



W.P.(MD)No.9818 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2024

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.9818 of 2017

and

W.M.P.(MD).Nos.7523 to 7525 of 2017

R.Pandaram

... Petitioner

Vs.

1.The Commissioner of Municipal Administration,
Ezhilagam,
Chepauk, Chennai-600 005.

2.The Commissioner,
Tirunelveli Corporation,
Tirunelveli,
Tirunelveli District.

3.The Assistant Commissioner of Corporation (Regional Office),
Palayamkottai,
Tirunelveli Corporation,
Tirunelveli,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the second respondent in Na.Ka.No. 5969/2011/C2 dated 25.02.2017 in dismissing the appeal petition preferred by the petitioner against the dismissal order of the second respondent in his order



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dated 09.05.2013 and confirming the dismissal order dated 5969/2011/C2 dated 09.05.2013 and quash the same as illegal and directing the respondents to reinstate the petitioner with back wages.

For Petitioner : Mr.S.Sarvagan Prabhu

For R-1 : Mr.R.Suriya Ananth,
Additional Government Pleader

For R-2 & R-3 : Mr.Aayiram K.Selvakumar,
Standing Counsel

ORDER

Heard Mr.S.Sarvagan Prabhu, learned counsel appearing for the petitioner, Mr.G.Suriya Ananth, learned Additional Government Pleader appearing for the first respondent and Mr.Aayiram K.Selvakumar, learned Standing Counsel appearing for the respondent Nos.2 and 3.

2. The petitioner has challenged the impugned orders passed by the second respondent, dated 09.05.2013 and 25.02.2017 respectively and on the impugned orders, the petitioner has been dismissed from service. The petitioner was working as 'Sanitary Worker' in the second respondent Corporation. In the disciplinary proceedings initiated against the petitioner, a charge has been framed against him that for thirty days he was unauthorizedly absent from



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service. In the disciplinary proceedings, the petitioner participated before the Enquiry Officer and the Enquiry Officer had submitted a report holding that the charge framed against the petitioner has been proved. Based on the same, the second respondent passed the impugned order, dated 09.05.2013, dismissing the petitioner from service after rejecting the petitioner's explanation. Aggrieved by the same, a statutory appeal was filed by the petitioner before the Appellate Committee, Tirunelveli Corporation. Even though the appeal was filed before the Appellate Committee, the second respondent, who is the member of the Appellate Committee, has once again passed an order in the Appeal, dated 25.02.2017, confirming the earlier order, dated 09.05.2013, upholding that the petitioner has to be dismissed from service. Aggrieved by the impugned orders dated 09.01.2013 and 25.02.2017 passed by the second respondent, this Writ Petition has been filed.

3. The petitioner has raised several grounds in this Writ Petition and has categorically stated that only due to the fact that the petitioner was not maintaining good health and due to family circumstances, he did not attend the duty for a period of thirty days which is a subject matter of the charge framed against the petitioner. The petitioner has also stated that the second respondent has passed the impugned orders without adhering to the principles of natural



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justice as no opportunity was granted to the petitioner in the enquiry proceedings and no proper explanation was given by the petitioner in the enquiry proceedings and he was also not afforded proper opportunity to explain, under which circumstances, he did not attend the duty for a period of thirty days before the second respondent prior to passing of the impugned orders.

4. Learned counsel appearing for the petitioner submitted that even though the appeal was filed by the petitioner aggrieved by the order dated 09.05.2013 passed by the second respondent, the Appellate Committee ought to have passed an order in the appeal, but, instead, the second respondent has once again passed the order in the appeal, though he had passed the order dated 09.05.2013 earlier which was the subject matter of the statutory appeal and therefore, by total non application of mind, the order dated 25.02.2017 has been passed by the very same second respondent, who had passed the earlier order, dated 09.05.2013, dismissing the petitioner from service.

5. A counter affidavit has been filed by the second respondent in this Writ Petition. They denied the allegations of the petitioner as contended in the affidavit filed in support of this Writ Petition. They would submit that even prior to the dismissal order based upon the said charge framed against the



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petitioner, the petitioner had remained absent from 1997 to 2011 unauthorizedly for a period of 2468 days. They would submit that the petitioner has not approached this Court with clean hands. The respondents have also stated that the enquiry conducted in the disciplinary proceedings initiated against the petitioner has been conducted properly and there is no violation of principles of natural justice.

6. Learned Standing Counsel appearing for respondent Nos.2 and 3 would submit that the second respondent has passed the subsequent order dated 25.02.2017 which is also impugned in this Writ Petition only based on the authority given to him by the first respondent and therefore, there is no infirmity in the order passed in the appeal filed by the petitioner aggrieved by the order dated 09.05.2013. In fact, as seen from the proceedings available on record, the first respondent had only directed the Appellate Committee to pass final orders on the petitioner's appeal. Despite the same, the second respondent once again has passed the order, dated 25.02.2017 in the appeal filed by the petitioner which is incorrect and has been passed by total non application of mind to the fact that the very same second respondent had passed the earlier order dated 09.05.2013 dismissing the petitioner from service.



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7. This Court without going into the merits of the respective contentions would notice from the impugned orders that the very same second respondent has passed both the impugned orders, viz., the order dated 09.05.2013 and the order dated 25.02.2017. The second respondent may be a member of the Appellate Authority before whom the statutory appeal was filed by the petitioner aggrieved by the order dated 09.05.2013 passed by the second respondent. But the order ought to have been passed by the Appellate Committee and not by the second respondent in his individual capacity as a Commissioner, Tirunelveli Corporation.

8. It is also not appropriate on the part of the first respondent who have authorised the second respondent to pass an order in the appeal filed by the petitioner dated 25.02.2017. The officer who had passed the order dated 09.05.2013 cannot once again pass the order in the appeal dated 25.02.2017. As observed earlier, the order ought to have been passed by the Appellate Committee which comprises of a Panel of members, but, the impugned order dated 25.02.2017, has been passed by the second respondent in its individual capacity as a Commissioner, Tirunelveli Corporation and he was the Officer, who had passed the earlier order, dated 09.05.2013, which is the subject matter of appeal in the appellate proceedings initiated by the petitioner.



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9. The very object of an appeal will be defeated if the same officer passes the order in the appeal as well. Therefore, without going into the merits of the respective contentions, only on the ground that the order in the appeal has been passed by the very same second respondent though he may be a member of the Appellate Committee, is erroneous and has been passed by total non application of mind to well settled judicial principles. Necessarily, the impugned order of the second respondent, dated 25.02.2017, has to be set aside by this Court.

10. For the aforementioned reasons, the matter has to be remanded back to the Appellate Committee of the Tirunelveli Corporation and a direction has to be issued to the said Appellate Committee to dispose of the statutory appeal filed by the petitioner aggrieved by the order, dated 09.05.2013 passed by the second respondent, within a time frame to be fixed by this Court.

11. In the result, the impugned order of the second respondent dated 25.02.2017 is hereby quashed and the matter is remanded back to the Appellate Committee / Tirunelveli Corporation and the Appellate Committee is directed to pass final orders on merits and in accordance with law on the petitioner's statutory appeal filed by the petitioner aggrieved by the order, dated 09.05.2013,



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passed by the second respondent, within a period of twelve weeks from the date of receipt of a copy of this order. The Appellate committee, before passing the final order pursuant to the direction issued by this Court, shall afford a fair opportunity of hearing to the petitioner.

12. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

13.08.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
TSG

To

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Chepauk, Chennai-600 005.
- 2.The Commissioner,
Tirunelveli Corporation,
Tirunelveli,
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- 3.The Assistant Commissioner of Corporation (Regional Office),
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ABDUL QUDDHOSE, J.

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