



GOVERNMENT OF KERALA

Abstract

Local Self Government Department – Establishment – OA(EKM)604/2023 filed by Sri. M.Surendran, Lower Division Clerk/Bill Collector, Thaliparamba Municipality – order dated 04.04.2023 of the Hon. Kerala Administrative Tribunal- Complied with - Orders issued.

LOCAL SELF GOVERNMENT(EU)DEPARTMENT

G.O.(Rt)No.1482/2023/LSGD Dated,Thiruvananthapuram, 20-07-2023

1 Order No. DUA/4147/2022-E8 dated:27.02.2023 of the Read Director, Urban Affairs,LSGD.

2 Review petition dated 16.03.2023 filed by Sri. M.Surendran, Lower Division Clerk/Bill Collector, Thaliparamba Municipality to Government(Annexure A11)

3 Order dated 04.04.2023 in OA(EKM)604/2023 of the Hon. Kerala Administrative Tribunal.

4 Letter.No. LSGD/553/2023-VIGE3 dated 05.07.2023 from the Principal Director,LSGD,Thiruvananthapuram

ORDER

As per the petition read as 2nd paper above Sri. M.Surendran, Lower Division Clerk/Bill Collector, Thaliparamba Municipality filed review petition before Government, aggrieved by the order of the Director of Urban Affairs, rejecting his appeal petition against the suspension order of the Secretary, Thaliparamba Municipality and the order of awarding him a punishment of barring one increment without cumulative effect.

2. In connection with the above subject, Sri. M.Surendran, filed OA(EKM) No. 604/2023 before the Kerala Administrative Tribunal. The Hon. Tribunal in the Order read as 3rd paper above directed the 1st Respondent, Government, to consider and pass orders on Annexure A11 review petition after affording an opportunity of hearing to the applicant within a period of three months from the date of receipt of a copy of this Order.

3. In accordance with the direction of the Hon. Kerala Administrative Tribunal, the petitioner's Counsel Adv.M.A.Stephen (on behalf of the petitioner, Sri. M.Surendran) was heard by the Under Secretary to Government, Local Self Government Department on 07/07/2023.

4. During the hearing it was submitted that Sri.M.Surendran commenced regular service as Heavy Vehicle Driver in the Municipal Common Service on 26.06.2005 and was subsequently promoted to the cadre of LD Clerk/Bill Collector on 08.11.2018 as per the orders of the Director of Urban Affairs. He was placed under suspension as per the Order No.G1-21352/17 dated: 29.04.2021 by the Secretary, Thalipparamba Municipality with the direction of the Chairperson of the Municipality on the allegation of using the staff quarters allotted to him for immoral purpose. Consequent to this Sri.Surendran approached the Hon'ble KAT by filing OA(EKM)No. 914/2021 challenging this suspension order. During the pendency of the above OA, the Secretary, Thalipparamba Municipality, issued Charge Memo and Statement of Allegations to him as per Order No. G1-21352/17 dated:04.05.2021 alleging that Sri. Surendran used the staff quarter allotted to him for immoral purpose with a stranger lady and the news items published in an evening daily newspaper about the incident caused damage to the good will of the Municipality. In response to the Charge Memo, Sri.Surendran submitted detailed defence statement stoutly denying the charges leveled against him vide his Statement dated: 18.05.2021. Sri.Surendran alleged that the Secretary, Thalipparamba Municipality ,without conducting any enquiry known to Law , finalized the disciplinary proceedings by imposing the penalty of barring one annual increment without cumulative effect and decided to reinstate him in service treating the period of suspension as eligible leave as per Order No. G1/21351/17 dated:24.11.2021 and he joined service on 06.12.2021. In the meantime , the Hon'ble KAT disposed the O.A(EKM)No. 914/2021 as per its Order dated: 30.11.2021 with liberty to the petitioner pursue his grievances ,if any, against the Order dated 24.11.2021 mentioned above. Sri.Surendran again filed OA(EKM)No. 268/2022 before the Hon'ble KAT against his alleged suspension and subsequent punishment imposed. In its Order dated; 19.10.2022, in the above OA, the Hon'ble KAT finalized the case with an instruction to the Director,Urban Affairs for concluding the case after affording an opportunity of hearing to the petitioner on his appeal petition.

Accordingly, the Director of Urban Affairs (DUA) finalized the case by issuing an Order No. DUA/4147/2022-E8 dated:27.02.2013. Sri.Surendran alleged that the Director,Urban Affairs finalized the case without considering his aversions mentioned in the appeal petition. Hence against this order of Director,Urban Affairs , Sri.Surendran submitted the review petition based on the provisions in Rule 9 (3) of Kerala Municipalities (Control on Officers)Rules,2011.

5. The main prayers in the review petition of the applicant is as follows.

(i) Set aside the Order No. G1-21352/17 dated:29.04.2021 of the Secretary, Thalipparamba Municipality regarding his suspension.

(ii) Set aside Order No. G1-21352/17 dated:24.11.2021 of Secretary,Thalipparamba Municipality to the extent to which it imposes the penalty of barring of one annual increment for one year without cumulative effect and fully exonerate him from all the charges leveled against him in Charge Memo No. G1-21352/17 dated:04.05 2021 issued by the Secretary,Thalipparamba Municipality.

(iii) Set aside Order No. DUA/4147/2022-E8 dated:27.02.2023 of the Director, Urban Affairs,LSGD.

(iv) Treat the period of his suspension from 29.04.2021 to 05.12.2021 as duty for all purposes including salary.

6. In Annexure A11 review petition and during hearing Sri.Surendran claimed that the reason for his suspension is a totally fabricated one. The whole incident was that one Smt.Lekshmi,who was a colleague of him while working in Kannur Municipality , along with her sister and family visited his quarters in the evening on 28.03.2021. At that time two persons in nearby area trespassed their quarters and alleged immoral practice against Surendran and his guests and made a news about it on social media and local evening daily. Against this action, Smt.Lekshmi filed a police case on the local people. But no police case was registered against Sri.Surendran on this issue. It is alleged that the entire episode was based on a political conspiracy by the locals against his strict actions during the Election process in the area. It is further informed that the alleged newspaper also apologized for publishing such a fake news in their paper and announced a correction in it. Further it is alleged that in the instant case the suspension order is against the provisions in Section 15(6) of the Kerala Municipalities Act,1994 that the applicant was suspended from service for another reason which is not provided in the Act. It is further stated that no preliminary enquiry was conducted while issuing suspension

order. Moreover, no show cause notice was served to the petitioner before issuing Charge Memo as mentioned in the provisions of Rule 5 of the Kerala Municipality (Control on Officers) Rule,2011.

7. As per report read as 4th paper above, Principal Director, LSGD informed that Sri.M.Surendran commenced regular service as Heavy Vehicle Driver in the Municipal Common Service on 26.06.2005 and was subsequently promoted to the cadre of LD Clerk/Bill Collector on 08.11.2018 as per the orders of the Director of Urban Affairs. Later he was placed under suspension as per the Order No.G1-21352/17 dated: 29.04.2021 by the Secretary, Thalipparamba Municipality with the direction of the Chairperson of the Municipality on the allegation of using the staff quarters allotted to him for immoral purpose. The suspension proceedings were ratified by the Council through its decision No.13 , dated:30.04.2021. A Charge Memo was issued to him vide G-21352/17 dated:04.05.2021 and Sri.Surendran furnished reply on it on 20.05.2021. Based on a complaint submitted by one Sri Abdul Sattar.K.P against Sri.Surendran to the Municipal Secretary on 10.03.2021 and based on a newspaper report in the daily MKTHAB dated:19.04.2021 , a departmental enquiry team has been constituted for conducting an enquiry and furnishing report by including Health Inspector Grade-1 and Revenue Inspector of the Municipality and they have submitted the report on 26.04.2021. The report has been prepared based on evidences and oral recordings provided by natives nearby area to quarters. But Sri.Surendran was not willing to provide his oral recordings. Suspension has been done on 29.04.2021 based on this enquiry report. After receiving his suspension order ,Sri.Surendran has submitted his reply on it on 20.05.2021 . This reply has been duly examined by the Council's Finance Committee on 22.05.2021 and set aside for later discussion. On completion of 3 months suspension period , Sri.Surendran submitted application for reinstatement in service on 30.07.2021 and the Finance Committee has decided to send this issue to Director, Urban Affairs (DUA)on 16.09.2021. Later based on Council decision , orders have been issued to reinstate him in service on 24.11.2021 and he rejoined service on 06.12.2021. Subsequently , Sri.Surendran filed an appeal before Director Urban Affairs as per Orders issued in the OA No. 914/2021 and the same has been rejected by Director Urban Affairs in its Order dated:27.02.2023.

8. The Principal Director has further reported that as per Rule 15(6)of

Kerala Municipal Act,1994 the Chairperson shall have the power to suspend from service any officer or employee in the service of the Municipality if necessary , on grounds of gross negligence of duty ,dereliction of duty and violation of rules and standing orders. In addition , as per Rule 4(1)of Kerala Municipality (Control on Officers) Rule,2011, the Council can take disciplinary action on proved mis behaviour ,bad conduct on the part of an employee. In the present case quarters have been allotted to Sri.Surendran on the condition that it won't be used for any illegal activity. Since Sri.Surendran, has violated these instructions as per enquiry report, the Council has ratified the actions taken against him. The Principal Director has stressed that all official actions taken against Sri.Surendran are as per the provisions in existing Municipal Acts and Rules. Sufficient time (15 days) has been given to him for submitting his explanation for not imposing punishments. As per Rule 15(3)(b) of Kerala Municipal Act,1994, the Chairperson shall supervise and control the acts done and steps taken by the officers and employees of the Municipality. As per Rule 49(d)of the above Act, the Secretary shall implement the directions of the Chairperson and as per Rule 49(k) Secretary shall take disciplinary action against Municipal employees with the knowledge of the Chairperson. Hence it is the responsibility of Secretary to take action on disciplinary procedures as per Rule 4(1)of Kerala Municipality (Control on Officers) Rule,2011. The Council can also implement disciplinary procedures as per Rule 4(1)of Kerala Municipality (Control on Officers) Rule,2011. All charges have been imposed based on Council decision No. 17 dated:29.10.2021. The Secretary has acted as per the direction of the Council only.

9. Government have examined the case in detail with the contentions raised by the applicant in the hearing, with the report furnished by the Principal Director,LSGD and with other available documents and existing provisions in Kerala Municipal Act,1994 and Kerala Municipality (Control on Officers) Rule,2011, it is found that the suspension done and subsequent disciplinary procedures taken against Sri.Surendran is in order. Hence the contentions raised in the Annexure A11 Appeal Petition cannot be considered favourably. In the circumstances the same is therefore rejected and orders issued accordingly.

10. The direction contained in the Order read as 3rd paper above of the Hon. Kerala Administrative Tribunal is thus complied with as noted

above.

(By order of the Governor)
DR MANJU K
UNDER SECRETARY

To:

1. The Principal Director,LSGD, Thiruvananthapuram.
2. The Director, Kerala State Audit Department, Thiruvananthapuram.
3. The Advocate General, Kerala, Thiruvananthapuram(With C/L).
4. Sri. M.Surendran, Lower Division Clerk/Bill Collector, Thaliparamba Municipality(Through the Principal Director,LSGD)
5. The Executive Director, Information Kerala Mission, Thiruvananthapuram.(For publishing this order in the Website).
6. Stock file/Office Copy.

Forwarded /By order

Section Officer