

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P. No.27795 of 2012

&

M.P.No.1 of 2012

J.Srinivasan

..Petitioner

Vs.

1.The Tami Nadu Civil Supplies Corporation,
Rep.by its Chairman and Managing Director,
No.12, Thambusamy Road, Kilpauk,
Chennai - 600 010.

2.The Regional Manager,
Chennai South Region,
Tamil Nadu Civil Supplies Corporation,
Gopalapuram, Chennai - 600 086.

...Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent relating to the impugned order dated 14.09.2011 bearing reference Na.Ka.No.A25/08293/2010 on the file of the first respondent dated 28.06.2012 bearing reference No.Procs.No.ADI/88634/2011, and quash the same and consequently reinstate the petitioner into service with all monetary and other benefits and back wages with interest.

For Petitioner : M/s.Sai, Bharath and Ilan

For Respondents : Mr.L.P.Shanmugasundaram

O R D E R

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent relating to the impugned order dated 14.09.2011 bearing reference Na.Ka.No.A25/08293/2010 on the file of the first respondent dated 28.06.2012 bearing reference No.Procs.No.ADI/88634/2011, and quash the same and consequently reinstate the petitioner into service with all monetary and other benefits and back wages with interest.

2.The case of the petitioner is that while he was working as Bill Clerk in the Amudham Retail Shop at Chintadripet, Chennai in the year 2010, based on certain allegations, he was suspended from service on 28.07.2010 by the second respondent and thereafter, on 02.10.2010 he was issued with a charge memo and also submitted his explanation on 27.10.2010 denying the said charge. However, the second respondent did not accept his explanation and the Deputy Manager [Bills] was appointed to conduct the enquiry and the petitioner appeared for the enquiry on 22.12.2010. In the meanwhile, he has been issued with a second show cause notice on 28.02.2011 wherein it is stated that the charge has been admitted by the petitioner. According to the petitioner, he submitted his explanation on 08.04.2011 stating that the Enquiry Officer totally erred in giving such a finding. However, he was directed to appear for a personal hearing on 20.04.2011 and thereafter, the second respondent passed the impugned order dated 14.09.2011 suspending the petitioner from service. As against the said order, the petitioner made an appeal on 20.09.2011 to the first respondent, which was rejected by an order dated 28.06.2012. The petitioner has got no other alternative except to approach this Court seeking to quash the impugned order dated 14.09.2011 and hence, the Writ Petition has been filed.

3.The learned counsel for the petitioner would submit that the Enquiry Officer without giving an opportunity to the petitioner conducted the enquiry and submitted his report, as if the charge is proved, which is totally erroneous and violative of the service regulations. He would rely upon the judgment of the Hon'ble First Bench of this Court passed in W.A.No.1106 of 2014 dated 19.08.2014 [C1514 Girisamudhram Agricultural Cooperative Bank Ltd. vs. K.Rajendran and others], which was challenged by the Department as against the order passed by the learned Single Judge in setting aside the ex-parte disciplinary proceedings against the delinquent officer therein by holding that merely because the documents form part of the record, it would not be suffice, if the same has not been marked by adducing evidence. However, the Hon'ble First Bench of this Court while dismissing the appeal stated that the Department is not precluded from taking disciplinary action in view of the conviction of the delinquent employee. Similarly, in the case of K. Govindaswamy vs. Tamil Nadu Civil Supplies Corporation reported in [1998] 2 MLJ 323, this Court has held that before imposing a major punishment, the Department should follow the procedure contemplated under the relevant Rules and if the same is not followed in a manner known to law, the same is not sustainable in law. Lastly, he referred to the judgment passed in Civil Appeal No.10125 of 2014 wherein the Hon'ble Supreme Court categorically held that where the appreciation of evidence is found to be wholly unsatisfactory that has to be set aside and accordingly, while allowing the appeal directed the

Management therein to pay the amount of compensation awarded by the Labour Court along with interest to the appellant therein.

4.The learned counsel for the respondents would contend that though no counter has been filed, the petitioner has been given sufficient opportunity both during the enquiry proceedings as well as at the time of personal hearing and after recording his evidence and obtaining his acceptance signature, the Appellate Authority confirmed the order passed by the Original Authority in dismissing the petitioner from service, warranting no interference in this Writ Petition.

5.Considering the facts and circumstances of the case and following the precedents cited by the learned counsel for the petitioner, this Court is of the view that when there is no examination of any witnesses nor marking of documents, the guilt cannot be proved merely on the basis of the fact that certain documents were on record and punishment cannot be imposed.

6.In view of the said fact, the impugned order is set aside and the matter is remitted back to the authority concerned for conducting a fresh enquiry as per the law laid down by this Court as well as the Hon'ble Apex Court. It is also made clear that the authority concerned will give an opportunity of hearing to the petitioner and shall start de novo enquiry and thereafter, pass appropriate orders, on merits and in accordance with law.

7.The Writ Petition is allowed accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.
sri

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The Tami Nadu Civil Supplies Corporation,
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- 2.The Regional Manager,
Chennai South Region,
Tamil Nadu Civil Supplies Corporation,
Gopalapuram, Chennai - 600 086.

+ 1 cc to M/s.Sai, Bharath and Ilan, Advocate Sr 34626
+ 1 cc to Mr.L.P.Shanmugasundaram, Advocate Sr 34366

KR/6/7/16

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