

(2009) 07 MAD CK 0290

Madras High Court (Madurai Bench)

Case No: Writ Petition No. 5626 of 2006

A. Lakshmanan

APPELLANT

Vs

State of Tamil Nadu and The
Commissioner, Manapparai
Municipality

RESPONDENT

Date of Decision: July 10, 2009

Citation: (2010) 1 CTC 159

Hon'ble Judges: M. Sathyanarayanan, J

Bench: Single Bench

Advocate: T.S. Mohamed Mohideen, for the Appellant; M. Rajaraja, Government Advocate for Respondent Nos. 1 and 2; Mr. P. Srinivasan, Advocate, for the Respondent

Final Decision: Allowed

Judgement

M. Sathyanarayanan, J.

As it could be seen from the affidavit filed in support of the Writ Petition that the petitioner joined the services of Manapparai Municipality as Junior Assistant on 10.2.1999. The third respondent has initiated disciplinary proceedings under Rule 8, Clause 2 of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1970. According to the charge memo, the petitioner had grant license to run a fruit and vegetable market without getting maintenance fee during the year 1997-98 and consequent upon the same, the Municipality had sustained a loss of Rs. 1,06,903/-. The petitioner had submitted his explanation and the third respondent has accepted the same and dropped the further proceedings in pursuant to the said charge memo. The third respondent, by the order dated 2.9.2002, has placed the petitioner under suspension, alleging that he had acted in violation of Municipal Service Rules. By the Charge memo dated 11.9.2002, six charges were framed against the petitioner. Charge No. 1 pertains to inaction on the part of the petitioner to follow up and take further action in respect of the Court cases. The petitioner has submitted his explanation. Thereafter, the petitioner has filed a Writ Petition,

challenging the disciplinary proceedings and this Court vide order dated 22.3.2005 in W.P. No. 1577 of 2005, has directed the third respondent to complete the enquiry within a period of two months from the date of receipt of a copy of that order.

2. Thereafter, enquiry was offing and an Enquiry officer was appointed and the petitioner has offered his explanation on 24.6.2005. Since, no orders have been passed on completion of enquiry, the petitioner once again filed a Writ Petition in W.P. (MD) No. 9312 of 2005 praying to direct the third respondent to pass orders on the enquiry proceedings and this Court by the order dated 30.11.2005 directed the respondents to complete the enquiry within a period of two months from that date of receipt of a copy of that order.

3. Thereafter, the enquiry was commenced and the Enquiry Officer has given a finding that the charge No. 1, framed against the petitioner alone, has been proved. The disciplinary authority has accepted the finding given by the enquiry Officer and imposed the punishment the of "Censure".

4. The grievance of the petitioner is that in spite of repeated orders passed by this Court, the third respondent has not chosen to complete the enquiry and therefore he was deprived of the promotion. It is the further case of the petitioners that the award of censure, by the third respondent cannot have any adverse effect and consequently, he is to be promoted with retrospective effect from June, 2003.

5. The third respondent has filed the counter, stating among other things, that the petitioner alone has contributed to the delay by repeatedly filing Writ Petitions. It is further contended by the third respondent that the enquiry officer, On the proper consideration of the materials available on regard, has found that the charge No. 1 was proved, which has been accepted by the disciplinary authority and consequently, the petitioner was imposed with the punishment of censure. Therefore, the third respondent Prayer of the dismissal of the Writ Petition.

6. The Court heard the submission of Mr. T.S. Mohammed Mohideen, learned counsel appearing for the petitioner, Mr. M. Rajarajan, learned Government Advocate, appearing for the respondents 1 and 2 and also Mr. P. Srinivasan, learned counsel appearing for the third respondent.

7. Since the enquiry has held the first charge framed against the petitioner alone has been proved, it is relevant to extract charge No. 1 hereunder as per the charge Memo dated:

8. The petitioner has offered his explanation stating that the cases are instituted in the year 1993-94 and it has not been made clear that the persons, who had dealt with the files. It is further contended by the petitioner that in response to the charge memo, he was put in charge of three posts and they delay, if any, can be found out only on perusal of the Tapal Disbursement Register for the year 2001.

9. The Enquiry officer in his finding held that on a perusal of O.S. Nos. 128 of 1994, 147 of 1995 and 133 of 1999 would reveal that no action has been taken to follow up the cases. The disciplinary authority based on the said finding has imposed the impugned order of censure.

10. A perusal of the charge memo would reveal that the charge No. 1 is very vague and benefit of particulars.

11. It is a specific case of the petitioner that no relevant records have been furnished and at the relevant point of time, he put in charge of three seas and that only on perusal of the Tapal Disbursement Registrar for the year 2001 would reveal that the reasons for delay in following up of the cases. The Enquiry Officer in his finding, has stated that the perusal of the case records relating to the above case except that fact that no follow up has been made. The Enquiry Officer has not given a categorical finding as to whether the petitioner alone contributed to the said delay or some other officials had also contributed to the delay. The Enquiry Officer has not assigned proper reasons and that may be due to the fact that the charge No. 1 itself is very vague. The disciplinary authority, viz., the third respondent based on the said finding, imposed the punishment of censure.

12. This Court is alive to the settled position of law that normally in respect of the disciplinary, this Court cannot act as an appellate forum to reappraise the materials to find out what made; in the minds of the Enquiry Officer as well as the disciplinary authority. But, there is one exception to the said settled position of law. If the findings of the disciplinary authority. As already held above, the charge No. 1 itself is benefit of any particulars and the finding of the Enquiry officer is also based on no reasons. Therefore, in the considered opinion of this Court, the findings of the Enquiry officer that charge No. 1 has been proved, on the fact of it, to be perverse and consequently the impugned order of censure passed by the third respondent against the petitioner is liable to be quashed.

13. The Learned counsel appearing for the third respondent would submit that after the expiry of the currency of the punishment, the petitioner was given promotion to the post of Assistant and in the opinion of this Court, the same may mitigate the case of the petitioner or advance the case of the third respondent. In the result, this Writ Petition is allowed and the impugned order of censure passed by the third respondent is quashed and the third respondent is directed to consider the claim of the petitioner for promotion with retrospective effect in accordance with the relevant rules and regulations within a period of six weeks from the date of receipt of a copy of this order. No costs.