



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2025

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.16782 of 2014

and

M.P.No.1 of 2014

A.Sivakumaran

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai – 600 009.

2. Tamil Nadu Housing Board (Board Secretariat),
Nandanam, Chennai – 600 035.

3. Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai – 600 035.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the second respondent in Proceedings No.DC-1/82528/ 2004 dated 09.03.2007 and consequential order dated 02.05.2014 passed by the first respondent in Letter No.24370/2007-12 and quash the same further direct the Respondents to pay all the benefits and the recovered amount to the petitioner within stipulated period as fixed by this Hon'ble Court.



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For Petitioner : Mr.S.Parthasarathy
For R1 : Mr.V.Nanmaran,
Additional Government Pleader
For R2 & R3 : Mr.V.Logesh,
Standing Counsel for TNHB
ORDER

This writ petition has been filed by the petitioner, aggrieved by the order passed by the second respondent in Proceedings No.DC-1/82528/ 2004 dated 09.03.2007, and the order passed by the first respondent in Letter No.24370/2007-12 dated 02.05.2014, confirming the order dated 09.03.2007 passed by the second respondent.

2. The brief facts that are relevant for disposal of this writ petition are as under:-

2.1. While the petitioner was working as 'Assistant Engineer, Nandanam Division', a charge-memo dated 03.08.2003, was issued containing two charges. The said charges reads as under:-

“Charge No.1:- That the said Thiru A.Sivakumaran, Assistant Engineer, Nandanam Division, while functioning as Assistant Engineer, Defunct Sites and Services Division-II (now Anna Nagar Division) during the period from 08.09.1992 to 10.11.1997 has procured materials for Tirur S&S Scheme in excess over actual requirement, which has



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resulted in dead stock.

Due to the above purchase, the dead stock materials was disposed only for a value of Rs.1,31,600.00 as against the book value of Rs.6,32,821.61 resulting in loss of Rs.5,01,221.61 to the Board for which he is responsible.

Charge No.2:- *That by his above action he has violated Section 20 of Tamil Nadu Housing Board Officers and Servants Conduct Regulation 1963 and Tamil Nadu Housing Board Service Regulation 32(A) of 1969."*

2.2. In terms of the said charges, the allegation is that the petitioner, while working as 'Assistant Engineer, Defunct Sites and Services Division-II' during the period from 08.09.1992 to 10.11.1997, he procured materials for 'Tirur S&S Scheme' in excess over actual requirement, resulting in dead stock, which was disposed of for a value of Rs.1,31,600/-, as against the book value of Rs.6,32,821.61/- resulting in loss of Rs.5,01,221.61/- to the respondent Board.

2.3. In response to the said charge-memo, the petitioner submitted an explanation stating that during the relevant period i.e., from 08.09.1992 to 10.11.1997, the petitioner never worked in the place where the alleged excess



materials were procured, and further contending that the petitioner was allocated work in 'Perumal Pattu Scheme' and not in 'Tirur S&S Scheme'.

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In spite of the said explanation, an Enquiry Officer was appointed to conduct an enquiry into the matter, and accordingly, the Enquiry Officer submitted his report holding that the charges against the petitioner as 'not proved'. However, the third respondent herein, having disagreed with the findings of the Enquiry Officer, communicated the report of the Enquiry Officer together with his dissenting view.

2.4. In the said dissenting view, the third respondent held the charges as 'proved' on the ground that the petitioner has failed to dispose of the surplus materials, if any, without delay on completion of the work, as per Paragraph 186 of the Works Code and also on the ground that the petitioner, during his tenure from 08.09.1992 to 10.11.1997, had not taken timely action to dispose of the surplus materials. Thereby, the surplus materials have become unserviceable due to rusting and non-utilization resulting in dead stock. Thereafter, the petitioner submitted his objections on the dissenting view, and on considering the same, the third respondent passed an order in Proceedings bearing No.DC1/23577/2003 dated 29.10.2004, imposing the punishment of



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“stoppage of increment for a period of five years with cumulative effect exclusive of periods, if any, spent on leave besides ordering for recovery of an amount of Rs.2,50,611/- from the petitioner”. Aggrieved by the said order dated 29.10.2004, the petitioner preferred an appeal before the second respondent on 29.12.2004. The second respondent, having entertained the appeal filed by the petitioner, passed an order in Proceedings No.DC-1/82528/2004 dated 09.03.2007, revising the punishment to “stoppage of increment for a period of two years without cumulative effect, besides recovery of Rs.2,50,611/- from the salary of the petitioner”.

2.5. Aggrieved thereby, the petitioner filed further appeal before the first respondent on 11.07.2007. However, during the pendency of the said appeal, the petitioner retired from service on 31.07.2013. It was thereafter, the petitioner approached this court by filing W.P.No.10687 of 2014, and this court disposed of the said writ petition by an order dated 02.05.2014, directing the first respondent to pass orders on the further appeal filed by the petitioner. It was pursuant to the said direction of this court, the first respondent disposed of the appeal filed by the petitioner by passing an order in **கடித எண்.24370/வீவ.1(1)/2007-12** dated 02.05.2014, rejecting the appeal. It is aggrieved by



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the said order, confirming the orders dated 09.03.2007 passed by the second respondent, the petitioner approached this court by filing the present writ petition.

3. Heard Mr.S.Parthasarathy, learned counsel for the petitioner, Mr.V.Nanmaran, learned Additional Government Pleader appearing for the first respondent and Mr.V.Logesh, learned Standing Counsel for the respondents 2 and 3.

4. As already noted above, the first charge that was levelled against the petitioner is that the petitioner, while functioning as 'Assistant Engineer' during the period from 08.09.1992 to 10.11.1997, the petitioner has procured materials for the 'Tirur S&S Scheme' in excess over actual requirement, resulting in dead stock and thereby causing loss to the respondents. The second charge is a consequential charge depending upon the first charge. The Enquiry Officer admittedly held both the charges as 'not proved'. However, the third respondent herein, while communicating the report of the Enquiry Officer, also communicated his dissenting view, stating that the petitioner



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failed to dispose of the surplus materials, if any, without any delay on completion of the work as per Paragraph 186 of the Works Code. Failure to dispose of the surplus materials is not the charge levelled against the petitioner, as is seen from the charge-memo dated 03.08.2003. But the charge that was levelled against the petitioner in Charge No.1 was held 'proved' by the third respondent on the ground that the petitioner failed to dispose of the surplus materials without any delay on completion of the work.

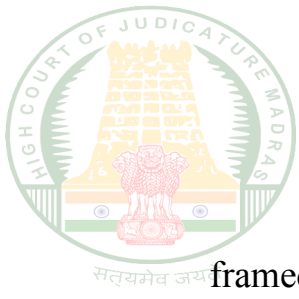
5. Thus, on the face of the dissenting note and the conclusion arrived at by the third respondent, it is evident that the third respondent held the Charge No.1 as 'proved' basing upon a finding which is alien to the charge that was levelled against the petitioner in Charge No.1. There was no opportunity afforded to the petitioner to answer the charge that the petitioner failed to dispose of the surplus materials without any delay and no enquiry was conducted in respect of the said allegation. Unless and until a specific charge is framed against the petitioner and the procedure that is required to be followed in terms of the Discipline and Appeal Rules is followed and sufficient opportunity was afforded to the petitioner, no conclusion can be arrived at by the third respondent nor any punishment can be imposed on the



petitioner basing upon such allegation, which does not form part of the charge-memo.

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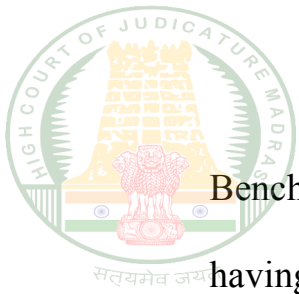
6. In the instant case, the petitioner was imposed with a punishment as noted above basing upon a conclusion arrived at by the third respondent, which is not the subject matter of the charge-memo at all. When the petitioner filed an appeal against the order passed by the third respondent before the second respondent/ Board, the second respondent. Board, though modified the punishment as noted above, has failed to apply its mind to the contentions raised by the petitioner in his appeal, whereby he categorically stated that the petitioner was not the Assistant Engineer concerned at the time when the materials were procured, as alleged in the charge. The second respondent, without looking into the said crucial aspects, proceeded to pass an order dated 09.03.2007, in a mechanical manner, though revising the punishment and imposed a lesser punishment than the punishment that was imposed by the third respondent. When the petitioner filed further appeal against the said order dated 09.03.2007, the same was also metted with the same treatment by the Respondent No.1.



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7. From the above, it is evident that the charges that were actually framed against the petitioner were held 'not proved' by the Enquiry Officer and the dissenting view that was communicated by the third respondent holding the charges levelled against the petitioner as 'proved' is not basing upon the allegations levelled against the petitioner in the charge-memo, but on certain extraneous conclusions arrived at by the third respondent, which are not the subject matter of the charge at all. Therefore, the entire disciplinary proceedings that were concluded by the third respondent vitiates and suffers from the vice of violation of principles of natural justice. When the same was complained against by the petitioner by filing an appeal and further appeal, the respondents 1 and 2 also failed to appreciate the matter in proper perspective and erroneously ignored the contentions and stand of the petitioner.

8. As the dissenting view and the conclusion arrived at by the third respondent and the charges are found to be wholly unsustainable, the impugned order passed by the second and third respondents, which are impugned in this writ petition also cannot be sustained. It is also necessary to notice that under similar circumstances, when an identical charge, dissenting view and final orders were passed by the third respondent, a Co-ordinate



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Bench of this court in W.P.No.15998 of 2005 and W.P.No.19225 of 2007, having examined the matter in detail, allowed the said writ petitions by common order dated 30.10.2012 and in the light of the reasons assigned herein above and for the reasons assigned in the said common order dated 30.10.2012 passed by a Co-ordinate Bench of this court, the impugned orders bearing Proceedings No.DC-1/82528/ 2004 dated 09.03.2007, and Letter No.24370/2007-12 dated 02.05.2014, cannot be sustained and accordingly, they are hereby quashed.

9. The respondents are further directed to refund the amount of Rs.2,50,611/- that was recovered from the petitioner together with interest at the rate of 6% per annum with effect from 31.07.2013 together with the amounts that are due and payable to the petitioner consequent upon the quashing of the punishment of 'stoppage of two increments without cumulative effect', as expeditiously as possible, at any rate within a period of two months from the date of receipt of a copy of this order.

10. Accordingly, the writ petition is allowed. No costs. Connected miscellaneous petitions, if any, shall stand closed.



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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Secretary to Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai – 600 009.
2. Tamil Nadu Housing Board (Board Secretariat),
Nandanam, Chennai – 600 035.
3. Managing Director,
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MUMMINENI SUDHEER KUMAR, J.

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