



WP(MD)No.10915 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 07.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.10915 of 2012

M.Palaniappan

... Petitioner

Vs

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

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records relating to the proceedings made in Ref. Onapi.3/56069/2008 dated 11.07.2011 on the file of the respondent and quash the ame and directing the respondent to repay the amount recovered from the terminal benefits of a sum of Rs.64,500/- from the petitioner on his superannuation dated 31.07.2011.

For Petitioner : Mr.R.Shankar Ganesh

For Respondents : Mr.S.Suresh

ORDER

The petitioner is a retired employee of the Tamil Nadu Housing Board. He was imposed with a punishment of stoppage of increment for



WP(MD)No.10915 of 2012

three years with cumulative effect by the respondent Board vide proceedings dated 11.07.2007, which is challenged in this writ petition.

2.This writ petition was filed in the year 2012. When this writ petition was listed for hearing before Hon'ble Mr Justice S.M.Subramaniam, on 29.08.2019, there was no representation for the petitioner and therefore, this Court by order dated 29.08.2019 directed the case to be listed under the caption for dismissal on 30.08.2019. Even on that day there was no representation. Therefore, this Court by order dated 30.08.2019 dismissed the writ petition for non prosecution.

3.The petitioner has filed miscellaneous petition before this Court to restore the writ petition stating that he felt sick due to viral fever and therefore, he was not able to appear before the Court. According to him, his counsel was also out of station on 29.08.2019 and the counsel was not aware of the listing of this case on 30.08.2019 under the caption for dismissal.



WP(MD)No.10915 of 2012

4.This restoration petition was filed on 27.09.2019 within limitation. The registry has numbered this petition as WMP(MD)No.21977 of 2019. However, it has not been listed for hearing for five years. The petitioner, who filed this application to restore the writ petition has also not taken any steps to list the WMP before the Court. This Court after verifying from the Registry as to the reasons for not listing this petition for the past five years, allowed the petition, in order to provide an opportunity to the petitioner to defend his case.

5.In the meantime, the registry has destroyed the papers and therefore, this Court directed the petitioner to reconstruct this writ petition. The Registry claims that even after the repeated reminders the petitioner has not come forward to reconstruct the bundle. The learned Counsel for the petitioner claims that he is not having papers. The learned Standing Counsel appearing for the respondent Board is also not having papers. Fortunately the impugned order and the affidavit filed in support of the writ petition are available. Therefore, this Court proceeds with the available materials.



WP(MD)No.10915 of 2012

6.The order of punishment of stoppage of increment as against this petitioner is challenged herein. The petitioner was the Junior Assistant in the respondent Housing Board. Action was initiated as against this petitioner under Rule 37 of the Tamil Nadu Housing Board Service Regulations, 1969 that the petitioner had not processed the application submitted by one Mayandi Chandran.

7.The lands of one Chandramuham were acquired by the Housing Board in the year 1982. It was not utilised by the Housing Board. Therefore, the legal heir of Chandramuhum has filed writ petitions before this Court in WP.Nos.8480 and 8481 of 1997. Those writ petitions were disposed of by this Court with a direction to the Housing Board to consider the representation of the said Mayandi Chandran. Based on the orders of this Court, the complainant Mayandi Chandran has submitted a representation to the respondent Board. The petitioner / then Junior Assistant had attended the complaint. The complainant in his letter made a specific allegation that he had approached the petitioner on various days but the petitioner had not taken any steps on his representation. He had also made a specific complaint that this petitioner Junior Assistant



WP(MD)No.10915 of 2012

had demanded a sum of Rs.50,000/- for processing his application. Based on the complaint of Mayandi Chandran, an enquiry was contemplated as against this petitioner under the Tamil Nadu Housing Board Service Regulations 1969. After enquiry the petitioner imposed with a punishment of stoppage of increment for period of three years with cumulative effect.

8.The learned Counsel for the petitioner seeks further time to restore the bundle.

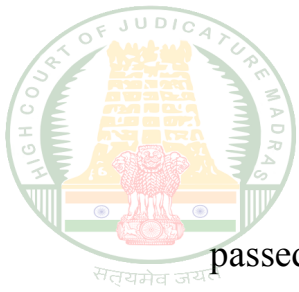
9.This Court is not inclined to keep the writ petition of the year 2012 any more. The writ petitioner had not prosecuted the writ petition in the year 2019, when it was listed for final disposal. It was listed twice, it was also listed under the caption for dismissal and even then there was no representation purposefully. Thereafter a restoration petition was filed in time. However the petitioner has not taken any steps to list the petition for the past five years. Even after the orders of this Court, the petitioner has not taken any steps to reconstruct the writ petition. Since the impugned order is available, this Court proceeds with the available



WP(MD)No.10915 of 2012

materials. The impugned order itself is a detailed order extracting the reply of the petitioner to the charge memo dated 25.06.2009. In his reply, the petitioner has taken a stand that he is not the only authority to deal with the application of Mayandi Chandaran. He has also taken another stand that the applications of similar nature are kept pending in the office at various stages. He has also taken another stand that this application would be processed only after consulting with various departments.

10.It is not known what is the role of other departments and what is the consultation required for processing an application or forwarding the application to the authority concerned. He has also taken another stand that the value of the property has raised to several times. The complainant has taken a specific plea that the petitioner has demanded a sum of Rs.50,000/- to forward his complaint. The Executive Officer has found that this petitioner has not taken any steps to process the application and he has not offered any valid reasons for not forwarding the application for two years. However, the petitioner has kept the application pending for years. This Court has also noted that this application itself was submitted pursuant to the orders of this Court



WP(MD)No.10915 of 2012

passed in WP.No.8480 and 8481 of 1997 dated 29.03.2004. Though the learned Counsel for the petitioner has pointed out that this petitioner is not responsible for the delay in processing the application, this Court is not inclined to accept this contention of the petitioner based on the reply affidavit filed by the petitioner during the departmental proceedings, which has also been extracted in the impugned order.

11. The Hon'ble Supreme Court in *State of Rajasthan and Others v. Heem Singh* [2021 (2) CTC 332] held that the scope of the judicial review in disciplinary matters is very limited and the observations made by the Hon'ble Supreme Court is extracted as under:-

“33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the



WEB COPY



WP(MD)No.10915 of 2012

idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady



WEB COPY



WP(MD)No.10915 of 2012

sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

12.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



WP(MD)No.10915 of 2012

arrived at in the departmental enquiry proceedings, except in cases of mala fide or perversity.

13.In the case on hand, the petitioner has not raised any such plea of lack of jurisdiction or mala fide or perversity. Therefore, on this ground, this Court is not inclined to entertain this writ petition. The petitioner was provided with an appeal remedy. It appears that this petitioner has not invoked the appeal remedy. The order is of the year 2011 Therefore, this Court is not inclined to grant any relief to the petitioner for invoking his alternative remedy also. This petition is dismissed. No costs.

07.01.2025

DSK

To

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



WEB COPY



WP(MD)No.10915 of 2012

B.PUGALENDHI.J.,

DSK

WP(MD)No.10915 of 2012

07.01.2025