

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A. No.301 of 2015 and M.P. No.1 of 2015

1 The Commissioner of Handlooms and Textiles
Kuralagam II Floor
Chennai 600 108

2 The Tamil Nadu Textile Corporation Ltd.
represented by its Managing Director
15, Dr. Munusamy Garden Street
Avanashi Road
Coimbatore 641 018

Appellants /Respondents
in W.P.No.25269/06

vs.

N. Balasubramanian

Respondent/Petitioner in W.P.25269/06

Writ Appeal preferred under Clause 15 of the Letters Patent as against the order dated 01.09.2014 passed in W.P. No.25269 of 2006. filed under Article 226 of the Constitution of India praying for issue of Certiorarified Mandamus, calling for the records of the 2nd respondent made in IA/3/2/37(a)/2005-2006 dated 7.11.2005 and to quash the same.

For appellants Mr. V. Karthik
for M/s. T.S. Gopalan & Co.

For respondent Mr. G. Balasubramanian

JUDGMENT

(Judgment of the Court was delivered by SATISH K. AGNIHOTRI, J.)

This intra-Court appeal arises from the order dated 01.09.2014 passed by the Writ Court in W.P. No.25269 of 2006, wherein, the order dated 07.11.2005 passed by the second appellant was put to challenge.

2 For the sake of convenience, the parties are referred to as per their rank in the instant appeal.

3 The facts, in nutshell, relevant for the adjudication of the dispute are that the respondent, while working as Manager (Finance)-cum-Company Secretary, was charge sheeted for signing blank cheques and handing over the same to the second appellant and as such, abetted him to commit criminal offence. It was also alleged that he prepared false minutes on 19.12.1992 at the instance of the then Managing Director of the second appellant. A criminal prosecution was initiated against the respondent, which resulted in acquittal of the charges on 15.03.2001. After the respondent joined the office back, after acquittal from criminal charges, a fresh departmental enquiry was initiated and he was placed under suspension on 16.03.2001. The Enquiry Officer did not find both the charges as proved. The Disciplinary Authority accepted the finding in respect of the first charge and in respect of the second charge, it was held as partly proved. Accordingly, punishment of stoppage of increment for one year with cumulative effect was imposed and it was also ordered that the entire period of suspension shall be treated as on "duty". Thereafter, the said order of punishment was amended without affording an opportunity of hearing to the respondent by order dated 26.10.2004 passed by the second appellant, stating that the period of suspension from 25.10.1996 to 28.02.2003 be treated as leave to which he is eligible other than Medical Leave. Subsequently, on 04.05.2005, it appears that the second appellant, on instructions from the first appellant, passed the following order to the effect of treating a portion of suspension period as "duty for all purposes", another portion of suspension period as "Earned Leave" and the remaining portion of the suspension period as "Extra-ordinary Leave"

ORDER:

The following amendment is issued to the Proceedings of the Managing Director No.IA/3/2/37(a)/2004-2005, dated 26.10.2004 in compliance of the proceedings of the Chairman, TNTC/CH & T Rc.No.12684/2003/B2 dated 01.03.2005.

AMENDMENT

In the proceedings No.IA/3/2/37 (a)/2004-2005, dated 26.10.2004, for the existing words "the period of suspension from 25.10.1996 to 28.02.2003 is ordered to be treated as leave to which he is eligible other than Medical Leave", the words "The period of suspension from 25.10.1996 to 15.03.2001 is ordered to be treated as duty for all purposes; the period of suspension from 16.03.2001 to

10.11.2001 is ordered to be treated as Earned Leave; and the period of suspension from 11.11.2001 to 28.02.2003 is ordered to be treated as Extra Ordinary Leave and Thiru N. Balasubramanian stands relieved from the Corporation on the afternoon of 28.02.2003" shall be substituted."

On the same day, i.e., on 04.05.2005, pursuant to the order of even date, the second appellant passed the following order in respect of grant of annual increments as well:

"ORDER:

Thiru. N. Balasubramanian, the then Manager (Finance)-cum-Company Secretary is granted annual increments as follows consequent to the proceedings of the Managing Director in the reference cited at the time scale of pay of Rs.12,000-375-16500.

1	Pay as on 25.10.1996	-	Rs.13,125/-
2	Pay as on 1.1.1997	-	Rs.13,500/-
3	Pay as on 1.1.1998	-	Rs.13,875/-
4	Pay as on 1.1.1999	-	Rs.14,250/-
5	Pay as on 1.1.2000	-	Rs.14,625/-
6	Pay as on 1.1.2001	-	Rs.15,000/-

Since it is not possible to give effect to the punishment of stoppage of increment for one year with cumulative effect, it is ordered that an increment amount of Rs.375/- p.m. together with the applicable allowances for one year is ordered to be recovered from the amount payable to Thiru. N. Balasubramanian."

Thereagainst, the respondent filed a review petition to the Board of Directors. The Board of Directors, vide communication dated 07.11.2005, rejected the review petition. Thus, the instant writ petition.

4 The primary question that arises for our consideration in the instant writ appeal is as to whether the Disciplinary Authority is competent to modify/alter the order of punishment, to the prejudice of the delinquent employee, subsequently, without affording an opportunity of hearing to him.

5 It is not in dispute that the initial order dated 26.10.2004 was subsequently amended by order dated 04.05.2005 to the prejudice of the respondent. It is a well settled principle of law that no order adversely affecting an employee can be passed without affording an opportunity of hearing to him. It is not the case of

the appellants that the respondent was given proper opportunity of hearing, except that he availed the opportunity of putting forward his case in the review petition and as such, the order does not suffer from the vice of lack of opportunity of hearing.

6 The Writ Court, having recorded the fact that the first order was amended subsequently to the prejudice of the respondent without affording an opportunity of hearing, quashed the first order itself, directing the appellants to treat the period from 16.03.2001 to 28.02.2003 as "duty period" and release all the benefits due and payable to the respondent.

7 It is a trite law that if the punishment order is found defective not on merits, but, on the ground that opportunity of hearing was not afforded, the delinquent employee is entitled to a fresh opportunity of hearing. In the case on hand, the first order was amended without recording any reason and also without giving an opportunity of hearing to the respondent.

8 In view of the foregoing, we are of the considered opinion that the order dated 01.09.2014 passed by the Writ Court is liable to be set aside and it is accordingly, set aside and the matter is remitted back to the disciplinary authority to consider the matter afresh, after affording an opportunity of hearing to the respondent and pass orders accordingly.

9 Resultantly, the writ appeal is allowed in the above terms. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

cad

To

1 The Commissioner of Handlooms and Textiles
Kuralagam II Floor
Chennai 600 108

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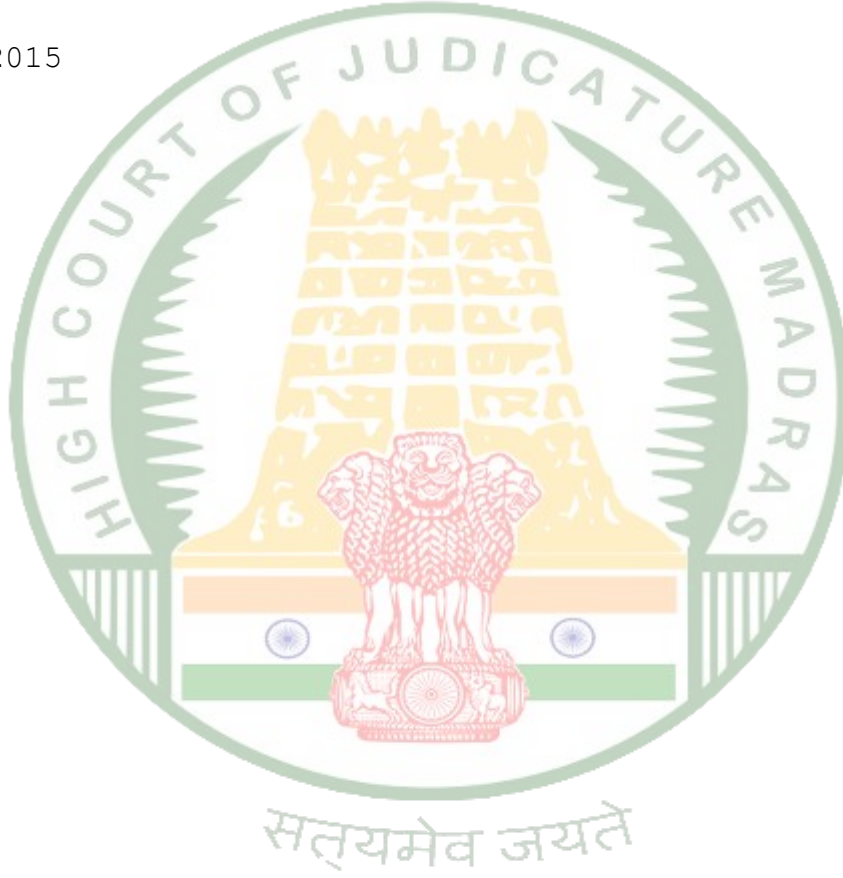
2 The Managing Director
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1 cc to M/s. T.S. Gopalan & Co, Advocate, SR.No.10823

1 cc to Mr.M.V.Venkataseshan , Advocate, SR.No.10867

W.A. No.301 of 2015

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