



W.P.No.26045 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.03.2024

CORAM :

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Writ Petition No.26045 of 2021

D.Sureshkumar

...

Petitioner

-Vs-

- 1.The Additional Chief Secretary to Government,
Municipal Administration and Water Supply
[ME.4] Department,
Secretariat,
Chennai - 600 009.
- 2.The Commissioner of Municipal Administration,
Office of the Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.
- 3.The Commissioner,
Nagercoil Municipality,
Nagercoil, Kanyakumari District.
- 4.The Collector,
Kanyakumari District.

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Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the first respondent vide G.O.[D]No.425, Municipal Administration and Water Supply [ME.4] Department, dated 05.12.2020 and to quash the same and consequently direct the



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respondents to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.S.Vijayakumar
Senior Counsel
for Mr.G.Bharadwaj
For Respondents : Mr.K.H.Ravikumar
Government Advocate

ORDER

Heard Mr.S.Vijayakumar, the learned Senior Counsel for the petitioner and Mr.K.H.Ravikumar, the learned Government Advocate for the respondents.

2. The petitioner has filed this writ petition challenging the order of the first respondent vide G.O.[D]No.425, Municipal Administration and Water Supply [ME.4] Department, dated 05.12.2020 and to consequently direct the respondents to reinstate the petitioner in service with all attendant benefits.

3. The petitioner was punished with the order of compulsory retirement. Challenging the order of compulsory retirement, the petitioner had filed a Writ Petition in W.P.No.15360 of 2019 and the said



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writ petition was considered and the order was quashed. In the said order,

this Court has made the following observation:-

“17. The specific stand that has been taken by the 3rd respondent also assumes a lot of significance in this case. The 3rd respondent, who is Commissioner of the Municipality has taken a very specific stand that during the relevant point of time, the contractors were on strike and the Municipality had to complete certain works immediately and therefore, a decision was taken not to issue any tenders and to allot work to the available Contractors. In view of this specific stand taken by the 3rd respondent, this Court does not find any apparent moral turpitude involved on the part of the delinquent officers to have allotted the work to the Contractors. Merely because the contracts have been allotted at a higher rate, that by itself cannot be taken as a ground to initiate disciplinary proceedings unless there is a material to show that the concerned delinquent officers have acted beyond their powers and caused loss to the Municipality.

18. This Court further finds that the impugned order passed by the 1st respondent suffers from non-application of mind. The 1st respondent having decided to disagree with the Enquiry Report, was duty bound to have given his reasons as to why he finds the petitioner guilty of the charges. There is not even a single finding to that effect in the impugned order passed by the 1st respondent. The 1st respondent has merely extracted the charge and the explanation given by the petitioner and the further explanation that was given by the petitioner. Thereafter, at Para



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No.3 of the order he has straightaway come to the conclusion that the petitioner is guilty of misconduct and he has imposed the punishment of compulsory retirement against the petitioner. For proper appreciation, para 3 of the impugned order is extracted hereunder:

“3.The Government have examined the matter in detail with charge memo, connected records, findings of Inquiry Officer, Defence Statement and Further representation of the delinquent officer on the deviated views of the disciplinary authority from the findings of Inquiry Officer. The Delinquent Officer has not offered any considerable explanation on the view of the Disciplinary Authority but cited few case laws which are not applicable to this case. Since there have been significant procedural lapses and the delinquent officer has failed in discharging of his duties, the Government have decided to hold all the charges framed against Thiru.D.Suresh Kumar, formerly Municipal Engineer, now Assistant Executive Engineer, Nagercoil Municipality as proved. Therefore, for the proven charges the Government hereby decide to impose the punishment of Compulsory Retirement against, Thiru.D.Suresh Kumar, formerly Municipal Engineer, now Assistant Executive Engineer, Nagercoil Municipality and order accordingly”.

19. Apart from para 3 that has been extracted herein above this Court does not find any application of mind on the part of the 1st respondent or reasons assigned in order to come to such a conclusion. In cases of this nature, where the impugned



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order results in civil consequences to the delinquent employee, reasons will have to be necessarily assigned, failing which the order will suffer from non-compliance of the principles of natural justice. It is only these reasons which will reflect the application of mind and in the absence of such reasons, the order will have to be necessarily set aside on the ground of non compliance of the principles of natural justice.

20. Looking at the order passed by the 1st respondent from any angle, this Court is convinced that the order suffers from illegality and there is no hesitation for this Court to interfere with the same.

21. In the result, the impugned order passed by the 1st respondent dated 22.03.2019, is hereby quashed and there shall be a direction to the 1st and 2nd respondents to reinstate the petitioner into service with all attendant benefits. If at all, the 1st respondent wants to continue with the proceedings, he shall give sufficient opportunity to the petitioner and seek for explanation and thereafter, apply his mind by giving reasons and pass orders.”

4. In view of the aforesaid order, the first respondent has reconsidered in the light of the orders of this Court made in W.P.No.15630 of 2019 and passed an order. The first respondent had imposed the same punishment of compulsory retirement, however after having dealt the matter at length. The said order is under challenge now.



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5. Mr.S.Vijayakumar, the learned Senior Counsel for the petitioner submitted that the alleged lapse is said to have taken place in the year 2003 and 2004 and for which charges have been framed in the year 2010; the enquiry officer has given a report stating that the charges were not proved; however, the disciplinary authority has disagreed with the report of the enquiry officer and proceeded to punish the petitioner by finding him guilty for the charges raised against him; even though the enquiry was over in the year 2014 and the report was submitted to the Disciplinary Authority on 31.07.2014, the order was passed after 5 years i.e. on 22.03.2019; in the impugned order also, the earlier order dated 22.03.2019 has been reiterated and consequent to that, the petitioner also got reinstated 03.04.2020.

6. Mr.T.Chezhiyan, the learned Additional Government Pleader, submitted that as per Rule 14 of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1970, where the appellate authority who has passed the original order imposing penalty, happens to be the State Government, the person aggrieved by the order may gain appeal to the State Government to reconsider the order; in such case the State



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Government shall review the records of the case and pass orders as it may appear to them to be just and expedient. According to the learned Additional Government Pleader, without exhausting the above statutory remedy, the petitioner has filed this writ petition in a premature manner.

7. However, the learned counsel for the petitioner submitted that in the earlier writ petition itself the very same argument has been adopted and that was rejected by the Court. But nowhere in the order dated 09.01.2020 anything has been dealt about Rule 14 of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1970.

8. Since the earlier order dated 22.03.2019 has been quashed and a direction has been issued to give an opportunity to the petitioner and after getting his explanation the authority concerned shall apply his mind and pass orders, once again an order has been passed, but with the same punishment of compulsory retirement. Just because a different order as expected by the petitioner is not passed, it cannot be held that the order now passed is in violation of earlier direction made by this Court in W.P.No.15360/2019. The petitioner can raise all the contentions which he



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now makes before this Court as his grounds of appeal and contest the same before appropriate authority and thus workout his remedy.

9. With the above observation, this Writ Petition is disposed. No costs.

14.03.2024

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To

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R.N.MANJULA, J.
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