

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.05.2016

Pronounced on : 06.07.2016

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P.Nos.17852 and 17853 of 2016

and

WMP.Nos.15537 to 15540 of 2016

S.Arumugam

Deputy Manager (Marketing) (Retired),
Office of the General Manager (Marketing),
Tamil Nadu Co-operative Milk Producers,
Federation Limited,
Corporate Office, Nandanam,
Chennai - 600 035. ...Petitioner in both WPs

Vs.

- 1.The Managing Director,
Tamil Nadu Co-operative Milk Producers,
Federation Limited,
"Aavin Illam",
Madhavaram Milk Colony,
Chennai - 600 051.
- 2.The Joint Managing Director,
Tamil Nadu Co-operative Milk Producers,
Federation Limited,
No.29 & 30, Industrial Estate,
Ambattur, Chennai - 600 098. ... Respondents in both WPs

Prayer in W.P.No.17852 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records which culminated in the proceedings bearing Ref.No.10147/Pers.IR.1/2010 dated 17.02.2016 of the first respondent which was served upon the petitioner on 02.03.2016 by confirming the order passed in Ref.No.4364/E3/10 dated 28.10.2010 of the second respondent quash both the orders and

consequently direct the respondents to release the terminal benefits due and payable to the petitioner, which were withheld by the respondents and / or recovered from the petitioner, within a time to be stipulated by this Court.

Prayer in W.P.No.17853 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records which culminated in the proceedings bearing Ref.No.12771/Pers.IR.1/2010 dated 12.02.2016 of the first respondent which was served upon the petitioner on 02.03.2016 by confirming the order passed in Proceedings Ref.No.885/Z1/07 dated 26.10.2010 of the second respondent quash both the orders and consequently direct the respondents to release the terminal benefits due and payable to the petitioner, which were withheld by the respondents and / or recovered from the petitioner, within a time to be stipulated by this Court.

For Petitioner : Mr.S.Kumaresan
(in both WPs)

For Respondents :Mr.S.Sathishrajan
(in both WPs)

COMMON ORDER

Heard the submissions of Mr.S.Kumaresan, learned counsel appearing on behalf of the writ petitioner in both the Writ Petitions and that of Mr.Sathishrajan, learned counsel appearing on behalf of the first and second respondents.

2.By consent of both parties both the writ petitions are taken up for final hearing.

3.Writ Petition No.17852 of 2016 has been filed before this Court with a prayer seeking an issuance of a Writ of Certiorarified Mandamus calling for the entire records of proceedings dated 17.02.2016 of the first respondent and quash the same and consequently direct the respondents to release the terminal benefits due and payable to the Petitioner. Writ Petition No.17853 of 2016 has been filed before this Court seeking a Writ of Certiorarified Mandamus calling for the records of the proceedings dated 12.02.2016 of the first respondent and quash the same and consequently direct the respondents to release the terminal benefits due and payable to the petitioner.

4.The factual matrix leading to the present controversy is that the Writ Petitioner has worked as Deputy Manager Marketing

in the respondents' office and retired from service on 31.10.2010 after rendering almost three and a half decades of service in the Respondent Corporation. It has also been submitted that the petitioner on 23.06.2004 was conferred with the best Marketing Officer award by the second respondent. While being so, the Deputy Manager of the Respondent Corporation has issued a charge memo to the Writ Petitioner on 07.02.2005 and three charges that were levelled against him are as follows:-

(a) Charge No.1: that he had violated the instructions and guidelines issued by this office then and there and allowed the private dealers mentioned below to lift milk for

Rs.11,89,404/- over and above the SD amount.

Details:

J.Mahendran	:	Rs. 4,92,310.50
N.Bijupaul	:	Rs. 6,42,397.50
B.Nagarajan	:	Rs. 54,696.50

		Rs.11,89,404.50

(b) Charge No.2: that he had not collected the empty tubs then and there and a total number of 4683 tubs, amounting to Rs.5,40,886.50 is due at the rate of Rs.115.50 for each tub, for a long time as detailed below:-

J.Mahendran	:	2706 Nos
N.Bijupaul	:	1780 Nos
B.Nagarajan	:	197 Nos

		4683 Nos

(c) Charge No.3: that he has not taken any efforts to make good of the loss and due to his inaction, the Federation has to meet heavy loss to the extent of Rs.17,30,290.50.

5.The petitioner has given his reply on 18.02.2005. Even "after his reply" he was not permitted to retire. However, by order dated 28.10.2010, he was permitted to retire. The enquiry officer after enquired the matter has come to the conclusion that the charges against the delinquent petitioner are proved and accordingly imposed a punishment of recovery of amount of loss from the terminal benefits of the petitioner and recovery of amount equivalent to stoppage of increment for two and a half years with cumulative effect and further the terminal benefits of the petitioner were withheld until the amount of loss and tubs were recovered from the private distributors.

6.The writ petitioner has preferred a Statutory Appeal on 28.09.2010 under the Tamil Nadu Cooperative Milk Producers

Federation Conduct, Discipline and Appeal Rules and has also raised some additional grounds of appeal and the Appellate authority who is the first respondent herein on 17.02.2016 has dismissed the Appeal and found that the charges against the petitioner were rightly proved.

7. In the other writ petition in W.P.No.17853 of 2016, the charge memo dated 28.08.2010 was issued and that the charges were levelled against the petitioner were as follows:

(a) Charge No.1: that he has fixed the distance from Sholinganallur Dairy to Kancheepuram as 240 Kms, instead of the actual distance 182 Kms. Without verifying the actual distance and thereby attracting Rules 30, 10 and 30(1) of the TCMPE Employees Conduct, Discipline and Appeal Rules.

(b) Charge No.1: that he has failed to perform the official duty and was instrumental in causing loss to the Federation to the extent of Rs.1,19,822.20 by settling the transport hire charges bills due to wrong fixation of distance from Sholinganallur to Kancheepuram as 240 Kms instead of 182 Kms.

For the above said charge memo the petitioner has given his reply on 08.09.2010.

8. It could be seen that in the instant case, the enquiry officer has found that the first charge was not proved by the report dated 25.10.2010 but however, the second charge is found to have been proved. However, the report of the enquiry officer was not completely accepted and his finding, in so far as the first charge is concerned, was deferred and it was found that even the first charge is proved and the enquiry officer's report in so far as exonerating the petitioner from the first charge was disagreed upon and accordingly, both the charges in the said charge memo were found to be proved. Aggrieved by that, a statutory appeal was preferred on 12.10.2010 and by an impugned order dated 12.02.2016, the first respondent has dismissed the appeal and found that the charges against the petitioner were proved.

9. Mr. S. Kumaresan, learned counsel appearing for the petitioner in both the writ petitions has vehemently contended that in the first place, the order passed in the appeal in both the writ petitions is absolutely cryptic and without assigning any reasons or there being any discussions, there is a non-speaking order passed by the Appellate authority wherein which the appeals have been dismissed. It has been submitted that the said orders passed in both the writ petitions wherein no reasons have been assigned, no discussions have been made and

appropriate issues have not been considered, the Appellate authority's order is clearly against the principles of natural justice and is ex facie arbitrary and unconstitutional. For canvassing his point, he would refer upon the judgments of the Supreme Court as follows:

1.State of Jharkhand and others v. Jitendra Kumar Srivastava and Another (2008 (16) VST 181 (SC).

2.Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney and others (2009) 4 SCC 240.

10.It is his further submission that in so far as Writ Petition No.17852 of 2016 is concerned, the charges against the writ petitioner revolve around the scope of loss that had occurred to the respondent corporation and even when the enquiry was conducted in 2010, this Court by order dated 22.06.2007 has directed that in C.S.No.205 of 2004 and in C.S.No.382 of 2004, the amount that has been alleged to have not been paid by the defaulters who have taken them it was directed to be paid and a decree has also been obtained wherein which an amount to the tune of Rs.13,66,344/- and Rs.15,72,133/- has been directed to be paid to the respondent corporation.

11.Hence, it has been submitted that when the enquiry took place, the issue of non payment of amount does not arise at all because the said amount has already been directed to be recovered from the defaulters and accordingly, there is no loss that the Corporation would suffer as the Court has clearly passed a detailed direction and this fact has not at all been discussed in the enquiry. The fact that the High Court passing an order and as a result of which the interest of the Corporation has been safeguarded has nowhere been placed in the entire enquiry proceedings and it has been submitted by the writ petitioner that this is a very crucial fact that ought to have been necessarily considered and non-consideration of the same would clearly show that the disciplinary authority has not acted fairly. It is also his submission that is only due to the superintendence of the superior officials, it was to be done and he has no role in the actual decision making.

12.Canvassing these submissions, it has also been pointed out that in the appeal that has been preferred, elaborate submissions have been made and detailed submissions that were given in the appeal in the additional grounds have been completely ignored by the appellate authority and the order of the disciplinary authority which suffers from errors was not considered by the appellate authority and the appellate authority has also passed a cryptic order and thence, it has been submitted that the order of the Appellate authority is liable to set aside.

13. In the other writ petition, it has been submitted that both the charges levelled against the petitioner were intertwined and in the event of one of the charges not being proved by the enquiry officer, the question of the other charge being proved does not arise. However, the disciplinary authority without proper appreciation of the material on record and the explanations given has disagreed with the findings of the enquiry officer and has held both the charges to have been proved against the petitioner. Consequently, the statutory appeal filed by the petitioner was also rejected by a non-speaking order by the first respondent in proceedings dated 12.02.2016. Hence, it was prayed that for the reasons for non-appreciation of material on record and passing a cryptic and arbitrary order, the impugned proceedings shall be quashed and the terminal benefits of the petitioner shall be released.

14. Per contra, Mr. Sathishrajan, learned counsel appearing for the respondents has submitted that the Appellate Authority has passed the impugned order after taking into consideration all relevant materials and facts and since the petitioner was responsible for causing heavy losses to the Corporation, the punishment that has been imposed naturally would commensurate to the gravity of charges that have been levelled against him. It has also been submitted by the learned counsel appearing for the respondents that the Appellate Authority has taken into account important and crucial facts and has come to a well considered and reasonable finding and he vehemently opposed for allowing the petitioner's case and thus prayed that the Writ Petitions be dismissed.

15. It has also been submitted by the learned counsel that the enquiry officer has elaborately considered the matter and only then, he has come to the conclusion and this being so, the Appellate authority has considered these findings and only then, confirmed the punishment that has been imposed.

16. Now, the two questions that arise for consideration before this Court is:

- (1) Whether the order passed by the Appellate Authority confirming the punishment awarded to the Petitioner is legally sustainable?
- (2) Whether the Petitioner is liable for the misconduct that has been alleged against him?

17. In fact, these two questions are interconnected with each other and this Court is to ascertain whether the whole exercise by which the punishment that has been imposed and confirmed against the Petitioner is sustainable in law.

18.It is settled in law that the scope of judicial review in matters relating to disciplinary proceedings is quite limited. The Court cannot substitute its view as against the view taken by the disciplinary authority and in a Writ Petition filed under Article 226 of the Constitution of India, the Court has to only ascertain and find whether there is any violation of any Fundamental rights or Constitutional rights or the decision making process for imposing the punishment is against the canons of law.

19.On a bare perusal of the pleadings and records, one fact that is evident is that the charge against the petitioner was issued as early as February 2005 and in both the Writ Petitions, the order of punishment was imposed in October 2010 and the statutory appeal was filed in September and November 2010. However, the Appellate authority has passed the impugned order only in February 2016 in both the Writ Petitions and even in the impugned orders that have been passed, there is no reason stated as to why the appeal was taken up and disposed of only after a period of 6 years after the original order of punishment was passed, that too after the petitioner's retirement of 6 years.

20.The Tamil Nadu Cooperative Milk Producers Federation Conduct, Discipline and Appeal Rules govern the employees in the Respondent Corporation and it is naturally expected that the disciplinary authority scrupulously follows the said Rules. In Rule 17, it has been clearly stated that the Appeal shall be preferred by the employee through the proper channel within a period of 15 days in cases of minor penalty and one month in cases of major penalty. Rule 19 stipulates that the Appellate authority shall consider whether facts on which the order was based have been established or the facts so established affords sufficient grounds for the punishment given and whether the punishment is excessive, adequate or inadequate and pass such orders in merits and it also prescribes that the order of the Appellate authority shall be final. Rule 9 prescribes that a disciplinary proceeding in case of a minor penalty shall be completed within a period of 60 days from the date of initiation of proceedings and Rule 10 states that in case of major penalty, the proceedings shall be completed within 3 months from the date of issue of charge sheet.

21.It is quite unclear as to how in spite of the Rules clearly prescribing that the disciplinary proceedings ought to be completed in a timely manner, the respondents have prolonged it beyond a reasonable period and have concluded that the petitioner is guilty of all charges even in the appeal. It is apposite to point out that neither the disciplinary proceedings nor the appeal proceedings have been completed in a timely manner and there has been inordinate delay in completing the same.

22.This Court feels that the term "justice delayed is justice denied" clearly and squarely could apply to disciplinary proceedings against delinquent employees because a persons career could virtually be doomed if a vexatious or baseless disciplinary proceedings against him / her is dragged for years together. Though this Court is aware that the Government and its agencies have passed several government orders and instructions that the disciplinary proceedings shall be conducted and completed in an expeditious and timely manner, the persons who are actually in charge of the disciplinary proceedings appear to be completely oblivious of this. In fact, due to delay, due to genuine cases where the Government is able to point out the misconduct, merely because of the disciplinary proceedings having been protracted for years together, the delinquent goes scot-free.

23.Here, the sum and substance of the charges against the delinquent focus on the alleged loss that has been caused to the Corporation due to the distributors and due to the wrong fixation of distance. As it has already been pointed out rightly by the Writ Petitioner, the alleged loss that has been suffered by the corporation has been made good by the orders passed by this Court in the Civil Suits that have been filed by the corporation and the explanation that has been given by the petitioner with regard to these allegations have been completely brushed aside as a result of which the impugned order of punishment has been imposed. Further in so far as the issue of wrong distance that has been calculated by the petitioner is concerned, the enquiry officer has taken a stand favourable to the petitioner but however, without any valid and convincing reasons, the disciplinary authority has overturned the findings.

24.Apart from this, in both the cases the Appellate Authorities have not given any valid reason in affirming the order of punishments of the Disciplinary authority, but simply confirm the punishment orders. Hence, in my opinion, that the Appellate Authority while confirming the orders of the Disciplinary authority must contain reasons at least in brief so that one can know whether the Appellate authority has applied its mind while affirming the order of the proposition disciplinary authority. This was upheld by the Hon'ble Apex Court in a case in Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney and others (2009) 4 SCC 240.

"5.In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact,

the said decision in Prabhu Dayal Grover case (1995) 31 ATC 492 has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

6.The view we are taking was also taken by this Court in Divl. Forest Officer v. Madhusudan Rao, JT (2008) 2 SC 253 (vide SCC para 20 : JT para 19), and in M.P. Industries Ltd. v. Union of India, AIR 1966 SC 671, Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India, AIR 1976 SC 1785 (vide SCC para 6 : AIR para 6), etc.

7.In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

8.The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in S.N.Mukherjee v. Union of India 1990 SCC (Cri) 669, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation."

25.As it has been reiterated by the Supreme Court and this Court in a series of decisions that reason is the heartbeat of any decision arrived by a judicial or a quasi judicial authority, in the instant case, in spite of there being a mandate in the Rules, the Appellate authority has passed nothing but a cryptic order in both the cases. This Court would have normally set aside the order and remanded the matter for fresh consideration by the Appellate authority but however, in the instant case, the writ petitioner has been fighting the battle for almost a decade and has suffered due to the inordinate delay caused by the Respondents Corporation by ignoring their own

Rules of the Corporation. This Court is of the view that not only on account of delay but also on the ground of non-appreciation of facts properly and improper consideration of the petitioner's explanation, the disciplinary proceedings would also suffer for being illegal and unsustainable.

26. On perusal of the above facts, documents filed before this Court and arguments made by both the parties, I am of the considered opinion that both the writ petitions ought to be allowed. Therefore, I am inclined to pass the following orders:

(a) The impugned orders in the proceedings bearing Ref.No.10147/Pers.IR.1/2010 dated 17.02.2016 of the first respondent, confirming the order passed in Ref.No.4364/E3/10 dated 28.10.2010 of the second respondent and in the proceedings bearing Ref.No.12771/Pers.IR.1/2010 dated 12.02.2016 of the first respondent, confirming the order passed in Proceedings Ref.No.885/Z1/07 dated 26.10.2010 of the second respondent respectively are hereby set aside and thereby the writ petitions are allowed.

(b) The respondents are directed to release the terminal benefits, which were withheld by the respondents or recovered from the petitioner within a period of four weeks from the date of receipt of a copy of this order.

27. Accordingly, both the writ petitions are allowed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

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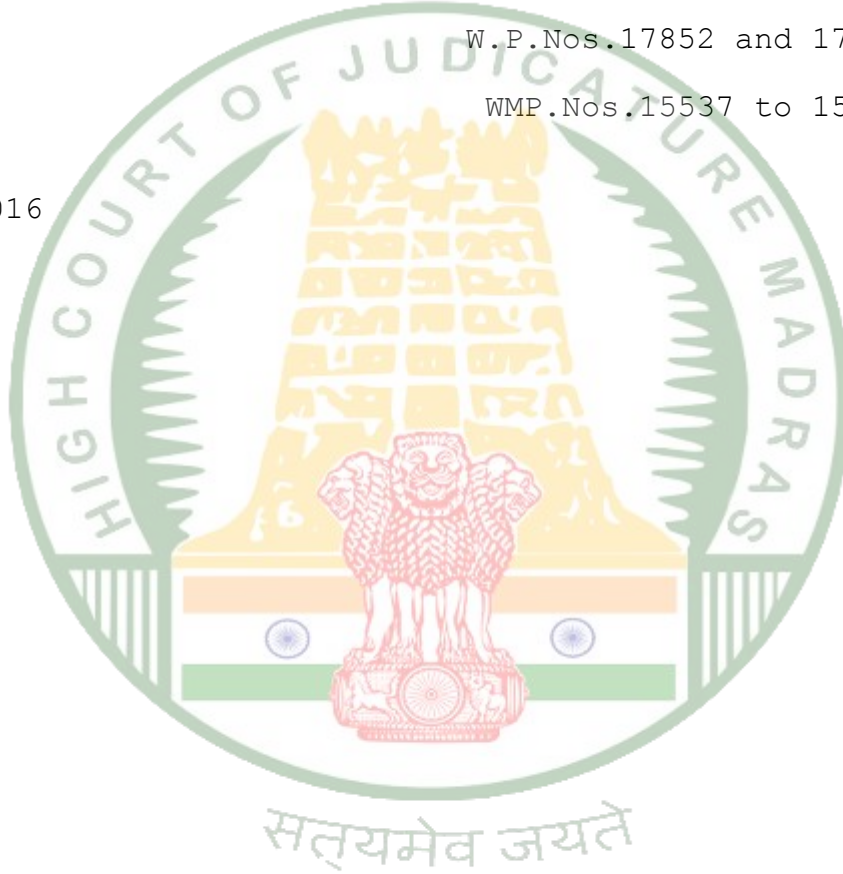
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