

(1989) 11 MAD CK 0046
In the Madras High Court

N. Janakiraman

APPELLANT

Vs

Government of Tamil Nadu Rural Development and Local
Administration Department and Another

RESPONDENT

Date of Decision : 13-11-1989

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 3, 34

Citation : (1990) 1 MLJ 216

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Judgement

Bakthavatsalam, J.—The petitioner challenges the order of the Government passed in G.O.Rt. No. 1191, Rural Development and Local Administration Department dated 10.8.1983 passing an order of reduction permanently in rank from the post of Bill Collector to chain man.

2. The petitioner is a direct recruit to the post of Bill Collector and he was working from 1.4.1965. The petitioner was kept under suspension by order dated 4.9.1972. An explanation was called for from him and he was reinstated in service on 8.1.1973 as Bill Collector. Another charge memo was issued on him on 19.6.1973 and an explanation was called for from him, which was given by him on 28.6.1973. An order of permanent reversion was passed on 1.9.1973 reverting the petitioner as chain man. The petitioner preferred an appeal to the Director of Municipal Administration on 14.7.1976 which was rejected in 1977. The petitioner filed a revision before the 1st respondent Government on 24.7.1979. Again, the petitioner was asked to submit his explanation and he also submitted the same. By order dated 25.6.1981, the petitioner was reinstated to the post of Bill Collector. It is to be seen that the charges against the petitioner were that he has misappropriated a sum of Rs. 115.05 p. It has also to be stated that the petitioner was issued a notice by the first respondent, after considering Fundamental Rule 29 (2) and he was reinstated in service by order of the first respondent in G.O.Ms. No. 1937, dated 16.12.1980 on the ground that the

period of reversion has not been specified in this case which amounts to reversion as a permanent measure and which is not in order as contrary to Fundamental Rule 29 (2). By the same order, the first respondent Government requested the Commissioner of Pallavapuram Municipality to send all the connected records for further examination by the Government. After a thorough examination of the case, the Government issued a show cause notice to the petitioner on 25.6.1981 as to why the penalty of dismissal from municipal service should not be imposed on him for the charges held proved in the disciplinary enquiry. Since the petitioner did not deny the charges in his reply to the show cause notice, the first respondent passed an order reverting the petitioner as basis servant.

3. The petitioner alleges in the affidavit that under the Fundamental Rules as well as under the Municipal Manual dealing with the appointments and punishments of the officers and servants of the Municipal Councils, under Chapter 17 (4) no one can be dismissed or removed without being informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. It is also stated in the affidavit that under Fundamental Rule 29-A that once the order of reduction is set aside, the person concerned has to be given the difference in the pay which he would have been (SIC) to. It is further stated that for the first time when charges were framed against the petitioner, after considering his explanation the second respondent dropped further action. When the same charges were framed for the second time, there was no charge of misappropriation much less the misappropriation of Rs. 115.05 p. and the first respondent incorrectly refers to in his order dated 10.8.1983 as if misappropriation charges were framed against the petitioner both the times and held to be proved. The petitioner further alleges than on both occasions, no opportunity of personal hearing was provided and no enquiry was conducted.

4. A counter-affidavit has been filed on behalf of the first respondent. The facts narrated in the counter would show that a final order was passed by the Special Officer, on 1.9.1973 reverting the petitioner permanently as chairman. It is also stated in the counter that the petitioner preferred an appeal to the Government and that the Government by Order dated 16.12.1980 set aside the orders issued by the Special Officer, Pallavapuram Municipality and the reasons for setting aside the order of the Special Officer were that the petitioner was directly recruited to the post of Bill Collector and that he cannot be reverted to a lower post of the cadre of Chairman in which he had not acted previously and that the period of reversion has not been specified resulting in reversion as a permanent measure. It is further stated in the counter-affidavit that the charges framed against the petitioner were held proved and that the petitioner was heard in person and his statement was recorded on 8.12.1982. It is also stated in the counter-affidavit that the petitioner has accepted all the charges and requested to drop all further actions condoning his conduct. It is also stated in the counter affidavit that the petitioner did not desire for any cross examination. Similarly

when the charges were framed against the petitioner by the Special Officer in 1973 a questionnaire was sent along with the charge memo and the petitioner was asked to state, if he wanted to be heard in person. Accepting all the charges the petitioner returned the enclosed questionnaire without mentioning as to whether he wanted to be heard in person or not. Therefore, the contention of the petitioner that the opportunity of personal hearing was not provided to him is not correct. It is also stated in the counter affidavit that before the passing of the orders, a show cause notice was issued to the petitioner. In paragraph 7 of the counter, a reference to Rule 25 of Tamil Nadu Municipal Services Rules, 1970 has wrongly been made, instead of "Tamil Nadu Municipal Service Rules, 1975" and this has been signed by the Deputy Secretary to Government (Establishment) and attested by, one under Secretary to Government (Establishment). It is also stated in the counter affidavit that the Government exercised their power under Rule 25 correctly and that the Government has not disturbed the findings of the disciplinary authority at any point of time. It is stated that the Government interfered only with the nature of punishment initially but later after giving opportunity to the petitioner imposed the penalty on him on the basis of the charges held proved.

5. The counter filed by the second respondent also narrates the events. According to the Second respondent the petitioner was in the habit of applying for leave frequently causing much inconvenience to the collection work entrusted with him. Charges were framed against the petitioner on 19.6.1973 and the petitioner submitted his explanation on 28.6.1973, wherein he did not deny the charges. It is stated in the counter affidavit that the petitioner had collected a sum of Rs. 115.11 P. on 7.3.1972 from one Thiru. R. Balasubramanian and had remitted the amount on 9.8.1973. Since the petitioner had not denied the charges framed against him, final orders were passed reverting him permanently as Chairman and from 1.9.1973. The Government by G.O.Ms. No. 1937/ RE & LA/ dated 16.12.1980 has set aside the order dated 1.9.1973 passed by the Special Officer, Pallavapuram Municipality. The counter affidavit narrates the events which led to the passing of the impugned order.

6. Mr. S. Venkataraman, learned counsel for the petitioner contends that the above rules relate to Rule 41 of the Manual of Municipal Service Rules which reads as follows:

The provisions of Fundamental Rules, Tamil Nadu Leave Rules, 1933, Tamil Nadu Manual of special Pay and Allowances, Tamil Nadu Pension Code, as amended from time to time as applicable to Government Servants, shall apply in so far as they are not inconsistent with the rules made under the District Municipalities Acts 1920 (Tamil Nadu Act V of 1920), Rule 29 of the Fundamental Rules reads as follows:

If a Government Servant is reduced as a measure of penalty to a lower service, grade or post or to a lower stage in his time scale the authority ordering such reduction shall state the period for which it shall be effective and whether on

restoration the period of reduction shall operate to postpone future increments and if so, to what extent.

In the rulings under the Rule, it is stated as follows:

(i) The date from which it will take effect and the period (in terms of years and months) for which the penalty shall be operative. It should be noted that the reduction to a lower service, grade or post or to a lower service, grade or post or to a lower stage in his time scale is also not permissible under the rules either for an unspecified period or as a permanent measure. It should only be for a specified period. Learned counsel for the petitioner further submits that the order reverting the petitioner as Chairman permanently is not in accordance with the Manual of Municipal Service Rules. Learned counsel did not advance any arguments on merits. Per contra, learned Government Advocate submits that the Government has got power under Rule 25 of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970.

7. I considered the arguments of both counsel and the concerned rules referred to above in extense. Rule 41 of the Manual of Municipal Service Rules and Rule 29 and Sub-rule (i) of Rule 29 of the Fundamental Rules, in my view support the argument of the learned counsel for the petitioner. I have already extracted the relevant rules and they speak for themselves. But the rule 25 of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 which was referred to by the learned Government Advocate has nothing to do with the contentions raised by the petitioner. It refers to the power of the Government to call for the records relating to the disciplinary proceedings taken and pass such orders on them as they deem fit and necessary. In view of this Rule, a notice has to be given to the person concerned and an opportunity has also to be given to the person concerned about the reasonings of the punishment. As I have already stated the counter refers to wrongly as Rule 25 of the Tamil Nadu Municipal Services Rules, 1970 whereas it should be mentioned as Rule 25 of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970.

It is only a revisional power of the Government and it cannot override the Fundamental Rule. Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 is concerned with the penalties and sub rules 3 and 4 to Section 34-3 deal with the reduction to a lower rank in the seniority list or to a lower post or time scale or to a lower stage in a time scale. Apart from that I do not find any power to the Government to order a reduction in rank permanently which will be against Rule 29 of the Fundamental Rules and Rule 41 of the Manual of Municipal Services Rules and the Rulings in the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970. The power under Rule 25 of the Rule referred to above cannot be disputed. But how far the power has been exercised is the question here. That power has been exercised wrongly in my view without considering the scope of Rule 29 of the Fundamental Rules and Rule 41 of the Manual of Municipal Service Rules and the Rulings of the Tamil Nadu Municipal Services (Discipline and Appeal), Rules, 1970. Since the impugned order has been passed

in violation of the above said rules, I set aside the impugned order and accordingly the impugned order is set aside.

8. In the result, this writ petition stand allowed. But there will be no order as to costs.

9. Having regard to the counter affidavit filed by the first respondent, I would like to add the following observations.

In paragraph 7 of the counter affidavit, a reference has been made to Rule 25 of the Tamil Nadu Municipal Services Rules, 1970 wrongly. I have to take it as Rule 25 of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970. It is a glaring mistake which has been made by a Deputy Secretary to Government (Establishment) and the same has been attested by the Under Secretary to Government. The Officers concerned have not taken care to find out whether the correct provisions of law have been referred to in the counter. It is disheartening to note nowadays that matters are not verified by the Officers correctly who are expected to verify the provisions of law correctly and sign them after careful scrutiny. I do hope that atleast in future the officers concerned will take care of the facts contained in the papers before they sign them and file before this Court.