



W.P.(MD).No.3315 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.3315 of 2021

and

W.M.P(MD)Nos.12045 & 12668 of 2021

R.Selvamani

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Govt.of Tamil Nadu,
Municipal Administration and Water Supply
(ME.4) Department,
Secretariat, Chennai.

2.The Commissioner / Director of
Municipal Administration,
Chepauk,
Chennai-600 005.

3.The Director of Local Fund Audit,
Chennai-600 108.

4.The Municipal Commissioner,
Kuzhithurai Municipality,
Nagercoil.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st Respondent`s G.O.(D) No.13, dated 20.01.2021, by giving



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punishment of compulsory retirement to the petitioner from the cadre of Overseer, Kuzhithurai Municipality ie. 4th Respondent and consequential relieving order of 4th Respondent in Na.Ka.No.730/2020/¶1.A.Aa.No.01/2021, dated 11.02.2021 and quash the same and consequently direct the 1st respondent to direct the 4th respondent to reinstate the petitioner in service in the petitioner's original place and to provide the petitioner all his service benefits within the period as stipulated by this Court.

For Petitioner : Mr.Haja Mohideen
For R1 – R3 : Mr.D.Gandhiraj
Special Government Pleader
For R4 : Mr.P.Athimoolapandian

ORDER

The present writ petition has been filed to call for the records of the 1st Respondent's G.O.(D) No.13, dated 20.01.2021, by giving punishment of compulsory retirement to the petitioner from the cadre of Overseer, Kuzhithurai Municipality ie. 4th Respondent and consequential relieving order of 4th Respondent in Na.Ka.No.730/2020/¶1.A.Aa.No.01/2021, dated 11.02.2021 and quash the same and consequently direct the 1st respondent to direct the 4th respondent to reinstate the petitioner in service in the petitioner's original place and to provide the petitioner all his service benefits.



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2. The petitioner having a qualification in Diploma in Civil Engineering, joined in the Nominal Muster Roll as Technical Assistant on 14.05.1990 in the Nagercoil Municipality. During 2002, he completed his B.E and thereafter, he was transferred to Colachel Municipality and worked as Draughtsman during 2005-06. During 2014, he was transferred back to Nagercoil Municipality in the cadre of Overseer. Thereafter, subsequently he was transferred to Colachel in the cadre of Overseer on 19.04.2017 wherein he served till 22.03.2019 that is the date of the compulsory retirement.

3. The petitioner was visited with a charge memo, dated 24.10.2010 by the proceedings of the 2nd respondent for 3 counts of charges, following which an Enquiry Officer was appointed to conduct enquiry and the Enquiry Officer had concluded his enquiry by a report, dated 31.07.2014 as that all the 3 counts of charges as against the petitioner are not proved. Even thereafter, the impugned order of punishment of compulsory retirement came to be passed by the 1st respondent vide G.O.(D).No.13, dated 20.01.2021 by giving punishment of compulsory retirement from the cadre of Overseer, Kuzhithurai Municipality and consequential relieving order of the Kuzhithurai Municipality, dated



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11.02.2021 came to be passed. Challenging the same, this writ petition came to be filed.

4. The learned counsel for the petitioner fully relying upon the enquiry report of the enquiry officer, namely M.Seeni Ajmalkhan, Enquiry Officer / Regional Director, Municipal Administration, Tirunelveli, dated 31.07.2014 submitted that the 1st respondent ought not to have passed the impugned order of punishment of compulsory retirement and pressed for allowing the writ petition.

5. The 1st respondent has filed a counter and the learned Special Government Pleader submitted that the Inquiry Officer has been appointed to inquire into this matter at length along with the report of Technical Committee. The Inquiry Officer has reported that the delinquent officer is not responsible for the lapse committed as the work executed by him is not under his ambit. Whereas, perusal of the report and connected records reveal that the delinquent officer has no power to execute 3 works specified in the estimate No.34/05-06, 35/05-06, the rates adopted for interior decorative arrangements is very abnormal comparing to the Public Works Department consolidated rates dated

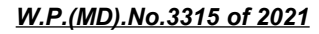


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2004-05 and the same are not followed, thereby causing excess expenditure of Rs.2,29,411/- for the both works to Nagercoil Municipality.

6. The learned counsel for the 4th respondent submitted that, the impugned order was invited by the petitioner himself and drew my attention to the order passed by this Court in W.P(MD)No.11719 of 2019 challenging G.O(D)No.137, dated 22.03.2019 by giving punishment of compulsory retirement to the petitioner at the first instance. The aforesaid case pertains to the same enquiry report, on the basis of which a punishment of compulsory retirement came to be imposed on the petitioner by the 1st respondent and the same was challenged by filing of W.P(MD)No.11719 of 2019 and this Court by an order, dated 04.12.2019 was pleased to quash the aforesaid proceedings and remand the matter back to the respondents. The operative portion of the same is extracted hereunder:

“8. In the light of the above observations, the impugned order G.O.(D).No.137, dated 22.03.2019, is set aside and the consequential order passed by the sixth respondent in Na.Ka.No.498/2019/C1, dated 22.04.2019 also stands quashed and the matter is remanded back to the first respondent for fresh consideration. During the course of such consideration, the first respondent herein shall give due opportunity to the petitioner herein to put forth his case and thereafter, pass a



7. Pursuant to the said order, the petitioner made a representation, dated 12.12.2019 requesting the Colachel Municipality to permit him to continue in his work as Overseer and provide him with all service benefits. Since the same was not considered, the petitioner has filed yet another writ petition in W.P(MD)No.425 of 2020. This Court by an order, dated 09.01.2020 has allowed the said writ petition, directing the 1st respondent to consider the petitioner's representation and pass appropriate orders within a period of six weeks. Pursuant to the same, the petitioner vide proceedings of the 2nd respondent, dated 03.04.2020 was allowed to join duty in the Municipality of Kuzhithurai. Accordingly, by an order of the 4th respondent, dated 07.04.2020, the petitioner was permitted to join as Overseer.

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his wilful disobedience to comply with the order of this Court in W.P(MD)No. 11719 of 2019, dated 04.12.2019 by not concluding the departmental proceedings within a period of 60 days. Pursuant to the filing of the said contempt petition, the 1st respondent proceeded strictly to comply with the order which culminated in the passing of impugned G.O(D)No.13, Municipal Administration and Water Supply (ME.4) Department, dated 20.01.2021, imposing a punishment of compulsory retirement from service. Accordingly, the petitioner was also consequently relieved from the cadre of Overseer by relieving order, dated 11.02.2021. Having invited trouble wantonly, the petitioner is not entitled to seek any kind of remedy before this Court and on that basis, the learned counsel for the 4th respondent categorically pressed that the writ petition should be dismissed.

9. Heard the learned counsels on either side and perused the materials available on record.

10. The learned counsel for the petitioner drew my attention to the order of the District Collector, Nagercoil, dated 02.07.2005 by which he had directed the Nagercoil Municipality Administration, on inspection of Christopher Bus



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Stand at Vadasery and Anna Bus Stand at Meenakshipuram, to undertake the work of Vadasery Christopher Bus Stand on a war footing basis and complete the same by 20.07.2005. Considering the urgency as directed by the District Collector vide proceedings, dated 02.07.2005 due to the compulsion to complete the work within 20.07.2005, the higher authorities including the Municipal Commissioner, two of the Junior Engineers, Municipal Engineers along with the petitioner who served as Work Inspector proceeded to execute the aforesaid work without calling for tender, for which disciplinary action has been initiated by the Commissioner of Municipal Administration as against the former Municipal Commissioner one D.Sudarshan Chowdhry, former Junior Engineer one K.Latha, former Municipal Engineer D.Suresh Kumar, former Junior Engineer one S.Sukumaran and the petitioner who had been a Work Inspector. The Work Inspector neither being the Administrative Head nor being the executive authority, but only vested with the supervisory power has nothing to do with the allegations involved and even according to the counter filed by the 1st respondent, no expenditure had been specifically shown as against the petitioner's delinquency and no expenditure details being provided as incurred by the petitioner. It is only that an advance amount of Rs.5,000/- was disbursed to the petitioner, for which the petitioner had duly provided with



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all the vouchers and other necessary documents with respect to the nature of work executed by him in a supervisory capacity.

11. In view of the same, there is no delinquency on his part and only on that basis, the Enquiry Officer in his enquiry report after elaborate enquiry, had concluded in favour of the petitioner and held that all three counts of charges as unproved. However, only on the basis of the technical report of the Technical Committee constituted by the 1st respondent, as pointed out by the learned Special Government Pleader, in view of the fact that, the petitioner had executed three works, while he had no power to execute works exceeding expenditure to a tune of Rs.2,29,411/-, in the Municipality of Nagercoil, the 1st respondent has imposed a punishment of compulsory retirement, pursuant to the filing of the contempt petition in Cont.P(MD)No.391 of 2020 by the petitioner herein.

12. Having carefully gone through the entire materials before me on record, I am of the considered view that all the higher authorities who have flouted the rules of tender and have executed the work themselves were duly imposed with punishment of compulsory retirement and duly punished.



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However, the petitioner herein is only a person who was vested with a supervisory power and hence, the punishment of compulsory retirement imposed as against him shockingly disproportionate. Accordingly, the impugned orders, dated 20.01.2021 and 11.02.2021 are hereby quashed and the same is remanded back to the file of the 1st respondent for re-consideration and inflict the lesser punishment than that of the compulsory retirement in accordance with law, after giving opportunity to all the stakeholders within a period of twelve (12) weeks from the date of receipt of copy of this order.

13. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

09.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

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To

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Municipal Administration and Water Supply
(ME.4) Department,
Secretariat, Chennai.



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L.VICTORIA GOWRI, J.

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