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Writ Petition No.936 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM

THE HON'BLE DR. JUSTICE D.NAGARJUN

Writ Petition No.936 of 2015

K.Krishnan Kutty

...Petitioner

Versus

1.The Principal Secretary
Municipal Administration and
Water Supply Department
Fort St.George, Secretariat,
Chennai – 600 009.

2.The Commissioner
Corporation of Chennai
Chennai – 600 003.

3.Assistant Commissioner (G.A. & P),
General Department, Corporation of Chennai
Chennai – 600 003.

4.Accounts Officer,
Health Department, Corporation of Chennai,
Chennai – 600 003.

...Respondents

Prayer: This writ petition is filed under Article 226 of the Constitution of India, with a prayer to issue a writ of Certiorarified Mandamus to call for the records passed by the order of the 1st respondent made in G.O.Ms.(P).No.448 dated 26.11.2014 confirming the order of the 3rd



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respondent made in proceedings in Ma.Ka.Ku.Na.Ka.No.A1/3950/2010 dated 08.01.2011 and the order of the 2nd respondent in his proceedings Ma.Ka.Ku.Na.Ka.No.A1/3950/2010 dated 30.05.2011 and to quash the same and consequently direct the 2nd respondent to pay the petitioner's pensionary benefits in full.

For Petitioner : Mr.N.Ishtiaq Ahmed
for N.P.Jayakumar & J.John Bosco

For Respondents :
R1 : Mr.R.Vignesh Raj Kumar
Additional Government Pleader
R2 to R4 : Mr.K.Aswini Devi

ORDER

This writ petition is filed under Article 226 of the Constitution of India, with a prayer to issue a writ of Certiorarified Mandamus to call for the records passed by the order of the 1st respondent made in G.O.Ms.(P).No.448 dated 26.11.2014 confirming the order of the 3rd respondent made in proceedings in Ma.Ka.Ku.Na.Ka.No.A1/3950/2010 dated 08.01.2011 and the order of the 2nd respondent in his proceedings Ma.Ka.Ku.Na.Ka.No.A1/3950/2010 dated 30.05.2011 and to quash the same and consequently direct the 2nd respondent to pay the petitioner's pensionary benefits in full.



2. The petitioner joined in Respondent Nos.2 to 4 Chennai Corporation on 01.12.1978, subsequently appointed as Typist on 08.03.1988, thereafter promoted as Assistant on 01.08.1997 and then Section Manager on 14.10.2009 and retired from service on attaining the age of superannuation on 31.05.2011.

3. The petitioner was placed under suspension on October 25, 2010, by the 2nd respondent, on the allegations of misconduct. The Assistant Commissioner/3rd respondent, framed three charges against the petitioner under Charge Memo A.C.C. No. A1/3950/ 2010 dated 29.12.2010. The first charge was that the petitioner had acted dishonestly and fraudulently by contacting prospective successful candidates for the appointment of Junior Training Officer, by abusing his close proximity to officers and accessibility to confidential records, and demanded bribe of Rs.2,00,000/- from each of the candidates. The second charge was that, the petitioner tarnished the reputation of the 2nd respondent/The Commissioner of Corporation of Chennai. The third charge was that, the petitioner contravened the Madras Corporation Class - III and IV Servants' Conduct Rules 1993.



4. The petitioner replied to the charge memo issued against him dated 29.12.2010 stating that the records purported to constitute the imputation of misconduct and alleged irregularities had not been supplied to him to submit his substantial explanation, and requested to supply the records before the start of the enquiry to defend his case and prove his innocence. The petitioner emphasized that he had no role in the selection of candidates and never demanded any money from them, as alleged in the charge memo. The petitioner also sought a copy of the statements of the individuals listed in Annexure III, and despite being asked to visit the office on 24.02.2011 to peruse the statement, he found discrepancies in the proceedings and the absence of certain individuals during the enquiry. This led petitioner to express concerns about the fairness and efficiency of the enquiry process, especially given his impending retirement.

5. All the three charges framed against the petitioner are proved and the punishment of stoppage of increments for three years with cumulative effect was awarded to the petitioner. He has filed appeal and the same was dismissed. The individual made a review petition to the Government in M.A.W.S. Department in turn the Government in



M.A.W.S Department have rejected the review petition by confirming the punishment was already imposed in Commissioner proceedings Ma.Ka.Ku.C.No.A1/3950/2010, dt. 30.05.2011, and same was communicated to the individual consequent to his retirement as superannuation on 31.05.2011. All the terminal benefits were disbursed to the petitioner including DCRG and while disbursing the DCRG as per Corporation Rules and the punishment of stoppage of increment with cumulative effect was worked out and deducted from his DCRG amount and balance of DCRG was paid.

6. The learned counsel for the 3rd respondent, submitted that the 3rd respondent denies all the allegations and averments contained in the Affidavit of the Petitioner and asserts that the petitioner/K.Krishnan Kutty, Section Manager, has acted dishonestly and fraudulently by contacting prospective successful candidates for the appointment of Junior Training Officer, abusing his close proximity to officers and accessibility to confidential records, and demanded a bribe of Rs.2,00,000/- from each of them.

7. Learned counsel appearing for the petitioner submitted that imposing punishment and stoppage of three (3) increments with



cumulative effect is erroneous and highly disproportionate. On the other hand learned counsel representing the respondent department submitted that the Enquiry Officer has rightly come to its conclusion, the petitioner was found guilty of the charges and thereby the punishment imposed is proper and not disproportionate.

8. The charges levelled against the petitioner are extracted hereunder:

“ Charge No.1:

That the said Thiru K.Krishnan Kutty has acted dishonestly and fraudulently contacted the prospective successful candidates for the appointment of Junior Training Officer by abusing his close proximity to officers and accessibility to confidential records and demanded a bribe of Rs.2,00,000/- from each of them.

Charge No.2:

That the said Thiru.K.Krishnan Kutty, Section Manager by his above illegal action has brought disrespect to the Corporation of Chennai among the Public.

Charge No.3:

That the said Krishnan Kutty, Section Manager by his above misconduct has contravened the Rules 20 of the Mardras Corporation Class III and IV Servants Conduct Bye-laws, 1983.”



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9. It is alleged by the Respondent/Authority that the petitioner has demanded bribe for a sum of Rs.2,00,000/- from Gowrinathan, Bala Vinayagam and Haribabu for their appointment as Junior Training Officer, and of which an amount of Rs.1,00,000/- was given as advance to the Petitioner. The Vigilance Cell of the Respondent Department has submitted a report in respect of the alleged misconduct of the petitioner before the authorities of the Respondent, while accepting the report of the Vigilance Officer, they placed the Petitioner under suspension vide proceedings No.GDC.No.E5/38992/2010 dated 25.10.2010. After which a domestic enquiry was conducted by Enquiry Officer. The Enquiry Officer has submitted a report holding that all the three charges extracted above have been proved, and after submission of the explanation on 24.05.2011 final orders were passed on 30.05.2011 imposed the punishment of stoppage of increments for three years with cumulative effect.

10. On perusal of the Enquiry Report it is clear that the Enquiry Officer has considered the charges and the explanation submitted by the petitioner and finally without appreciating any of the facts and defense, a



cryptic order was passed stating that on the basis of the letters received from Gowrinathan, Bala Vinayagam and Haribabu, the charges are proved. Admittedly the complaints were not examined. No document was marked. The Enquiry Officer should have been examined at least one person from the Department and could have marked the documents. He could have examined the complainants. If at all the Enquiry Officer did not cross-examine the complainants. The burden lies on the department to prove the charges levelled against the petitioner. Further one of the grounds levelled against the petitioner is that there are outgoing calls from the mobile phone of the petitioner. The Department presumed that the petitioner has demanded money from the complainants which the Department was unable to prove. Unless these complainants appear before the Enquiry Officer and depose that the Petitioner has demanded money from them, it cannot be said that the petitioner has demanded the bribe.

11. The Petitioner was imposed with a penalty of three (3) charges with cumulative effect. Punishment must be proportionate commensurate with the proved misconduct. When the conclusion of the Enquiry Officer itself is doubtful, considering the fact that no evidence is coming forward



against the petitioner to state that the petitioner has demanded money from the complainants, the petitioner should have been exonerated or at least reasonable punishment should have been inflicted.

12. This Court is of the opinion that the only aspect that can be found fault is that the Petitioner has called the complainants, on his mobile phone. The Petitioner who was working in the Education Department is not expected to call the complainants. It certainly gives rise of a doubt that he may be trying to reach the complainants through phone in order to help them. Therefore, even if calling of such persons by the Petitioner is a misconduct, this Court is of the opinion that the punishment imposed in the petition is highly disproportionate, as it affects the Petitioner's career monetarily. Normally Court will not enter into altering/modify the punishment imposed, since it is the prerogative of the Disciplinary Authority, to impose punishment. However, considering the facts and circumstances of this case since the punishment imposed is highly excessive and disproportionate this Court instead of remanding the same to the Disciplinary Authority for imposing punishment, this Court intervenes to correct the excessive punishment.

13. Considering the above this writ petition is allowed in part



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confirming the finding of the Disciplinary Authority, however the punishment of penalty of stoppage of three (3) increments with cumulative effect is modified as stoppage of three (3) increments without cumulative effect. There shall be no order as to costs. MP stands closed.

25.03.2024

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

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- 2.The Commissioner
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