



Writ Appeal No.1161 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
26.06.2024

PRONOUNCED ON
08.08.2024

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR, ACTING CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

Writ Appeal No.1161 of 2022
and C.M.P.No.7366 of 2022

The Tamil Nadu Housing Board,
Represented by its Managing Director,
Chennai – 600 035.

... Appellant

Vs

1.K.B.Natarajan

2.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai – 600 009.

... Respondents

PRAYER:- Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 27.11.2020 made in W.P.No.21189 of 2013 and pass such further order.

For Appellant : Mr.V.Logesh
Standing Counsel TNHB

For Respondents : Ms.T.Subhiksha for R1
for Mr.M.Ravi
: Mr.V.Manoharan for R2



Writ Appeal No.1161 of 2022

Additional Government Pleader

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JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra Court Appeal had been preferred as being aggrieved against the order of the learned Single Judge wherein the punishment that had been imposed against the first respondent was quashed with a further direction to calculate the consequential benefits payable to him and to pay the same within the time stipulated by the learned Single Judge.

2. Heard Mr.V.Logesh, learned Standing Counsel TNHB for the appellant, Ms.T.Subhiksha, learned counsel for Mr.M.Ravi, learned counsel for the first respondent and Mr.V.Manoharan, learned Additional Government Pleader appearing on behalf of the second respondent.

3. Mr.V.Logesh, learned Standing Counsel for the appellant would submit that the disciplinary proceedings were initiated against the first respondent originally in the year 1991 with regard to the improper supervision of construction in Coimbatore, Uppilipalayam Scheme. Again an



Writ Appeal No.1161 of 2022

another charge memo was issued in the year 2001 which was also dealt with the said Scheme, but the charges were wholly different. Pursuant to the framing of charge memo an Enquiry Officer was appointed. As the Disciplinary Authority had found that the first Enquiry Officer had not done the enquiry in a proper manner a further enquiry was ordered. He would submit that in the mean time, the first respondent had attained the age of superannuation and he had been permitted to retire without prejudice to the disciplinary proceedings that were pending against him. Thereafter, the Disciplinary Authority had passed an order of recovery of Rs.5,17,672/- by deducting one third pension for a period of three years and the same came to be challenged by the first respondent before this Court. The learned Single Judge without appreciating the facts of the case where the first respondent had been found guilty of the first charge, even by the subsequent Enquiry Officer only after which a punishment has been imposed against him had held that the punishment imposed upon him to be unsustainable by just following the order of this Court in respect to an Officer for the same charges. He would submit that the said officer had been dealt with by an independent proceedings, had been exonerated by the Enquiry Officer of all



Writ Appeal No.1161 of 2022

the charges framed and in the present case the first respondent had been found to have been found guilty of Charge No.1 by the successive Enquiry Officers. He would submit that even though the appointment of the successive Enquiry Officer was bad, as regards to Charge No.1 and it was a consistent finding of the enquiry officer that the first respondent delinquent was guilty. This aspect had been wholly over looked by the learned Single Judge and for that reason he would seek interference of this Court.

4. Mr.V.Manoharan, learned Additional Government Pleader appearing on behalf of the second respondent would support the contentions raised by the learned Standing Counsel for the appellant and would also submit that the first respondent had not placed any materials as to his non-involvement in the delinquency complained of in any manner.

5.Ms.T.Subhiksha , the learned counsel appearing for the first respondent would contend that about 12 Officers including the first respondent were proceeded with departmentally. The first respondent was a Junior Engineer at the time of the alleged delinquency and was working



Writ Appeal No.1161 of 2022

under one T. Arumugam, who was an Assistant Engineer. The said

T.Arumugam had also been proceeded with on the same delinquency as that of this first respondent and he had been exonerated by the enquiry officers. But the Disciplinary Authority dissenting with the opinion of the original Enquiry Officer and had appointed a new Enquiry Officer. Even the second Enquiry Officer found him to be innocent and had exonerated him of the charges. In spite of this, the Disciplinary Authority had imposed a punishment which was set aside by the learned Single Judge of this Court which is also affirmed by the Division Bench of this Court. The first respondent, who was working under the said Arumugam cannot be held to have been committed the irregularity. When the Senior Officer is held to be not a delinquent for the said charges, a person who is working under the said person cannot be equally held responsible. But, however the Enquiry Officer had found that the delinquency proved as against the first respondent, which itself would show that the different enquiry officer had taken a different stand and when the Enquiry Officers had been taking a different stand and when one Enquiry Officer had found the Senior Officer not to be guilty of misconduct which had been affirmed by this Division Bench of this Court



Writ Appeal No.1161 of 2022

that the said benefits should also be extended to the first respondent herein and therefore, she would submit that there is no infirmity in the order passed by the learned Single Judge.

6. We have considered the rival submissions made by the learned counsels appearing for their respective parties and perused the materials available on record.

7. It is admitted that originally a charge memo was issued in the year 1991 for certain delinquencies relating to the projects that had been carried out by the Department at Coimbatore. It is also not disputed that various Officers have been proceeded with for the said delinquencies, the learned Single Judge had specifically recorded that the first respondent was working under one T.Arumugam, who was an Assistant Engineer and that he had been also proceeded with on the same set of charges. This fact has not been disputed by the appellant. The learned Single Judge had also recorded that the said T.Arumugam had been exonerated by the Enquiry Officer on all accounts. However, the Disciplinary Authority had taken a different view and had imposed a punishment. The said punishment had also been set aside



Writ Appeal No.1161 of 2022

by the learned Single Judge and affirmed by the Division Bench of this Court. There is a specific finding of this Court that the Officer had been victimised by the Disciplinary Authority. The learned Single Judge had also given a categorical finding that when the superior officer had been held to have been exonerated by the enquiry officer, the first respondent, who was working under him cannot be found guilty of the very same delinquency. As recorded above when the fact that the first respondent was working under the said T.Arumugam, stands exonerated, we are of the considered view that what has been recorded by the learned Single Judge does not require any interference by this Court. No reasons have also been attributed by the Department as to why when the first charge memo was issued the delinquency that is noted in the second charge memo were not incorporated and as to what had happened to the first charge memo has also not been put forwarded by the Department/ appellant. It has been a trite law that when a charge memo had been initiated on allegations of certain delinquency, the reasons should be attributed as to why the first charge memo has not been proceeded and the second charge memo was issued. The reason that had been attributed is that the first charges and the second charge were totally



Writ Appeal No.1161 of 2022

different. Both the charge memos had been placed before us.

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8. A reading of the said charge memo would envisage that for the lapses for the construction of the Uppilipalayam Scheme, he had been proceeded with. Further, the first respondent was only a Junior Engineer working under the hierarchy starting from the Chief Engineer, Superintendent Engineer, Executive Engineer, Assistant Executive and Assistant Engineer. He had to only obey the dictum of the superiors in implementing the projects and he cannot be independently held to have committed certain delinquency when his immediate superior who was working as an Assistant Engineer had been exonerated of the charges and the punishment imposed by the Disciplinary Authority dissenting from the enquiry officers report was also set aside by the Court and the same was affirmed by the Division Bench, the first respondent cannot be imposed with a punishment.

9. In such view of the matter, we do not find any infirmity or illegality in the order impugned before us which warrants interference of this Court. In fine, this Writ Appeal fails and is accordingly dismissed. However, there shall be no order as to costs.



Writ Appeal No.1161 of 2022

(D.K.K.,J., .A.C.J.)

(K.B., J.)

08.08.2024

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Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
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To

The Government of Tamil Nadu,
Represented by its Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai – 600 009.



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Writ Appeal No.1161 of 2022

THE HON'BLE ACTING CHIEF JUSTICE
and
K.KUMARESH BABU.,J.

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A Pre-delivery Judgment made in
Writ Appeal No.1161 of 2022
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08.08.2024