



WEB COPY



W.P.No. 25841 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No. 25841 of 2017

and

W.M.P.Nos.27284 & 27285 of 2017

N. Selvakumar (Deceased)

2.S. Valarmathy

[P2 substituted as LR of deceased sole petitioner vide
order dated 04.08.2023

... Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Municipal Administration,
Chepauk,
Chennai – 600 005.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent issued in ROC.No.22718/2016/F1 dated 15.02.2017 and the consequential order of rejection of the Appeal Petition by the first respondent in G.O.(D) No.291, MAWS, (ME3), Department dated 19.07.2017 and quash the same and consequently direct the respondents to reinstate the petitioner in service with all consequential monetary benefits.



W.P.No. 25841 of 2017

For Petitioner : Mr. T. Ranganathan

For Respondents : Mrs. S. Anitha,
Special Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

2. Learned counsel for the petitioner submits that the first petitioner filed this writ petition and during the pendency of the writ petition, he died and the second petitioner who is the wife of the first petitioner was brought on record as LR and impleaded as petitioner No.2.

3. The first petitioner was initially appointed as Public Works Overseer on 01.08.1983 in Tiruvarur Municipality and subsequently promoted as Junior Engineer on 18.01.1984 and posted at Mannargudi Municipality. In the year 2016, the second respondent placed the petitioner under suspension vide proceedings dated 22.08.2016 and subsequently framed five charges against the petitioner under Rule 8(2) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 with the following charges: -



Charge 1:

WEB COPY

“That you Thiru N.Selvakumar, while working as Junior Engineer (Municipal) at Jayamkondam Municipality have violated the provisions made in the Bid Agreement and sanctioned advance payment to a tune of Rs.107.00 Lakh as stated in the Annexure II to the contractor before the completion of works under the improvement of Solid Waste Management Scheme at Jayamkondam Municipality”.

Charge 2:

“That you Thiru N.Selvakumar, Junior Engineer (Municipal) before the completion of works have also sanctioned advance payment to a tune of Rs.15.00 Lakh under the works of modern crematorium scheme at Jayamkondam Municipality as stated in the Annexure II to the contractor in violation of rules”.

Charge 3:

“That you Thiru N.Selvakumar, Junior Engineer (Municipal) have also sanctioned advance payment to a tune of Rs.38.00 Lakh under the implementation of works in Swachh Bharat Mission – IHLL Scheme even though works were not fully completed and found with defects as stated in the Annexure II to the contractors”.

Charge 4:

“That you Thiru N.Selvakumar, Junior Engineer (Municipal) have also failed to monitor the execution of works under Swachh Bharat Mission – IHLL Scheme, improvement of Solid Waste Management and Modern Crematorium where in several defects were noticed during the inspection. Thus being a Junior Engineer (Municipal), you have violated the provisions laid down in the



Engineering Manual for urban local bodies in Tamil Nadu and sanctioned advance payment in violation of the provisions laid down in the Tamil Nadu Tender Transparency Act, 1988”.

Charge 5:

“That you Thiru N.Selvakumar, Junior Engineer (Municipal) in violation of the rules has caused revenue loss to the Municipality. Thus you acted against the interest of the Municipality have failed to maintain absolute integrity and devotion to duty being a Municipal Servant and thus have violated rule 21 of the Municipal Servants Conduct Rules”.

4. The petitioner has submitted a detailed Defence Statement on 25.10.2016. The second respondent without considering his Defence Statement in proper perception has issued proceedings in Roc.No.22178/2016/F1 dated 20.09.2016 by appointing the Enquiry Officer to enquire into the charges framed against the petitioner. The Enquiry Officer has conducted the enquiry and he submitted report on 02.01.2017. In the enquiry report, the Enquiry Officer noted that all five charges are held proved. The enquiry report was communicated to the petitioner on 03.01.2017. On 02.02.2017, the petitioner submitted his further explanation on the findings of the Enquiry Officer. The second respondent without considering the facts and explanation submitted by the petitioner, without examining the materials, the second respondent issued proceedings in Roc.No.22178/2016/F1 dated 15.02.2017 imposing the penalty of “punishment of removal of service”. As the order of punishment of



removal of service issued by the second respondent is without considering the facts and explanation submitted the petitioner properly and no reasons are assigned for imposing such major punishment, aggrieved by the same, the petitioner has preferred an appeal before the first respondent on 09.03.2017.

5. Learned counsel for the petitioner would submit that the first respondent also without looking into the facts and without considering the grounds raised in the appeal, in a mechanical way confirmed the order of the second respondent by dismissing the appeal. The learned counsel for the petitioner further submits that the enquiry officer at the back of the petitioner recorded the statements which is impermissible under law. The main ground raised by the learned counsel for the petitioner is that the order impugned in this writ petition issued by the first respondent is liable to be quashed on the ground that the said order issued by the first respondent in G.O.(2D) No.291, MAWS Department, dated 19.07.2017 has not been properly authenticated by the first respondent. It is submitted that the rejection of Appeal Order should be signed only by the Appellate Authority and communicated to the Accused Officer. This provision has already been incorporated by amending the provisions in para 339 of the Secretariat Office Manual as per the orders issued in G.O.(Ms) No.97, P and AR, Department, dated 21.08.2022. Relying on the said G.O., the learned counsel for the petitioner would submit that the impugned order



W.P.No. 25841 of 2017

passed by the first respondent is incurably defective and non-est in law and sought to allow the writ petition.

6. The second respondent has filed counter affidavit. Though several averments are made in the counter affidavit by reproducing the facts of the case leading to passing the punishment order by the original authority and the order of dismissal of the appeal by Appellate Authority, there is no specific answer to the ground raised by the petitioner with regard to applicability of G.O.(Ms) No.97, P & AR Department dated 21.08.2002.

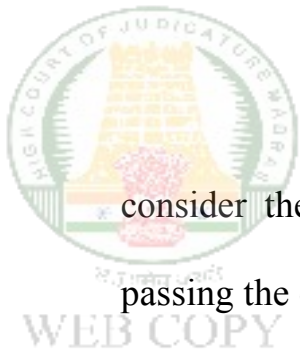
7. Learned Special Government Pleader appearing for the respondents contend that the petitioner has filed the present writ petition with an ulterior motive to get orders from this Court to benefit and sought to dismiss the writ petition.

8. Having heard the submissions of the respective counsel and upon careful perusal of the materials available on record, it appears that the main charge levelled against the petitioner is that the petitioner has violated the provisions for disbursing the advance payment to the Contractors and acted against the interest of the municipality with an ulterior motive.



9. Learned counsel for the petitioner would submit that it is the practice in all municipalities to complete the works before the rainy season to felicitate the Contractor to complete the works disbursing the advance payment to them is a practice in the Government Departments in the interest of the public. Learned counsel further contends that the advance payment made to the Contractors could be recovered from the amounts to be paid to them in various bills and the same was done in the present case also. Learned counsel submits that absolutely there is no any loss to the Municipal Corporation or to the Government. The intention of the petitioner is that only to see the works to be completed within time frame in the interest of the public. It is an admitted fact that in the counter affidavit filed by the respondents what is the loss caused to the Municipal Corporation or to the Government is not stated clearly except stating that the petitioner has violated the provisions of law. There is also no any averment in the counter affidavit to state whether any amount has been recovered or the respondents could not able to recover the advance payment made to the Contractors by the petitioner. Infact, all these aspects brought to the notice of the second respondent in his explanation submitted to the show cause notice and also after furnishing copy of the enquiry report.

10. Considering all these facts, it appears that there is some substance in the contention of the learned counsel for the petitioner that the second respondent did not



consider the explanation submitted by the petitioner in proper perspective before passing the order of punishment for removal of service.

11. The contention of the petitioner is that the first respondent who is the Appellate Authority, has to sign the order in Appeal. There is no proper and acceptable reply from the respondents on this aspect. Admittedly, the State Government issued G.O.(Ms) No.97, Personnel & Administrative Reforms Department dated 21.08.2002 making amendment to para 339(ii) of Secretariat Office Manual. The said amendment came into force with effect from 30.10.2001. The amendment is extracted herein under: -

“In disciplinary cases where the Government or the Secretary of the administrative department is the disciplinary or appellate or revisional or reviewing authority, the fair copy intended to the accused officer or officers shall be signed by the Secretary of the administrative department concerned. However, copies of those communications marked to other officials or Departments shall be signed by an officer of the rank of Under Secretary or above. In other cases, the fair copy shall be signed by the officer who has passed the order as the disciplinary or appellate or revisional or reviewing authority.”

12. A bare perusal of the said amendment, it is clear that in disciplinary cases where the Government or the Secretary of the Administrative Department is the



disciplinary or appellate or revisional or reviewing authority, the fair copy intended to the accused officer or officers shall be signed by the Secretary of the Administrative Department concerned. As per this amendment, the fair copy shall be signed by the officer who has passed the order as the disciplinary authority or appellate or revisional or reviewing authority.

13. It is an admitted fact that in the present case, the order impugned in this writ petition which is passed by the first respondent is not signed by him which is against the procedure provided under G.O.(Ms) No.97, P & AR Department dated 21.08.2002. As such, this Court left with no other option except to accept the contention of the petitioner that the impugned order passed by the first respondent is incurably defective and non-est in law. Beside this, considering the facts and circumstances of the case, the punishment imposed against the petitioner for removal of service is also appears to be disproportionate as per the facts and circumstances of the case.

14. For the reasons stated above, in the considered opinion of this Court, the order passed by the second respondent in Roc.No.22718/2016/F1 dated 15.02.2017 is liable to be set aside as it is passed without assigning reasons and also the punishment imposed against the petitioner is disproportionate and the order passed



W.P.No. 25841 of 2017

by the first respondent in Appeal vide G.O.(D) No.291, MAWS (ME3) Department dated 19.07.2017 is liable to be set aside as it is passed without following the G.O.(Ms) No.97, Personnel and Administrative Reforms Department dated 21.08.2002.

15. Accordingly, the Writ Petition is allowed with the following directions: -

i. The order of the second respondent issued in Roc.No.22718/2016/F1 dated 15.02.2017 and consequential order issued by the first respondent in G.O.(D) No.291, MAWS, (ME3) Department dated 19.07.2017 are hereby quashed.

ii. The respondents are directed to settle all the benefits for which the second petitioner is entitled under the relevant Rules being the legal heir of the first petitioner, within a period of six weeks from the date of receipt of copy of this order.

16. Consequently, connected miscellaneous petitions are closed. No costs.

22.04.2024

Index :Yes/No

Neutral Citation :Yes/No

AT



W.P.No. 25841 of 2017

To

1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Municipal Administration,
Chepauk,
Chennai – 600 005.



WEB COPY



W.P.No. 25841 of 2017

BATTU DEVANAND, J.

AT

W.P.No. 25841 of 2017 and
W.M.P.Nos.27284 & 27285 of 2017

22.04.2024