IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 18TH DAY OF JULY 2014/27TH ASHADHA, 1936

WP(C).No. 18526 of 2003 (E)

PETITIONER(S):

A. ISMAIL KUNJU, S/O.ABDULREHUMAN KUNJU,
AGED 42 YEARS, THENGILAZHIKATH VEEDU,
MUTTAKKAVU, NEDUMPANA P.O., KOLLAM,
HELPER (FORMERLY), REGIONAL GODOWN, KOLLAM,
KERALA STATE CIVIL SUPPLIES CORPORATION.

BY ADVS.SRI.C.UNNIKRISHNAN (KOLLAM),
SRI.S.HARIKRISHNAN.

RESPONDENT(S):
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1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
FOOD & CIVIL SUPPLIES DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

2. THE MANAGING DIRECTOR,
KERALA STATE CIVIL SUPPLIES CORPORATION LIMITED,
MAVELI BHAVAN, GANDHI NAGAR, COCHIN.

3. THE SECRETARY,
KERALA STATE CIVIL SUPPLIES CORPORATION LIMITED,
MAVELI BHAVAN, GANDHI NAGAR, COCHIN.

4. TAHSILDAR,
REVENUE RECOVERY, KOLLAM.

R1 & R4 BY GOVT. PLEADER MR.T.R. RAJESH.
R2 & R3 BY ADVS. SRI.JOY GEORGE, SC,
SMT.MOLLY JACOB, SC,
SRI.MATHAI VARKEY MUTHIRENTHY, SC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-07-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

A.M.SHAFFIQUE, J

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W.P.C.No.18526 of 2003

Dated this the 11th day of November 2015

J U D G M E N T

Petitioner challenges Exts.P2, P5 and P7 by which a liability had been imposed on him by the Civil Supplies Corporation (for short 'Corporation') and attempts were made to recover the amounts from him.

2. The short facts involved in the writ petition would disclose that the petitioner was working as a Helper in the Corporation since 1983. He was suspended from service on 30/08/1991 alleging huge shortage of stock of chilly and coriander in the godown at Kollam. The memo of charges was issued and the petitioner had given a reply. 3rd respondent, by order dated 16/11/1992, imposed a punishment of barring two increments with cumulative effect and ordered recovery of an amount of Rs.40,745.25/- . Ext.P2 is the said order. Petitioner preferred a review petition before the 2nd respondent. He was reinstated in service and later, by conducting another enquiry, he was terminated from service as per order dated 05/01/1999 alleging

that he was unauthorisedly absent from 1993 onwards. In the meantime, petitioner was faced with a notice for revenue recovery for an amount of Rs.40,745.25/-. Petitioner submitted that his review petition was pending and challenged the matter before this Court by filing O.P.No.29180/2002. By judgment dated 10/01/2003, this Court directed the review petition to be considered on merits and until such time, the recovery proceedings were kept in abeyance. Ext.P7 is the order passed in the review petition by which his claim has been rejected.

3. Counter affidavit has been filed by the Corporation supporting the stand taken in Ext.P7. It is stated that the petitioner, who was a Helper, was also responsible for the stock and as per the procedure prescribed, necessary notice had been issued to him, his explanation was considered and orders have been passed which resulted in Ext.P2. Though the petitioner preferred an appeal, it came to be rejected against which review petition was filed, which was also rejected.

4. Heard learned counsel for the petitioner and the learned counsel appearing for the Corporation.

5. The main contention urged on behalf of the petitioner is that he, being only a helper and not the custodian of the property in the godown, cannot be mulcted with any liability. It is also contended that no enquiry was conducted before passing any order by which he was called upon to pay such a huge amount. It is further contended that the recovery notice is barred by law of limitation as held by the Supreme Court in **State of Kerala v. Y.R.Kalliyanikutty** *[1999 (2) KLT 146 (SC)]*. Learned counsel for the petitioner also relied upon the Kerala Financial Code to indicate that when a liability is fixed on an employee in Government service, it has to be done only after conducting a proper enquiry in the matter fixing the liability.

6. On the other hand, Smt.Molly Jacob, appearing on behalf of the Corporation, would submit that as per the Rules, fixation of liability for shortage of stock is a minor penalty and therefore an enquiry as contemplated under the Rules is not required. She relied upon a statement along with which Annexures have been produced which indicates that helpers will also be responsible for the shortage of stock, if any, and other irregularities in stock in the outlets they are working. In so far as

the petitioner was working in a godown and shortage of stock had been found out, he is also responsible for the shortage in stock after deducting an admissible wastage. In fact, the liability of the custodian was 50% and the balance 50% liability is fixed on the Helpers who are working in the godown during the relevant time. It is also argued that the revenue recovery proceedings have been initiated well within time and no such contentions have been urged by the petitioner in this regard.

7. Having regard to the contentions urged by the parties, primarily it has to be considered whether a detailed enquiry was required to be conducted by the Corporation. Rules in this regard is the Kerala State Civil Supplies Corporation Helpers Service Rules, 1978 (hereinafter referred to as 'the Rules'). As per Rule 16, minor penalties and major penalties are prescribed. It is indicated that withholding of increments without cumulative effect, recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders or otherwise is treated as a minor penalty. This amendment was effected as per Board meeting held on 29/03/1986. It is further stated that no major penalty shall be imposed without holding a

domestic enquiry. In so far as minor penalty is concerned, it is indicated that no kind of punishment shall be awarded to an employee unless he has been informed in writing of the grounds on which it is proposed to take action against him and he has been afforded an opportunity including a personal hearing if so demanded. It is apparent that the aforesaid procedure had been complied with and the punishment imposed is withholding of increment as well as recovery from pay of the whole or part of any pecuniary loss caused to the Corporation. Under such circumstances, requirement of domestic enquiry is not required in the matter and such a ground is not sustainable.

8. Learned counsel for the petitioner, however, made reference to the Kerala Financial Code to indicate that when liability is fixed on an employee in respect of any loss caused to the Government, necessarily an enquiry has to be conducted. But the fact remains that as far as the petitioner is concerned, his rights and obligations are covered by the Rules, which will apply to the fact situation and therefore the said contention is not available to the petitioner.

9. The next ground urged by the learned counsel for the petitioner is with reference to the liability. He makes specific reference to Annexures 1(a) and 1(b) produced along with the statement dated 13/10/2011. Annexure 1(a) is with reference to the duties and responsibilities of Helpers. Clause (2) reads as under:

> *"(2) The Helpers will also be responsible for the shortage of stock, if any, and other irregularities in stock in the outlets they are working, considering the joint responsibility of stock."*

It is argued that Helpers are normally engaged in retail outlets and their obligation is clearly spelled out only with reference to the work in retail outlet. Annexure 1(b) is the copy of the proceedings of the Managing Director dated 08/11/1990 which clearly indicates that in case of Depots, custodian of stock will be held primarily responsible for the shortages and Assistant Manager/Unit Manager will also be held responsible for causing loss to the Corporation due to their supervisory lapse. It is contended that Sales Depot or godown is concerned, Helper cannot be mulcted with any such liability and there is no procedure prescribed under any standing orders or Rules or instructions which permit the Corporation to impose on the Helper a liability for the loss which had occurred in a godown. It is stated that godown is being handled by a Custodian as well as Helpers and only the Custodian, at best, can be made responsible. Further, it is argued that shortage of stock, which has occurred, might be on account of pilferage as it was kept in a godown which does not have proper enclosures and therefore such a liability could not have been fastened on the petitioner.

10. Learned counsel appearing for the Corporation, however, brings to the notice of this Court Rule 13(ii) which indicates the duties, responsibilities and conduct. Rule 13(ii) reads as under:

> *"**13. Duties, responsibilities and conduct***
>
> *(i) xxxx*
>
> *(ii) Their behaviour to the customers should be polite, decent and courteous. They shall be jointly responsible with the Assistant Incharge of the depot for custody, maintenance and proper display of stocks/goods in the almirahs/racks and counters etc., sale of goods and for deficit in stocks if any. They will attend*

> *to their duties as per the instructions of the superiors. They should attend to their work at the appointed time, neatly dressed."*

It is argued that the petitioner cannot wriggle out of the liability as it is clearly indicated in the Rule that he shall be jointly responsible with the Assistant Incharge of the depot for custody, maintenance and proper display of stocks/goods in the almirahs/racks and counters etc., sale of goods and for deficit in stocks if any.

11. The question that arise in this background would be whether the petitioner can be made responsible for any deficit in stock. As rightly contended on behalf of the respondent Corporation that the Rules itself specifically indicate that Helper will also be responsible for the deficiency in stock.

12. Learned counsel for the petitioner has drawn a distinction between the retail outlet and a depot.

13. Annexure 1(b) has been issued to indicate that there is no uniformity in the recovery made by the Regional Managers towards the cost of shortages in the Outlet/Depot. Annexure 1(b) is apparently with reference to the recovery to be made in the

normal course of proceedings. It is indicated that before taking such action, memo of charges should be issued for the entire shortage noticed in the Retail Outlet/Depot. Further, it is stated that the value of abnormal shortage in the Depot/Outlet should be recovered at economic rates instead of recovering at the retail selling prices for the shortages. Paragraph 4 indicates that in the Retail Outlets, the Shop Manager will be held responsible for 50% of the total value of shortage and the Salesman/Helpers will be held equally responsible for the balance 50% of the shortages, unless there is evidence to prove otherwise. Paragraph 5 further indicates that in the case of Depots, the Custodian of stock will be held primarily responsible for the shortages and Assistant Manager/Unit Manager will also be held responsible for causing loss to the Corporation. It is argued that in so far as Clause 5 relating to Depot, the liability can be fixed only on the Custodian of stock and thereafter on the Assistant Manager/Unit Manager and no such liability can be fixed on the Helper. Annexure 1(b), which is only an administrative instruction issued by the Managing Director, does not indicate that the liability cannot be fastened after issuing a notice and after taking proceedings in terms with 1978 Rules. Annexure 1(a) prescribes the duties and responsibilities of the Helpers and Annexure 1(b) is with reference to the manner in which the proceedings are to be taken. But, that does not mean that the Corporation has no power to take disciplinary action in terms with 1978 Rules. Under such circumstances, the fact that the petitioner was working in a godown and merely for the reason that in paragraph (5) of Annexure 1(b), there is no mention about imposing a liability on the Helper, by itself will not suffice to hold that the Helper who was working in a godown was not responsible for the shortage of stock. The shortage of stock has been found out by the Management on a surprise inspection and when a deficit is noticed, the Management had come to the conclusion that all the persons involved in the matter is responsible. In such an event, this Court cannot in exercise of the power of judicial review, set aside the said finding of fact. It is also evident from the materials placed on record that there were four persons in the godown which include the managerial personnel as well as two Helpers and action had been taken by the Management against all of them.

14. Having regard to the aforesaid factual situation, I am of the view that merely for the reason that the petitioner was working in the godown, it does not mean that the management cannot impose any liability on him for the loss suffered by the Corporation. Under such circumstances, such a ground taken by the petitioner is also unsustainable.

15. The next question to be considered is whether the revenue recovery notice has been issued beyond the time specified under the period of limitation. First of all, as to when a requisition has been issued by the Corporation is also a fact which is not known, as no contention has been urged in the matter. That apart, it is evident that the proceedings of revenue recovery were kept in abeyance by virtue of the directions issued by this Court in O.P.No.29180/2002 and that the issue was directed to be agitated in a review petition filed by the petitioner which came to be disposed only on 02/04/2003. Revenue recovery notice, Ext.P5, does not contain any material as to when the requisition has been sent. It only gives the details of the date on which the District Collector had forwarded the requisition to the Tahsildar for revenue recovery. Under such circumstances, I do not think

that there are sufficient materials to come to a conclusion that the revenue recovery notice has been issued beyond the time specified for filing of a suit. Under such circumstances, I do not think that the petitioner has succeeded in challenging Exts.P2,P5 and P7 and accordingly, this writ petition is dismissed.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr