

**L.Ashok Kumar Vs. the Commissioner of Municipal Administration and anr.**

**L.Ashok Kumar Vs. the Commissioner of Municipal Administration and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/923620](http://sooperkanoon.com/923620)

**Court :** Chennai

**Decided On :** Dec-07-2011

**Judge :** T.S.Sivagnanam, J.

**Acts :** Tamilnadu Municipal Service (Discipline and Appeals) Rules 1970 - Rule 8(2)

**Appeal No. :** W.P. No. 8175 of 2009

**Appellant :** L.Ashok Kumar

**Respondent :** The Commissioner of Municipal Administration and anr.

**Advocate for Def. :** Mr.R.Lakshmi Narayanan, Adv.

**Advocate for Pet/Ap. :** Mr.C.Kulanthaivel, Adv.

**Judgement :**

1. The prayer in the writ petition is for issuance of writ of Certiorarified Mandamus, to quash the proceedings of the first respondent dated 3.10.2008, by the said proceedings, the first respondent directed the second respondent to continue the enquiry and record evidence of certain witness whose names were furnished in the said proceedings. A further direction was issued to the second respondent to submit his further enquiry report along with specific remarks relating to the charges framed against the petitioner.

2. The petitioner was appointed as a Draftsman on 05.06.1998, in the Komarapalayam Municipality. The petitioner's case is that he married one Sumathi @ Bharathi on 09.02.1997, and it was an intercaste marriage and the petitioner's wife belonged to a Scheduled Caste community. The petitioner submitted the marriage certificate, which was signed in the presence of relatives, before the employment exchange and his name was registered under a priority category. The petitioner's name was forwarded by the employment exchange under the priority category of intercaste marriage and he was selected and appointed as Draftsman. During December 1998, the petitioner's wife is stated to have deserted him and her whereabouts were not known. During 1999, it was alleged that the petitioner registered his name in the employment exchange as a priority candidate by producing bogus marriage certificate. In this regard, a criminal complaint was also lodged against the petitioner, which was registered as crime No.22 of 2000, before the Komarapalayam Police Station. Thereafter the petitioner was placed under suspension, which was challenged by the petitioner by filing O.A.No.2968 of 2001, before the Tamil Nadu Administrative Tribunal and the Tribunal granted interim stay of the order of suspension. Departmental proceedings were initiated against the petitioner and a charge memo dated 11.10.2001 was issued. The second respondent was appointed as enquiry officer who conducted the enquiry and submitted a report on 29.03.2006, holding that the charge is not proved. This enquiry report dated 29.03.2006, was forwarded to the Government and no orders were passed. After about more than 2 = years, a proceeding dated 3.10.2008, was issued by the first respondent, directing the second respondent to continue the enquiry and record evidence of four officers whose names were mentioned. This proceedings dated 3.10.2008, is impugned in this writ petition.

3. The learned counsel for the petitioner primarily challenged the impugned order as well as the disciplinary proceedings on two grounds. Firstly, by contending that the first respondent has no jurisdiction to direct the enquiry officer to conduct further enquiry after the enquiry was completed and the enquiry officer has submitted his reported dated 29.08.2006, holding that the charge is not proved. In support of his contentions, the learned counsel placed reliance on the following decisions in State of Assam and another vs. J.N.Roy Biswas, [CDJ 1975 SC 189]; A.Palani vs. Union of India and others [1994-I-LLN-435]; Union of India vs.

K.D.Pandey and another [2003-I-LLJ-557]; Union of India vs. V.Sekar and another [2005 (1) CTC 566]; S.B.I. and others vs. Arvind K.Shukla [2001 (3) CTC 765].

4. The second ground raised by the learned counsel is that the entire disciplinary proceedings are vitiated on account of delay and laches. That the charge memo was issued in 2001 and after more than 5 years the enquiry was concluded and report was submitted on 29.03.2006 and this enquiry proceedings is sought to be reopened after 2 = years during 2008. Therefore, on this ground also the entire disciplinary proceedings are liable to be quashed. In support of the said contention, the learned counsel placed reliance on the following decisions in Union of India vs. Central Administrative Tribunal, [2005 (2) CTC 169] and M.Elangovan vs. The Trichy District Central Co-op. Bank Ltd., [2006 (2) CTC 635].

5. The learned Government Advocate appearing for the respondent by relying upon the counter affidavit, contended that the petitioner was appointed as a Draftsman under priority category by producing a false certificate and on verification it was found that no such marriage took place between the petitioner and Sumathi on 09.02.1977 and no such certificate was issued from the Taluk Office, Sangari and the rubber stamp affixed in the certificate is bogus. Based on investigation, charges were framed under Rule 8(2) of Tamilnadu Municipal Service (Discipline and Appeals) Rules 1970, dated 11.10.2001, and an enquiry was conducted and the enquiry report was submitted on 29.03.2006. It is further stated that on examination of the enquiry report, it was found that the enquiry officer has not conducted the enquiry properly and proper procedure was not followed and therefore, the matter was remitted to the enquiry officer for recording further evidence. Therefore, it is contended that the petitioner's contention that the respondents are bound to agree with the findings of the enquiry officer is wholly untenable. The learned Government Advocate further submitted that the petitioner cannot seek for direction that the disciplinary authority has to accept the report of the enquiry officer and the disciplinary authority may deviate from the findings of the enquiry officer and the charge against the petitioner is very serious as he has committed forgery, which was found out belatedly based on investigation. Therefore, it is contended that the enquiry officer having failed to examine the key witnesses, there is no error in the first respondent directing the enquiry officer to

reopen the enquiry proceedings.

6. In reply, the learned counsel for the petitioner submitted that the criminal proceedings which were initiated against the petitioner in crime No.220 of 2000, on the file of the Kumarapalayam Police Station has been referred as mistake of fact and refer memo dated 09.08.2006 has been issued to the said effect.

7. Heard the learned counsels for the parties and perused the materials available on record.

8. The two questions which arise for consideration in the instant case are

i) Whether the disciplinary authority can direct the enquiry officer to reopen the enquiry after the enquiry was concluded and report submitted to the Disciplinary Authority?

ii) Whether in the facts and circumstances of the present case the disciplinary proceedings is liable to be quashed on the ground of delay and laches?

9. Question No.ii):-

While considering this question the factual aspect of the matter cannot be brushed aside. The petitioner was appointed as a Draftsman in the Municipality on 05.06.1998. It is not in dispute that such appointment was offered to the petitioner on the ground that he comes under the intercaste married couple category, which is a priority category, thereby getting preference for consideration for appointment. It appears that during 1999, investigation was taken up in respect of a trap and arrest case against one Murugan, who was working as Sanitary Inspector in the same Municipality. During the course of investigation, it came to light that the petitioner had produced a bogus certificate and secured priority category status and consequently secured employment. Admittedly, the charge against the petitioner is one relating to his personal life which may not surface immediately unless brought out by some third party. Therefore, it cannot be stated that there was any delay in initiation of the proceedings as the charge memo was issued in 2001 immediately after the investigation was completed. Though the learned counsel for the petitioner relied on the decision of this Court which has been

rendered taking into consideration the judgment of the Hon'ble Supreme Court in P.V.Mahadevan vs. M.D.Tamilnadu Housing Board, 2005 (4) CTC 403, delay by itself cannot be the sole ground for quashing the disciplinary proceedings and the facts of each case have to be looked into. As noticed above, only in 1999, during course of investigation into another case relating to trap and arrest of a Sanitary Inspector, the allegation against the petitioner was surfaced. Thereafter the petitioner was placed under suspension which was challenged by the petitioner before the Tribunal and the Tribunal passed an order of interim stay of the suspension and the petitioner was reinstated in service. Thereafter, charge memo was issued, the petitioner submitted his reply, and not satisfied with the reply, an enquiry was ordered to be conducted and the petitioner without any demur participated in the enquiry proceedings which ultimately concluded in 2006. Though the enquiry report was submitted in 2006 and no action further was initiated for over two years, the petitioner did not raise any objection nor sought for early conclusion of the disciplinary proceedings, but approach this Court for the first time during 2009 only when the impugned proceedings were issued, directing the reopening of the domestic enquiry. This impugned proceeding has also been stayed by this Court, by order dated 29.04.2009. At this stage, it would be useful to refer to the decision of the Hon'ble Supreme in Andhra Pradesh v. V. Appala Swamy, (2007) 14 SCC 49

12. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard-and-fast rule can be laid down therefor. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are: (1) where by reason of the delay, the employer condoned the lapses on the part of the employee;

(2) where the delay caused prejudice to the employee.

Such a case of prejudice, however, is to be made out by the employee before the inquiry officer.

10. As noticed above, the petitioner did not raise the plea of prejudice before the enquiry officer and participated in the domestic enquiry, even thereafter, he has

not raised any plea of prejudice and continued to work as a Overseer in the department, since the order of suspension was stayed by the Tribunal.

11. Therefore, on facts of the present case, this Court is of the view that the disciplinary proceedings initiated against the petitioner cannot be quashed on the ground of delay. Accordingly, question no.(ii) is answered against the petitioner.

12. Question No.(i):-

From the facts as noticed above, it is not in dispute that the enquiry officer conducted the enquiry proceedings and submitted his report to the disciplinary authority on 29.03.2006. The enquiry officer held the charge not proved. The next step which is required to be done as per Service jurisprudence and as per Rule 8 of the Municipal Service rules is that the disciplinary authority may accept the findings of the enquiry officer and exonerate the petitioner or if the disciplinary authority does not agree with the findings of the enquiry officer, it is open to the disciplinary authority to differ with the findings of the enquiry officer. In doing so, essentially two requirements are to be complied with. Firstly, the disciplinary authority is required to record reasons in writing as to on what basis, he proposes to disagree with the findings of the enquiry officer. Secondly, the disciplinary authority has to issue notice to the delinquent employee disclosing such reasons for disagreement with the findings of the enquiry officer and afford an opportunity to the delinquent to submit his explanation. It is only thereafter, the disciplinary authority would be entitled to proceed further in accordance with law. As held by the Hon'ble Supreme court in Union Of India vs. K.D.Pandey reported in [2003-1-LLJ-557] that when specific findings have been given in respect of a charge after discussing the matter, the matter could not be remitted to the enquiry officer for further enquiry as this would result in a second enquiry and not a further enquiry on the same set of charges on the materials available on record. The Hon'ble Supreme held that if such process is allowed the enquiries can go on perpetually until the view of the enquiry authority is in accord with that of the disciplinary authority and it would be an abuse of process of law.

13. In the instant case, the disciplinary authority did not follow the twin requirements, required to be followed while disagreeing with the findings of the

enquiry officer. It is true that the disciplinary authority cannot be compelled to accept the findings of the enquiry officer. Yet while disagreeing with the findings, the disciplinary authority is required to follow the procedure indicated above. From the facts stated above, it is evidently clear that the disciplinary authority failed to follow the procedure established by law.

14. In the result, the writ petition is allowed and the impugned proceedings are quashed with liberty to the first respondent to issue show cause notice to the petitioner indicating the grounds on which he proposes to disagree with the findings of the enquiry officer, as contained in the enquiry report dated 29.03.2006, and afford an opportunity to the petitioner to submit his explanation and thereafter proceeds further in accordance with law. The first respondent is directed to issue such notice to the petitioner within a period of eight weeks from the date of receipt of a copy of this order and after the petitioner submits his explanation, the disciplinary authority shall take a final decision in the matter within a period of three months from the date on which the petitioner submits his explanation. Hence, the writ petition is allowed to the extent indicated. No costs. Consequently, connected miscellaneous petition is closed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**