

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2016

CORAM
THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.A.Nos.386 to 388 of 2012
and
M.P.No.1 of 2012
and
M.P.Nos.2 and 2 of 2012

1. Tamil Nadu Civil Supplies Corporation
rep.by its Chairman and Managing
Director, No.42, Thambusamy Street
Kilpauk, Chennai 600 010.
2. The Regional Manager
Tamil Nadu Civil Supplies Corporation
Collector Office Compound Back side
Siluvampatti Post
Namakkal.

.. Appellants in all the WAs.

Versus

C.Gopal .. Respondent in W.A.No.
386 of 2012

M.Marudhan .. Respondent in W.A.No.
387 of 2012

R.Baskaran .. Respondent in W.A.No.
388 of 2012

Prayer : Writ Appeals against the common order of this Court
dated 22.07.2011 passed in W.P.Nos.26019 to 26021 of 2009.

Writ petition filed under Article 226 of the Constitution
of India praying to issue a writ of certiorari calling for the
records of the 2nd respondent corporation in connection with the
proceedings bearing Ref. Na. Ka. No.E2/8703/2008-4, E2/8703/2008-3
and E2/8703/2008-2 respectively dt 4.12.2009 and quash the same.

For Appellants : Mr.L.P.Shanmugasundaram
in all W.As. Special Government Pleader
(Co-op).

For Respondents : Mr.V.Prakash, Senior Counsel
in all W.As. for Mr.K.Sudalaikannu

COMMON JUDGMENT

(Judgment of the Court was delivered by Huluvadi G.Ramesh,J.,)

The respondents, who were employees of the appellant Civil Supplies Corporation, were served with charge memos for their alleged misconduct of misappropriation of 75 rice bags from the fair price shop for personal gain and for attempting to sell the same in black market. The appellants having found that prima facie the respondents have involved in the said misconduct, kept them under suspension and initiated an enquiry. On conclusion of the enquiry, the Enquiry Officer held, the charges framed against the respondents were proved and ultimately, they were dismissed from service.

2. Aggrieved by the same, the respondents challenged the said order of dismissal before this Court in W.P.Nos.26019 to 26021 of 2009 by contending that the Department has not followed the due procedure as contemplated under Tamil Nadu Civil Supplies Corporation Limited Employees Service Regulations, 1989 before imposing a major penalty of removing them from service.

3. The learned Single Judge vide order dated 22.07.2011 by exercising his power under Article 226 of the Constitution of India, set aside the order of dismissal, i.e., the punishment imposed upon the respondents and remitted the matter back to the authority to follow the legal procedures as contemplated under the Regulations. That order is put under challenge by way of these appeals by the Civil Supplies Corporation.

4. The learned Special Government Pleader representing the appellant-Corporation submitted that the learned Single Judge had committed an error in setting aside the order of removal passed by the disciplinary authority, without taking into consideration the gravity of the offence committed by the respondents. He also submitted that the respondents have not canvassed the violation of principles of natural justice either before the enquiry officer or the disciplinary authority and for the first time such an argument was advanced before the learned Single Judge in the writ petitions.

5. Per contra, the learned Senior Counsel representing the respondents, by referring to Chapter V of the Tamil Nadu Civil Supplies Corporation Limited Employees Service Regulations 1989, submitted that for imposing major penalty, viz., removal from service, certain procedures are contemplated and Regulation IV deals with the steps to be taken in conducting enquiry wherein in paragraph No.3.1, it is stated as follows:

(i) Issual of a charge memo recording the basis of charge, quoting the relevant rules or instrucitns omitted to be followed, the consequent result of such delinquent should be informed of the list of the documents relied upon as the basis of charge, the list of witnesses whose versions also form the basis of the charge. Thereafter, the Enquiry Officer appointed for the purpose has to conduct an objective enquiry into the charges in the presence of the delinquent and witnesses, whose versions form the basis of the charges, should be examined providing opportunity to the delinquent for cross-examine. Thereafter, the delinquent should be permitted to present his witnesses and also file his written statement. Then, on the basis of the findings and on perusing the further explanation on the findings, the competent authority should examine the gravity of the charge and decide on the quantum of punishment commensurate with the gravity of the charges to meet the ends of justice".

It is therefore, stated that the procedure as contemplated in the aforesaid Regulation has not been followed by the disciplinary authority before removing the respondents from service. Further the learned Senior Counsel also submitted that the punishment imposed is too disproportionate for the alleged misappropriation stated to have been committed by them.

4. Heard the learned Special Government Pleader representing the appellants and the learned Senior Counsel representing the respondents.

5. On going through the order passed, we could see that the learned Single Judge had only set aside the order of dismissal on the ground of non following the principles/procedure as contemplated in the above noted regulations. However, the appellant-Corporation without conducting the enquiry as per the regulations has rushed to this Court by way of these appeals. Though nothing much has been argued by the learned Senior Counsel representing the delinquent officials except contending that the due procedure has not been followed, it is not out of place to mention that for the alleged misappropriation committed by the respondents, right is available to the disciplinary authority to seek for re-initiation of de novo enquiry against the delinquent officials.

6. In the circumstances, while modifying the order passed by the learned Single Judge, we hereby direct the disciplinary authority to institute a fresh enquiry as against the respondents, by following due procedure as provided under Chapter V of the Tamil Nadu Civil Supplies Corporation Limited Employees Service Regulations 1989, after due service of notice to the respondents and conclude the same within three months from the date of receipt of a copy of this order and take a decision in accordance with law.

7. Inasmuch as we have prescribed an outer time limit of three months for concluding the enquiry, the order of reinstatement of the respondents may not arise at this stage. However, if the enquiry is not concluded within three months, further decision should be taken by the appellant-Corporation to reinstate the respondents, if permitted, in accordance with law. It is also made clear that since the criminal proceedings are also set at naught against the respondents, they are directed to co-operate for the earlier disposal of the disciplinary proceedings, if any, initiated.

8. With the above direction, all these writ appeals are disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Asst.Registrar (CS VI)

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Sub Asst. Registrar

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To

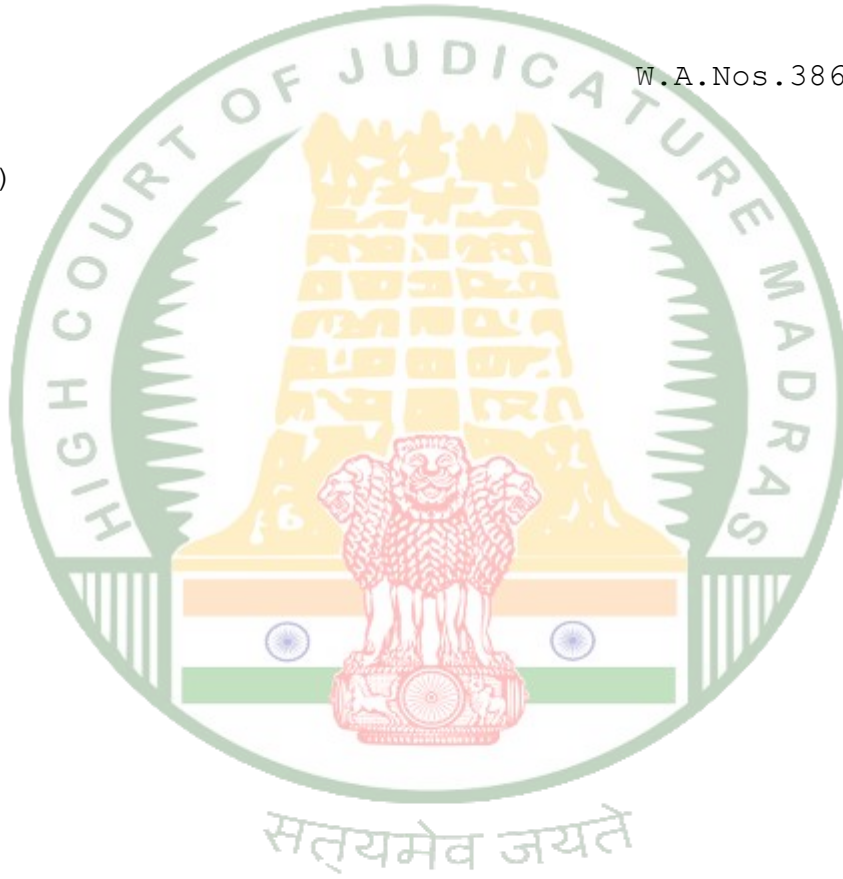
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1 cc to Mr.L.P. Shanmugasundaram, Advocate, Sr. 22674
1 cc to Mr.K. Sudalaikannu, Advocate, Sr. 22973

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