



W.A.No.668 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2025

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE Dr. JUSTICE A.D. MARIA CLETE

W.A.No.668 of 2023

AND

C.M.P.No.6659 of 2023

1.The State of Tamil Nadu
Rep. by its Secretary to Government
Municipal Administration & Water Supply Department
Fort St. George, Chennai 600 009

2.The Director of Town Panchayats
Kuralagam, Chennai 600 108

3.The District Collector
Vellore District, Vellore

.. Appellants

Vs.

L.Dhamodharan

.. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 08.10.2021 passed in W.P.No.28338 of 2019.

For Appellants : Mr.R.Neelakandan
Additional Advocate General
Assisted by Mr.C.Selvaraj
Additional Government Pleader

For Respondent : Mr.K.Jenitha



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JUDGMENT

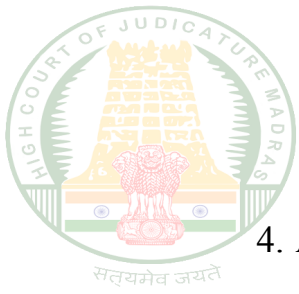
(Delivered by R.SURESH KUMAR, J.)

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This intra-court appeal has been directed against the order dated 08.10.2021 passed by the writ Court in W.P.No.28338 of 2019.

2. The respondent who was working as a Bill Collector was superannuated on 31.10.2012. Just one day prior to his superannuation *i.e.*, on 30.10.2012, a charge memo dated 30.10.2012 was served on him, where two charges were framed. Based on the said two charges, inquiry was conducted under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, (in short “ the said Rules”).

3. After inquiry, since these two charges were held proved against the respondent/writ petitioner, the disciplinary authority *i.e.*, the District Collector, by order dated 31.03.2016, imposed the punishment of stoppage of two increments and recovery of loss by deducting one-third from the Death-Cum-Retirement Gratuity (DCRG).

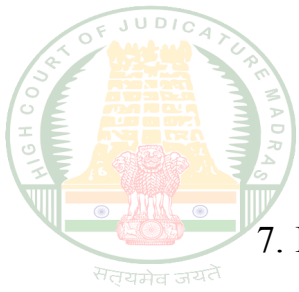


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4. As against the said punishment awarded against him, the respondent/writ petitioner had preferred statutory appeal to the 2nd appellant *i.e.*, the Director of Town Panchayats, who, instead of considering the appeal filed by the respondent/writ petitioner, either to set aside or reduce the punishment, by order dated 27.07.2018, enhanced the punishment *i.e.*, imposed the maximum punishment of dismissal from service, as against only the said writ petition was filed which was allowed by the impugned order.

5. Heard the learned Additional Advocate General appearing on behalf of the appellants and the learned counsel appearing for the respondent/writ petitioner.

6. The learned Additional Advocate General would submit that insofar as the enhancement of punishment is concerned, the appellate authority is entitled to make such an enhancement, provided, based on the proven charges as per the Inquiry Officer's report, if the adequate punishment is in commensurate with the proven charges. Such a statutory power vested with the appellate authority since has been exercised in this case, which cannot be found fault with, he contended.



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7. Even though a notice was sent to the respondent/writ petitioner to appear before the appellate authority, he did not appear and that would not make him entitle to take a defence that Rule 23 of the said Rules had not been followed by the appellate authority. Since on that ground, the order impugned before the writ Court imposing the enhanced punishment of dismissal from service against the writ petitioner, was set aside by the writ Court, that approach, according to the learned Government Advocate of the writ Court is erroneous. Hence, he seeks the indulgence of this Court against the order passed by the writ Court.

8. We have also heard the learned counsel appearing for the respondent/writ petitioner, who supports the order which is impugned herein.

9. We have gone through the impugned order passed by the writ Court.

10. Insofar as the proven charges are concerned, whether the respondent/writ petitioner is liable to be punished, is not the question before the writ Court, as the punishment was already awarded by the disciplinary authority, viz., stoppage of two increments and recovery of loss by deducting one-third from DCRG. That



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according to the writ Court, the punishment is in commensurate with the proven

WEB charges.

11. As against the said punishment or penalty when the employee preferred statutory appeal, the appellate authority, even though is empowered to enhance the punishment, the procedure was to be followed in such a case contemplated under Rule 23 of the said Rules, in fact, which has been extracted in paragraph 22 of the impugned order.

12. In clause (iii) of Rule 23 of the said Rules, it is made clear that no order imposing an enhanced penalty would be made in any other case, unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (a) of Rule 17 of making such representation against the penalty.

13. It is of the rule which is mandatory in nature should have been followed by the appellate authority, which was not followed as found by the learned Judge in paragraph 26 of the order, which reads thus :



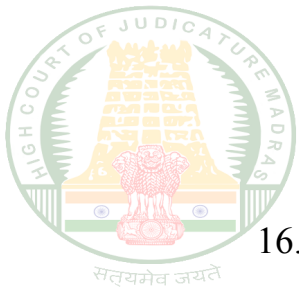
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“26. In the facts of the present case, what is evident is that the petitioner has not been given a reasonable opportunity before a proposal was made for enhancing penalty imposed by the third respondent Original Authority. Therefore, the impugned order of the second respondent cannot be sustained and is liable to be set aside.”

14. Since it is factually found that the mandatory requirement was not followed by the appellate authority while imposing an enhanced punishment, that too, to the extent of maximum punishment of dismissal from service ought not have been inflicted on the respondent/writ petitioner and therefore, the impugned order, in our considered view is to be accepted.

15. Reason being that apart from this mandatory requirement, the charge memo itself was served on the respondent/writ petitioner on 30.10.2012, nearly after a decade for the alleged misappropriation which was of the year 2006-07 *i.e.*, one day prior to his superannuation. This ground of last minute framing of charges by not allowing the employee retiring from service itself is impermissible, as per the Government Order issued in this regard.



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16. Assuming that before superannuation, the charge memo was issued and the employee was not permitted to retire and based on which, Rule 17(b) inquiry was conducted, where the charges were held proved, for which the disciplinary authority already imposed the punishment as stated *supra*, that on the appeal filed by the employee at that juncture, the appellate authority, without following the mandatory requirement under Rule 23 of the said Rules, imposed the maximum punishment of dismissal from service, which cannot be approved by this Court. Therefore, to that extent, the reasoning given and the conclusion reached by the writ Court through the impugned order setting aside the enhanced punishment of dismissal from service, cannot be said to be erroneous. At the same time, the punishment inflicted by the disciplinary authority on the respondent/writ petitioner, has to be approved.

Resultantly, this writ appeal fails and it is accordingly dismissed. No costs. Connected C.M.P. is closed.

(R.S.K., J.) (A.D.M.C., J.)
17.03.2025

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Index: Yes/No
Neutral Citation: Yes/No



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