, enquiry report was served and the respondent was called upon to submit her further explanation and defence, if any, within a period of 15 days. Upon receipt of the same, the respondent requested additional time on two occasions, which were duly granted by the authorities. Thereafter, she submitted her further explanation on 24.03.2017. Consequently, she was



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granted further opportunity of personal hearing before the second appellant on 22.05.2017 and 22.09.2017 and during the course of the same, she stated that she had no witnesses to be examined or further / additional explanations to submit on her behalf. Only thereafter, the second appellant, based on the materials available before him, passed the final order inflicting the punishment of removal from service for the proven misconduct, *vide* proceedings in Na.Ka.No.17096/2014/A5 dated 08.03.2018, which was received and acknowledged by the respondent on 10.03.2018 and she was relieved from duty on 10.03.2018. The said order of punishment was affirmed by the first appellant, *vide* G.O(D) No. 295 Municipal Administration and Water Supply Department dated 26.07.2019, after perusing the entire materials and based on the advice of the Tamil Nadu Public Service Commission dated 21.01.2019. Thus, according to the appellants, the respondent was granted ample opportunities to defend her case and the authorities after following due process of law, has passed the orders impugned in the writ petition. However, the learned Judge, by the order impugned herein, erred in allowing the writ petition filed by the respondent solely on the ground of delay in initiating the disciplinary proceedings.



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4. Reiterating the grounds raised in the appeal, the learned Additional Advocate General appearing for the appellants made his submissions and prayed for setting aside the order passed by the learned Judge in the writ petition.

5. On the other hand, the learned counsel appearing for the respondent / writ petitioner submitted that as per the order passed by the learned Judge, the appellant authorities ought to have reinstated the respondent in service with effect from the date of the order i.e., 27.01.2022. However, the appellants have not done so, despite several representations and reminders made by the respondent. It is also submitted that the appellants have preferred this appeal belatedly and they have not obtained any interim order in their favour. Hence, the respondent is entitled to get reinstatement in accordance with the direction of the learned Judge. Further, the learned counsel, on instructions from the respondent, submitted that she undertakes to co-operate with the authorities for the departmental enquiry, if any, to be conducted by them and she is willing to forego her backwages for the period from 08.03.2018 up to the date of this judgment. An affidavit has also been filed by the respondent to that effect.



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6. In the light of the submissions and affidavit filed on the side of the respondent, which have not been seriously resisted by the learned Additional Advocate General appearing for the appellants, this court directs the appellant authorities to reinstate the respondent within a period of one week from the date of receipt of a copy of this judgment, and comply with the other directions issued by the learned Judge in the order impugned herein, within a period of eight weeks from the date of receipt of a copy of this judgment. The affidavit filed by the respondent agreeing to forego her backwages from the date of imposition of punishment i.e., 08.03.2018 till the date of this judgment, is recorded. It is made clear that this judgment is passed only based on the said undertaking given by the respondent before this court.

7. Accordingly, this writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]

13.03.2024

Internet : Yes

Neutral Citation : Yes/No

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AND  
MOHAMMED SHAFFIQ, J.

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To

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