

(1999) 01 MAD CK 0004
In the Madras High Court

S. Syed Mohammed Ghouse

APPELLANT

Vs

The Tamil Nadu Water Supply and Drainage Board and
Another

RESPONDENT

Date of Decision : 11-01-1999

Acts Referred:

Citation : (1999) 1 MLJ 765

Hon'ble Judges : T. Meenakumari, J

Bench : Single Bench

Judgement

T. Meenakumari, J.—The writ petition is for the issue of writ of certiorari to call for the records connected with the proceedings of the

second respondent dated 10.4.1991 in proceedings No. 18762/Estt/A3/88 and quash the same.

2. The case of the petitioner is that he was working as Divisional Accountant in the Tamil Nadu Water Supply and Drainage Board. While working

in the Rural Water Supply Division, Mayiladuthurai, he was issued with a charge memo by the Managing Director, Tamil Nadu Water Supply and

Drainage Board alleging that he connived with the Executive Engineer with an intention to award the work to Thiru N. Balasubramanian and has

failed to perform his duties as evidenced from the fact that there are more than 13 irregularities in the acceptance of tenders. The petitioner

submitted his explanation denying the charges. The case of the petitioner was that without properly considering his explanation, enquiry was

conducted without following the procedure as laid down under the regulations of the Tamil Nadu Water Supply and Drainage Board Employees"

(Discipline and Appeal) Regulations, 1972 (for short "the Regulations"). It is also submitted by the petitioner that no witness was examined and no

documentary evidence was adduced on behalf of the respondents and no opportunity to rebut the evidence adduced against him was given. It was very vehemently contended on behalf of the petitioner that the Enquiry Officer has not given any finding that the charges have been proved; that the enquiry itself is void and violative of the principles of natural justice. Holding the petitioner guilty of the charges levelled against him, the Managing Director has passed the impugned order imposing the penalty of reduction to the lower post of Superintendent for a period of two years with effect from 1.5.1991 and that the period of reduction to the lower post of Superintendent shall operate to postpone the future increments in the higher post of Divisional Accountant for a period of two years and that the period for which the reduction is ordered will be exclusive of any interval spent on leave before that period is completed. It is further contended by the learned Counsel for the petitioner that the petitioner was holding the post of Divisional Accountant and he was in no way connected with the acceptance of tender as alleged and as per paras 154-156 of the Public Works Department Code, the entire responsibility of accepting and executing the tenders rests with the Executive Engineer personally and therefore the petitioner is not responsible for the alleged acceptance of tenders. Further, when the Executive Engineer himself stated in the enquiry that he himself accepted the tender of Thiru N. Balasubramanian and rejected the tenders of others by using his discretion, it is not proper for the Managing Director to hold the petitioner guilty of the charge and punish him by passing the impugned order. It has also been contended by the learned Counsel for the petitioner that the penalty of reduction in the rank has been imposed by the appellate authority who happened to be the Managing Director and who framed the charges. Hence there is an irregularity in conducting the disciplinary proceedings. Thus contending, the learned Counsel for the petitioner sought to allow this writ petition.

3. Learned Counsel for the respondents has argued that the enquiry was conducted by the Superintending Engineer, Thanjavur Pudukottai Circle, Thanjavur who was appointed as an Enquiry officer. The petitioner was also given a personal hearing by the Managing Director on 4.12.1990.

Only after considering the explanation submitted by the petitioner and after examining the connected records, the Managing Director has passed

the impugned order. It has also been stated that at the first instance the enquiry was conducted by the Superintending Engineer. A questionnaire was furnished to the petitioner and the petitioner has submitted his answers to the said questionnaire and the same was forwarded to the Managing Director and only after going through them and considering all aspects only the impugned order was passed by the Managing Director. The learned Counsel has further argued that as per the amended Clause 9-B, there is no need to give an opportunity to the delinquent to make a representation to the authorities on the penalty proposed to be imposed.

4. There is no dispute that the petitioner was working as the Divisional Accountant which post falls under category 4(iv) of Clause 7 of the Regulations. By the impugned proceedings, the petitioner has been imposed with the penalty of reduction to the lower post of Superintendent. As per Clause 4(iv) the Chief Engineer is the competent authority to impose the penalty of reduction in rank and the Managing Director is the appellate authority. In the instant case, enquiry was conducted by the Superintending Engineer who has got the power to impose the penalty and the Chief Engineer is the appellate authority. But for imposing the penalties mentioned in item (b) to (j) in column (2) of the table, for the employees in item 4 viz., employees working in division and sub division offices, the Chief Engineer is the competent authority to impose the penalty and the Managing Director is the appellate authority. In this case, there is no dispute that the enquiry has been conducted by the Superintending Engineer and the charge memo has been issued by the Managing Director and the petitioner submitted his explanation to the Managing Director. Further, while submitting replies to the question, the petitioner has requested for an oral enquiry and personal hearing. On 23.2.1990, the enquiry has been fixed by the Superintending Engineer at the circle office of Thanjavur.. On 3.12.1990, the Managing Director has again directed the petitioner herein to appear before him for personal hearing. On 10.4.1991, the Managing Director passed the impugned order.

5. As per the Regulations, the Chief Engineer is the competent authority to impose the penalty of reduction in rank and the Managing Director is the Appellate Authority. But in the instant case, the Appellate Authority, Managing Director, himself has issued the charge memo and also

conducted the enquiry partly and passed the impugned order awarding punishment to the petitioner. Therefore, the petitioner has lost his right to appeal before the Managing Director-Appellate Authority.

6. In such circumstances, it has to be held that the enquiry conducted by the Superintending Engineer and the enquiry conducted by the Managing Director and the final order passed by the Managing Director are to be held to be illegal for the simple reason that the petitioner has lost his right to file an appeal. On that ground alone, the impugned order is quashed. The writ petition is allowed. No costs.