



W.P.No.32800 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2024

PRONOUNCED ON : 24.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.32800 of 2022
and W.M.P.No.32196 of 2022

K.Namachivayam

...Petitioner

-Vs-

1. The Principal Secretary/
Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.75, Santhome High Road,
MRC Nagar, R.A.Puram,
Chennai – 600 028.
2. The Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.75, Santhome High Road,
MRC Nagar, R.A.Puram,
Chennai – 600 028.
3. The Vigilance Officer/General Manager,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.75, Santhome High Road,
MRC Nagar, R.A.Puram,
Chennai – 600 028.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in proceedings No. CMWSSB/P&A/VC2/27645/2020-1 dated 09.06.2021 and the order of the first respondent in proceedings No.CMWSSB/P&A/VC(A)/17321/2021 dated 04.01.2022 and quash the same and direct the second respondent herein to include the name of the petitioner for the panel to the post of Executive Engineer in the appropriate place as issued in proceedings No.CMWSSB/P&A/STF/RA1/25004/2022 dated 21.10.2022 and to grant the petitioner with retrospective promotion from the date of promotion of his immediate Junior and to grant the Petitioner all consequential benefits.

For Petitioner : Mr.M.Ravi
For Respondents : Mr.Krishna Ravindran
Standing Counsel

ORDER

This writ petition has been filed challenging the order dated 09.06.2021 passed by the second respondent thereby imposed punishment of stoppage of increment for the period of one year without cumulative effect and the order passed by the first respondent dated 04.01.2022, thereby confirming the order passed by the second respondent.



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2. The petitioner had joined as Assistant Engineer in the respondents Board and thereafter he was promoted to the post of Assistant Executive Engineer during the year 2016. While being so, he was served with charge memo dated 27.11.2020, by the third respondent and initiated disciplinary proceedings under Section 10(2) of the CMWSS Board Employees (Discipline and Appeal) Regulations, 1978. The charges are as follows:-

“Thiru K. Namachivayam, (E.C.No. 3436), then DAE-40A, Area XIII (now in Area-V) is the responsible person for inspection/supervision of the property as per circular instructions issued. But he has failed to inspect and verify the structure of the above said building properly before effecting water/sewer connection which resulted in short collection of connection charges, IDC and taxes/charges. He has failed in his legitimate duty in giving water/sewer connection and thereby caused revenue loss to the Board to the tune of Rs.8,45,337/-. His above acts are also caused bad image to the Board among the public and complaints are received in this regard.

His above act amounts to misconduct under Regulation 6(4), 6(23) and 6(37) and 6(38) of CMWSS Board Employees (Discipline and Appeal) Regulations,



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1978 which read as follows:

6(4) *"Neglect of work"*

6(23) *"Dishonesty in connection with the Board's property or transactions."*

6(37) *"Any other activity which in the opinion of Board is a misconduct".*

6(38) *"Breaching the rule of integrity and devotion to duty and doing any Act which is unbecoming of a member of the Board service"*

The above charges were framed for failure in conducting proper inspection and supervision before effecting water/sewerage connection to the premises No.9/4, Sasi Nagar, Main Road, Velachery, Chennai – 42, thereby causing revenue loss to the tune of Rs.8,45,337/-.

3. On receipt of the charge memo, the petitioner submitted detailed explanation stating that in the subject building, he carried out inspection with reference to the sanctioned plan. Based on the actual construction as per plan, total charges were arrived and collected from the owner and service connection was effected. There is no reference to basement construction. The basement construction of the building has been stealthily concealed. The colour of the entrance door of the basement and the wall tiles are of the same colour and therefore the door



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provided in the wall could not be identified. The owner has suppressed about the basement.

4. The petitioner further stated that in the sanctioned plan, there is only stilt plus two floors. Basement floor is generally provided only in the multistored building and not in the building with stilt plus two floors. Therefore, the basement floor could not be identified by anyone including the Assistant Engineer who accommodated with him. He also stated that while his inspection, there was no bed provided to have inpatient facility. When he made a specific enquiry with the owner, he informed that he is not going to provide any inpatient facility. Only on that basis, he recommended category 'B' which is a clinic without inpatient facility under commercial category.

5. Though the petitioner submitted his explanation, without satisfying the explanation submitted by the petitioner, an Enquiry Officer was appointed to conduct enquiry. The Enquiry Officer conducted detailed enquiry and submitted report concluding that on receipt of the complaint and after conducting preliminary enquiry, notices issued to the consumer and all the difference amounts were collected during December



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2020, whereas the connection was effected on 09.12.2019. The owner of the building has not given the details in the water/sewer application deliberately about the construction to be carried out in the basement, but he completed the construction work in the basement before effecting water/sewer connection.

6. Further the petitioner stated that at the time of inspection made by him, there was no bed provided to have inpatient facility and on specific enquiry also the owner has informed that he is not going to provide any inpatient facility and on that basis, he had recommended for category 'B' which is a clinic without inpatient facility under commercial category. Though there is no revenue loss to the Board in respect of sanctioning water/sewerage application, the failure on the part of the petitioner on supervising and assessing the structure of the building is partly proved. After inspection, the deviation observed thereby caused loss to the Board. Therefore, the second respondent imposed punishment of stoppage of one increment for one year without cumulative effect. Aggrieved by the same, the petitioner filed appeal before the first respondent and the same was also dismissed confirming the order passed by the second respondent. Hence, the petitioner filed this present writ



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petition.

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7. The learned counsel appearing for the petitioner submitted that in the absence of any loss caused to the Board and in the absence of any allegation involving moral turpitude, the initiation of disciplinary proceedings against the petitioner is absolutely unjustified. The basement was stealthily concealed and therefore, the petitioner unable to detect the basement while inspection. Therefore, the punishment imposed on the petitioner is disproportionate to the charge and it is liable to be set aside. In fact, on the subsequent inspection, the basement was detected only by way of an accident. The entrance door for the basement was mistakenly opened and there was a staircase leading to the basement. Otherwise, it is an admitted fact that the basement entrance was sealed and was hidden intentionally by the owner and the basement entrance door was fixed to the wall tiles of the same colour and was not visible as a separate door.

7.1. He also submitted that the disciplinary authority did not even examine any of the witness. Further there is no loss caused to the Board and there is no question of moral turpitude or dishonesty on the part of the petitioner. In fact, the petitioner already included in the



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regular panel for the post of Executive Engineer, by the proceeding dated 05.08.2020. However, all of a sudden, he was issued with charge memo only for the purpose of not to include the petitioner's name in the panel for the post of Executive Engineer. Hence, he prayed to set aside the order passed by the respondents 1 & 2.

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. On perusal of records revealed that on receipt of the complaint, preliminary inspection was conducted on 02.11.2020 and certain division noticed by the inspection officer and reported that there was revenue loss caused. Therefore, the Area Engineer was directed to submit report after conducting proper assessment of the structure and category and arrive the difference amount to be collected from the consumer. On inspection, the Area Engineer submitted inspection report along with the details of deviation noticed there on, specifying the amount to be collected from the consumer, which are considered to be revenue loss to the Board, as detailed below :-



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S.No.	Floor	As per application registered	As per construction
1.	Basement Floor	0	22270 Sqm
2.	Ground Floor	148.00 Sqm	225.75 Sqm
3.	First Floor	148.00 Sqm	225.75 Sqm
4.	Second Floor	148.00 Sqm	225.75 Sqm
5.	Third Floor	0	252.88 Sqm
6.	Fourth Floor (Semi Permanent Roof)	0	55.87 Sqm
		Total	1208.70 Sqm
7.	OHT	8.00 Sqm	10.00 Sqm
8.	Compound Wall	10.00 Sqm	7.14 Sqm
9.	UGT	8.00 Sqm	17.10 Sqm
10.	RWH Chamber	3.00 Sqm	5.04 Sqm
		Total	1247.98 Sqm
11.	Category	The building is categorized as Clinic without inpatient facility under 'B' commercial category	The entire building is coming under Hospital with inpatient facility under 'C' commercial category.



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10. Accordingly the additional connection charges, infrastructural development charges and advance taxes are calculated and tabulated as below:-

Sl. No.	Description	Actual amount to be paid in Rs.	Already Paid in Rs.	Balance to be paid in Rs.
1.	Connection charge for water connection	49 Units	10 Units	39 Units
		Rs.3,67,500/-	Rs.75,000/-	Rs.2,92,500/-
2.	Connection Charges for sewer connection	49 Units	10 Units	39 Units
		Rs.3,67,500/-	Rs.75,000/-	Rs.2,92,500/-
3.	Advance Tax	49 Nos.	10 Nos	39 Nos
		Rs.1,47,000	Rs.30,000/-	Rs.1,17,000/-
4.	Meter testing charges	49 Nos	10 Nos	39 Nos
		Rs.400/-	Rs.200/-	Rs.200/-
	Connection charges including advance tax and meter testing charges (Sl.No. 1+2+3+4)			Rs.7,02,200/-
5.	IDC	1247.98 Sqm	500.00 Sqm	749.45 Sqm
		Rs.2,24,637/-	Rs.81,500/-	Rs.1,43,137/-
	Total	Rs.11,07,037/-	Rs.2,61,700/-	Rs.8,45,337/-

11. As certain irregularities were identified during site inspection that deviations in the areas, category, dwelling unit between the details given in application and actual structure of the building, disciplinary action was initiated against the petitioner in accordance with CMWSS



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Board Employees (Discipline and Appeal) Regulation, 1978. Therefore, there was no willful action taken against the petitioner. It shows that without conducting proper inspection on structure of the building and failure in verification of dwelling unit and category etc., the service connection was effected, which resulted in levying very less amount for connection charges.

12. Only after receipt of the complaint, there was second inspection and found the above mentioned deviation. Therefore, it doesn't require any evidence and the inspection report speaks for itself and it is self explanatory. Even if no loss was incurred to the Board, the same cannot absolve the petitioner from the liability of misconduct that he had committed and the imposition of a penalty is warranted. The revised amount was collected only because of the inspection team and identified the basement and revise the payment otherwise, it will amount to loss to the Board.

13. Due to the lack of supervision of the petitioner in verifying the actual structure of the building, number of dwelling units and infrastructure development charges before effecting water connection,



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short collection of charges were collected from the consumer. Therefore, the petitioner was issued charges and conducted enquiry in accordance with the Discipline and Appeal Regulation of the Board. The Employment Committee has examined and compared the details of the building structure and number of dwelling units etc., with the inspection report and the application dated 12.11.2019, check slip and the photographs. The infrastructure development charges made based on the report of the Area Engineer and awarded punishment to the petitioner. Therefore, this Court finds no procedural lapse on the part of the disciplinary authority.

14. Further the petitioner was awarded punishment of stoppage of increment for one year without cumulative effect, which falls within the period of five years prior to the crucial date for drawal of panel. The name of the petitioner was passed over from the draft panel as per the existing rules regarding the procedure for preparation of approved list, prescribed under Schedule XI (Section 7(1)) Part-A, Para-II(11) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as follow :-

“..... Any punishment, (Other than 'Censure'



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imposed on a member of service within a period of five years prior to the crucial date and a punishment of 'Censure' imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list."

15. The Schedule XI Part - A Para - II (15) of Tamil Nadu Government Servants (Conditions of Service) Act, also reads as below:

"No member of service shall be promoted or appointed to a post, if the member is undergoing any punishment imposed under rule 8 of the Tamil Nadu Civil Services(Discipline and Appeal) Rules, either on the crucial date or on the date of consideration for actual promotion."

Therefore, the case of the petitioner squarely covered under the above Rules.

16. Further the next increment due for the petitioner was on 01.04.2022 and the same was stopped for one year and the petitioner would be eligible for the same only on 01.04.2023. Since the currency of punishment is in operation, he was not given to next level of promotion.



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Accordingly, the second respondent rightly imposed the punishment on the petitioner and the same was confirmed by the first respondent. This Court finds no infirmity or illegality in the order passed by the respondents 1 & 2 and the writ petition is devoid of merits and liable to be dismissed.

17. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

24.01.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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G.K.ILANTHIRAIYAN. J.

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ORDER IN
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