

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/11/2003

CORAM

THE HONOURABLE Mr. JUSTICE P.K.MISRA

W.P.No.3136 OF 1999

AR.N.Suppiyah ...Petitioner

-Vs-

1.State of Tamil nadu  
rep. By Secretary to Government  
Municipal Administration &  
Water Supply Department  
Fort St.George, Chennai 600 009.

2.Corporation of Chennai  
represented by its Commissioner,  
Ripon Buildings,  
Chennai 600 003. ..Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus calling for the records of the first respondent relating to its order bearing No.G.O.(D)No.466 dated 21.8.1998 and quash the same and consequently direct the second respondent to promote the petitioner to the post of Executive Engineer with effect from the date when his immediate junior was promoted to the said post with consequential benefits including arrears of pay accordingly revise his pension.

!For petitioner:Mr.K.Alagirisamy  
Senior Counsel  
for Mr.V.Srinivasa babu

^For Respondents: Mrs.P.Bagyalakshmi  
for Corporation,

:O R D E R

Heard the learned counsel for both the parties.

2. The petitioner was initially appointed under the Respondent No.2 Corporation as a lower category Overseer Draughtsman in 1960. Subsequently he was promoted as Junior Engineer in 1968 and thereafter he was promoted as Executive Engineer in October, 1979 and continue to hold such post till he retired in the year 1993. In the present writ petition, the petitioner has prayed for quashing the order in G.O.(D) No.466 dated 21.8.1988 wherein the punishment was imposed directing the reduction of pension at the rate of Rs.50/- for a period of six months. The petitioner has also prayed that he should be promoted to the post of Executive Engineer with effect from the date on which his immediate junior was promoted to such post, as the petitioner was not considered for such promotion due to the pendency of the disciplinary proceedings. The petitioner has further prayed for payment of all consequential benefits including arrears of pay and revised pension on the aforesaid basis.

3. In order to appreciate the contentions raised by the petitioner, it is necessary to notice in brief the various events: On 8.6.1972, a property was purchased by the wife of the petitioner. On 21.3.1977, a charge memo was issued. The first charge was to the effect that acquisition of property was disproportionate to the known source of income of the petitioner and the second charge was to the effect that as per the Government Servants Conduct Rules, which had been adopted by the Corporation by Resolution No.187 of 1950, the petitioner had failed to obtain fair permission from the Commissioner of Corporation with regard to the purchase and disclosure of the properties. At that stage, the petitioner had filed W.P.No.5490 of 1981. Relying upon the earlier decision of the High Court holding that in the absence of bye-laws by adopting the Tamil Nadu Government Servant Conduct Rules, no action can be taken on the basis of the resolution of the Corporation, the charge memo was quashed by this Court by order dated 13.1.1992. In the meantime, the Corporation had framed formal bye-laws for the servants employed under the Corporation. On the basis of such byelaws, subsequently a second set of charge memo dated 9.6.1993 was issued containing four charges.

(i) Charge No.1 was relating to the purchase of the property in the name of the wife beyond the known source of income of the petitioner.

(ii) In Charge No.2, there was a reference to the bye-laws applied by the Government as per G.O.Ms.No.363 dated 18.3.1983 and it was indicated that the petitioner had failed to obtain fair permission before making a purchase and had failed to make a declaration with regard to the purchase and disposal of vacant house site.

(iii) Charge No.3 was to the effect that the Corporation had failed to function as a trust worthy official by entering into property transactions without proper sanction from concerned authorities; and

(iv) Charge No.4 was to the effect that the petitioner had misused his official position to mass wealth in the name of his wife without disclosing and without obtaining necessary permission from competent authorities for various property

transactions.

4. At that stage, the petitioner filed a writ petition in W.P.No.1 5631 of 1993 which was disposed of on 7.2.1995 by this Court. Justice Jayasimha Babu quashed Charges 2 to 4, but observed that it would be open to the Corporation to consider as to whether a fresh charge should be issued in respect of charge No.1 Thereafter, the Corporation issued a fresh charge to the effect that the purchase of property in the name of wife which was beyond the known source of income of the petitioner . Thereafter the enquiry officer proceeded with the enquiry after referring to the materials on records, concluded as follows:

"From the above judgment and the I.T.records produced by Thiru A.R. N.Suppiah there is no evidence of the property in question having for purchased in the name of Thiru A.R.N.Suppiah to establish the fact that he had enquired the property. In as much as the property itself is not in his name, the charge that he has acquired and he is in possession of the property disproportionate to his own source of income is not held proved."

5. In spite of such finding, the disciplinary authority issued notice to the petitioner to show cause as to why punishment should not be issued as the petitioner had not got prior permission nor intimated about the sale transaction. It is to be noted that the disciplinary authority had not specifically differed from the finding of the enquiry authority to the effect that the charges had not been proved.

6. Be that as it may, the petitioner again furnished further explanation stating that since the charges have not been proved, no action could be taken. On the other hand, the petitioner made a specific prayer that since his case for promotion had not been considered due to the pendency of

the disciplinary proceedings, he should be given promotion from the date on which his junior was promoted as Executive Engineer. Thereafter the Government under the impugned order inter alia observed as follows:

"The Government have examined the charges framed against the Accused Officer, his defence statement and the findings of the Enquiry Officer carefully and independently with the relevant records. According to the findings of the Enquiry officer the charge of possession of assets in the form of property at 3/3 College Road, Chennai is not proved basically the property was purchased by the wife of the Accused officer from her own sources of income. Non-informing the fact of the possession of the property by his wife to the authority is in violation of the Government Servants Conduct Rules adopted by Chennai Corporation in 1950 itself. The Accused Officer has also admitted at the time of enquiry on 16.2.1996 about unawareness of the Government Servants Conduct Rules as adopted in Corporation in 1950. Such ignorance of rules is not an excuse. Non informing of the acquisition of assets by his wife, to the competent authority in violation of the Government Servants Conduct Rules adopted in the Chennai Corporation at that time is therefore proved against the Accused Officer beyond any doubt what so ever."

The Government also referred to the fact that bye-laws had been adopted subsequently and ultimately imposed a punishment of reduction of Rs.50/- from his pension for a period of six months.

7.The contention of the petitioner is to the effect that the charge relating to holding of properties disproportionate to the known source of income having not been established, the respondents should not have imposed any punishment on the basis of the allegations which had already been quashed by the High Court on earlier two occasions. A perusal of the order passed by the Respondent No.1 indicates that there is no categorical finding that the charges as laid against the petitioner had been proved. The charge was to the effect that the property had been purchased in the name of wife beyond the known source of income of the petitioner. The Enquiry officer had referred to the income Tax Return of the wife and had held that the charge had not been proved. The Disciplinary authority had not categorically differed from such finding. On the other hand, the disciplinary authority had referred to the Government servants' Conduct Rules as adopted by the Corporation in 1950 and to the subsequent bye-laws framed in the year 1983 and has come to the conclusion that the impugned transaction relating to the purchase of the property by the wife had not been notified to the Corporation or any fair permission had been obtained. Similar charge which was framed by the Corporation on earlier occasion had been quashed. In spite of such categorical judgment of the High Court , it is surprising that the disciplinary authority again referred to such allegation and came to the conclusion that the petitioner was guilty of not disclosing the transaction nor seeking prior permission. As already held on earlier occasion, the Government Servants' Conduct Rules were applicable to the employees of the Corporation where for the first time the bye-laws were framed in 1983. The transaction had admittedly taken place prior to 1983 and only because of such admitted position, W.P.No.15631 of 1993 was allowed on 7.2.1995 and such charges were quashed and the High Court had observed that it would be open to the Corporation to consider as to whether a fresh charge should be issued relating to the petitioner holding property disproportionate to the known source of income. The Enquiry Officer had found that such charge had not been established. In such view of the matter, there was no justification for the disciplinary authority to pass an order of punishment on basis of charges which had been quashed on earlier two occasions. The matter had become final and it was not open to the disciplinary authority to sit in appeal to over come the decisions rendered by High Court on two earlier occasions, which were binding on the parties. It is evident that the order of punishment is fully unjustified and is hereby quashed .

8.The next question is as to whether the petitioner should be promoted to the post of Executive Engineer. In the Counter, it is not disputed that the question of promotion of the petitioner was not considered as the disciplinary proceeding was pending. Since the disciplinary proceeding itself is found to be misconceived and the punishment has been quashed, there cannot be any justification to ignore the case of the petitioner for promotion.

9.It is of course true that no employee can as of right ask

for promotion , but he should be considered for promotion at the relevant time. In the present case it is not disputed that the petitioner has retired since 1993. In such view of the matter, it would not be in the interest of justice to leave the question of promotion for fresh consideration by the authority and the matter should be given a quietus. Since the petitioner has already retired, interest of justice would be served by directing that the petitioner shall be deemed to have been promoted as Executive Engineer with effect from the date on which his immediate Junior was promoted as Executive Engineer and his last drawn salary shall be accordingly calculated notionally. However, since the petitioner had not actually worked as an Executive Engineer, he would not be entitled to the actual salary payable for the post Executive Engineer for the period in question, but, for the purpose of computing the pension, it would be deemed as if the petitioner had been promoted as Executive Engineer from the date on which his immediate Junior become Executive Engineer and on that footing, the revised pension should be made available to the petitioner from the date of his retirement.

10. This Order shall be carried out and the arrears of pension to be calculated and paid to the petitioner within a period of six months from the date of communication of the order.

11. The writ petition is allowed to the extent indicated above. However, there will be no order as to costs.

Index: Yes

Internet: Yes

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To

1. The Secretary to Government  
Municipal Administration &  
Water Supply Department  
Fort St. George, Chennai 600 009.

2. The Commissioner,  
Corporation of Chennai  
Ripon Buildings,  
Chennai 600 003.

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