

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.08.2016

Delivered on : **22.08.2016**

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Appeal No.549 of 2012
and
W.P.No.10197 of 2012

K.P.Perumal

..Appellant in
W.A.No.549 of 2012

...Petitioner in
W.P.No.10197 of 2012

-vs-

1.Tamil Nadu Industrial Investment
Corporation, rep.by its Board of Directors
(Appellate Authority), No.692, Anna Salai,
Nandanam, Chennai-35

2.Tamil Nadu Industrial Investment
Corporation, rep.by its
Managing Director(Disciplinary
Authority), No.692, Anna Salai,
Nandanam, Chennai-35

.. Respondents
in both W.A.and W.P.

WRIT APPEAL filed under Clause 15 of Letters Patent
against the order passed in W.P.No.3514 of 2010, dated 08.03.2012.

Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, calling for the records relating to the order bearing Procds.No.DD/11-12, 28.03.2012, issued by the 2nd respondent, to quash the same as being illegal, arbitrary, *mala fide* and contrary to principles of natural justice and consequently direct the respondents to continue the petitioner in service till his retirement dated 30.04.2012 together with all attendant benefits, including seniority and monetary benefits and award cost.

For Appellant in	: Mr.N.G.R.Prasad for
W.A.No.549/12 and	M/s.Row and Reddy
for Petitioner in	
W.P.No.10197 of 2012	

For Respondents in both	
W.A and in W.P.	: Mr.H.Adaikala Arockiaraj

COMMON JUDGMENT

(Judgment of the Court was delivered by
A.SELVAM, J)

Writ Appeal No.549 of 2012 has been filed against the order dated 8.3.2012, passed in W.P.No.3514 of 2010. Likewise, W.P.No.10197 of 2012 has been filed under Article 226 of the

Constitution of India praying to quash the order dated 28.3.2012, passed by the second respondent.

2. The appellant in W.A.No.549 of 2012, as petitioner, has filed W.P.No.3514 of 2012, under Article 226 of the Constitution of India, on the file of this Court, praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned order of the Board of Directors bearing Proceedings No.DD/09-10, dated 8.2.2010 together with minutes dated 6.11.2009, 9.12.2009 and 29.1.2010 of the first respondent Corporation and quash the same.

3. The learned Single Judge, after considering the divergent contentions raised on either side, has dismissed W.P.No.3514 of 2010. Against the dismissal order, W.A.No.549 of 2012 has been filed.

4. During pendency of Writ Appeal No.549 of 2012, the second respondent has passed the order dated 28.3.2012 against the petitioner and thereby given compulsory retirement and the said order has been challenged in W.P.No.10197 of 2012.

5. Since common questions of law and facts are involved, common judgment is pronounced.

6. The factual aspects of the present case may be stated like thus:

The appellant/petitioner has joined as AGM in the year 1987 and promoted as DGM in the year 1995. In the year 1997 he has been posted as Senior Regional Manager, Tiruchirappalli and subsequently transferred to Chennai in the year 2000. During February 2003, a proceeding has been initiated against the appellant/petitioner by way of saying that he made false claim of travelling allowance from July to August 2002. The appellant/petitioner has submitted his explanation. Since his explanation is not satisfactory, a charge-memo has been issued, which culminated in domestic enquiry. In the domestic enquiry he has been found guilty of charges and the same has been concluded in ex-parte. The appellant/petitioner has filed W.P.No.37805 of 2003 to quash the show cause notice. On 1.3.2004, the said writ petition has been allowed and subsequently, W.A.No.1443 of 2004 has been filed and the same has been disposed of by way of giving direction to appoint appropriate person as enquiry officer. The appellant/petitioner has filed W.P.No.15950 of 2004 to quash the

charge-memo, wherein a specific direction has been given to appoint a retired District Judge as enquiry officer and accordingly, a retired District Judge has been appointed, wherein it has been held that the charges against the appellant/petitioner are proved. The appellant/petitioner has filed W.P.No.8744 of 2005 to quash the findings of the enquiry officer and the same has also been allowed. In the meanwhile, the appellant/petitioner has given a representation and the same has been rejected and ultimately a fresh enquiry officer has been appointed and he conducted enquiry and ultimately found that the charges framed against the appellant/petitioner are not proved. But, the respondents have not accepted the same and passed the impugned orders mentioned in W.P.No.3514 of 2010.

7. The learned Senior counsel appearing for the appellant/petitioner has strenuously contended that in the instant case, the appellant/petitioner has been driven from pillar to post and that too from the year 2003. As per the directions of this Court, ultimately, an enquiry officer has been appointed and the enquiry officer, after considering the available records, has rightly found that the charges framed against the appellant/petitioner are not proved. But, the respondents have taken a different view and thereby they

passed the impugned order mentioned in W.P.No.3514 of 2010. Further, during pendency of proceedings, the second respondent has passed the order relating to compulsory retirement. But the learned Single, without considering the enquiry report, has erroneously dismissed W.P.No.3514 of 2010 and therefore, both the writ appeal as well as writ petition are liable to be allowed.

8. In support of the contentions put forth on the side of the appellant/petitioner, the following decisions are relied upon:

(1) In **(2010) 3 MLJ 625 - State of Tamil Nadu, rep.by its Secretary to Government vs. T.Ranganathan**, the Division Bench of this Court has held that once a competent Court fixes an outer time limit to complete the enquiry and pass final orders, the parties to the proceedings are bound to strictly adhere to the time granted to comply with the said order.

(2) In **1985 (II) LLJ 165 - Chief of the Army Staff and Others vs. Major Dharam Pal Kukrety**, wherein the Hon'ble Supreme Court has held that against the show cause notice, writ petition under Article 226 of the Constitution of India is maintainable.

(3) In **AIR 1987 Supreme Court 71 - Institute of Chartered Accountants of India vs. L.K.Ratna and Others**, it is held that the power to find and record whether a member is guilty of misconduct has been specifically entrusted by the Act to the entire Council itself and not to a few of its members, who constitute the Disciplinary Committee.

(4) In **2002 Supreme Court Cases (L & S) 290 - Amar Nath Chowdhury vs. Braithwaite and Co. Ltd. and Others**, the Hon'ble Supreme Court has held that the same person, acting as a disciplinary authority, removing the employee from service and thereafter, in his capacity as Charman-cum-Managing Director of the employer company, presiding over, and participating in the deliberations of the meeting of the Board of Directors, while deciding the said employee's appeal, is not proper.

(5) In **(2006) 12 Supreme Court Cases 33 - Siemens Ltd., vs. State of Maharashtra and Others** it is held that if a notice is issued with premeditation, a writ petition is maintainable.

9. Learned counsel appearing for the respondents has simply contended that during pendency of the present writ appeal and also in pursuance of interim order passed therein, the appellant/petitioner has been permitted to retire on 30.04.2012, on superannuation, subject to the result of writ appeal.

10. In the present proceedings, two sets of orders, as mentioned supra, are being challenged.

11. It is an admitted fact that from the year 2003, the appellant/petitioner has filed various proceedings before this Court and ultimately, a retired District Judge has been appointed as an Enquiry Officer and he thoroughly perused the available evidence on record and held that the charges framed against the petitioner/appellant are not proved.

12. The respondents have taken a different view and passed the proceedings mentioned in W.P.No.3514 of 2010. During pendency of the present writ appeal, compulsory retirement order has been passed on 28.3.2012.

13. The specific charge framed against the appellant/petitioner is that during the relevant period, without actually travelling, he claimed false travelling allowance.

14. In fact, this Court has perused the enquiry report given by the learned retired District Judge, wherein, it has been clearly held that for proving the charges framed against the appellant/petitioner, *prima facie* evidence are not available. Since *prima facie* evidence are not available, the learned retired District Judge has categorically held that the charges framed against the appellant/petitioner are not proved.

15. Considering the consistent finding given by the Enquiry Officer, this Court is of the view that the subsequent proceedings passed by the respondents are not factually and legally sustainable.

16. The learned Single Judge, without considering the findings given in the enquiry report and also without considering the ordeals meted out by the appellant/petitioner, has erroneously dismissed W.P.No.3514 of 2010.

17. As adverted to earlier, during pendency of writ appeal, on 28.3.2012 the second respondent has passed order relating to compulsory retirement and subsequently on 30.04.2012, the appellant/petitioner has been permitted to retire on superannuation, subject to the result of writ appeal. It has already been pointed out that the proceedings of the respondents, including the order dated 28.3.2012, are not factually and legally sustainable and therefore the same are liable to be quashed.

In fine, Writ Appeal No.549 of 2012 is allowed without cost. The order passed in W.P.No.3514 of 2010 is set aside and W.P.No.3514 of 2010 is allowed without cost and the impugned orders passed by the respondents are quashed. Likewise, W.P.No.10197 of 2012 is allowed without cost and the order dated 28.3.2012 passed by the second respondent is quashed.

(A.S.,J.) (P.K.,J)
22.08.2016

msk

Index:Yes/No
Internet:Yes

To

1. Board of Directors
Tamil Nadu Industrial Investment
Corporation,
(Appellate Authority), No.692, Anna Salai,
Nandanam, Chennai-35
2. Managing Director(Disciplinary
Authority)
Tamil Nadu Industrial Investment
Corporation,
No.692, Anna Salai,
Nandanam, Chennai-35

**A.SELVAM,J.
AND
P.KALAIYARASAN,J.**
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**Judgment in
W.A.No.549 of 2012
and
W.P.No.10197 of 2012**

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