BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.22207 of 2018

S.Balakrishnan ... Petitioner

Vs

1.The Commissioner of Municipal Administration,
Chepauk, Chennai-5.

2.The Principal Secretary to Government,
Municipal Administration and Water Supply (ME.4) Department,
Fort. St. George,
Chennai-9. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the proceedings of the second respondent in G.O.(D).No.331, Municipal Administration and Water Supply (ME. 4) Department, dated 13.08.2018, confirming the order passed by the 1st respondent in R.O.C.No. 7259/2011/V2/dated 31.03.2016.

For Petitioner : Mr.C.Godwin
For Respondents : Mr.P.T.Thiraviam
Government Advocate

ORDER

The petitioner, a retired Bill Collector was issued with a charge memo on 14.08.2011, under Rule 8(2) of Tamil Nadu Municipal Service (Discipline and Appeal) Rules 1970 on some irregularities and for his dereliction of duty. The allegation as against this petitioner is that he has caused a loss of Rs. 5,14,278/- to the Municipality that he has failed to bring to the notice of the Department of an unauthorized construction of "Anbu Illam" and also failed to collect property tax from the said Home. The petitioner has offered his explanation on 25.08.2011 as to the charges framed as against him. However, being not satisfied with the explanation offered by the petitioner, the Regional Director of Municipal Administration, Tirunelveli was appointed as an Enquiry officer and on completion of an enquiry, he has submitted his report to the Commissioner of Municipal Administration, Chennai on 21.12.2011 that the charges levelled as against this petitioner were proved. Therefore, this petitioner was directed to submit his explanation as to the proposed punishment of cut in pension of Rs.2000/- per month, for a period of three years. The petitioner has submitted his further explanation on 16.12.2015. However, the proposed punishment was confirmed by the Commissioner of Municipal Administration, vide his proceedings in Roc.No.7259/2011/V2, dated 31.03.2016. Challenging the same, the petitioner has filed an appeal before the Principal Secretary to Government, Municipal Administration and Water Supply (ME.4) Department/the second respondent herein and the same was rejected by the first respondent in G.O(D) No.331, Municipal Administration and Water Supply (ME 4) Department, dated 13.08.2018. As against the same, the petitioner is before this Court with this writ petition.

2.The learned counsel appearing for the petitioner submits that this petitioner has already informed about the construction of "Anbu Illam" to the Town Planning Inspector and he has also issued a notice to the said Anbu Illam on 26.12.2007. The learned Counsel also claimed that this Anbu Illam has constructed a building for the purpose of running a School for "Hearing and Speech impaired children" after obtaining necessary permission from the Government. According to the learned Counsel, the said Home has made a request to the Nagarcoil Municipality for exemption of payment of property tax, as it was established for charitable purpose. He further submits that "Anbu Illam" has filed a writ petition before this Court, as against the demand notice issued by the Municipality in WP(MD) No.12767 of 2010 and the same was allowed in favour of the Home that they have to be exempted from payment of property tax. Therefore, the petitioner cannot be found fault that he has failed to collect any tax from the said home and thereby, there is no question of revenue loss to the Municipality. If any tax has to be collected from the said Home, the Municipality can very well recover it at any point of time from the said Home and they have also recovered the amount subsequently. Hence, the findings of the enquiry officer that there was a loss to the Municipality is perverse. Therefore the order impugned in this writ petition is liable to be set aside.

3.The learned Government Advocate appearing for the respondents submits that the said Anbu Illam was constructed in the year 2007 and at that time, the petitioner was the Bill Collector in that area. He failed to report about the construction of the said Home and also failed to collect property tax from the said Home. Later, it was noticed by the Town Planning Inspector and a notice was issued to the Home on 26.12.2007, which was challenged by the said Home in WP(MD) No.12767 of 2010 and it was allowed by this Court, by order dated 05.04.2017. However, challenging the order passed by this Court in WP(MD) No.12767 of 2010, a writ appeal in WA(MD) No.187 of 2018 has been filed by the Municipality and it was allowed in favour of the Municipality on 06.07.2021. The learned Government Advocate further submits that the tax payable by the said Home comes around Rs.2,00,000/- and since this petitioner has failed to collect the tax in between 2007 and 2010, without any instructions, he was issued with a charge memo for his dereliction of duty and he was also imposed with the punishment. Therefore, there is no need to interfere with the order impugned in this writ petition.

4.This Court considered the rival submissions made and also perused the materials placed on record.

5.The petitioner, while he was working as a Bill Collector in Municipality was issued with a charge memo on 14.11.2011 on certain irregularities; an enquiry was conducted after receiving his explanation from him on 25.08.2011 and a punishment of cut in pension of Rs.2000/- per month, for a period of three years has also been imposed. The allegation as against this petitioner is that the petitioner has failed to inform about the construction of a building by the said Anbu Illam within their limits and also failed to collect property tax from the said Home. The factual matrix, whether the Anbu Illam is liable to be taxed or not cannot be decided in this writ petition as this writ petition is filed as against the order of punishment imposed on the petitioner. More over, the writ appeal preferred by the Municipality as against the order passed by this Court in favour of the said Anbu Illam has been decided by the Division Bench of this Court, in favour of the Municipality.

6.The scope of judicial review in matters relating to disciplinary proceedings is very limited. It is meant to ascertain as to whether due process was followed and whether a fair opportunity was accorded to the employee concerned. The power of Courts is limited to reviewing the decision making process, rather than the merits of the decision itself. This is to ensure fairness in treatment and not the fairness of the conclusion. The Courts should not interfere with the findings of the fact arrived at in the departmental enquiry proceedings, except in cases of mala fide or perversity. The petitioner has not made out any case that there was violation in conducting the disciplinary proceedings as against this petitioner. This Court is not inclined to entertain this writ petition, in the absence of any procedural irregularities in conducting the trial.

7.In view of the foregoing discussions and reasons, this Court is not inclined to interfere with the order of punishment. Accordingly, this writ petition is dismissed. No costs.

12.12.2024

NCC:Yes/No
Index:Yes
vrn

To

1.The Commissioner of Municipal Administration,
Chepauk, Chennai-5.

2.The Principal Secretary to Government,
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B.PUGALENDHI, J.

vrn

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W.P(MD)No.22207 of 2018

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