

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.13817 of 2011

and

M.P.No.1 of 2011

P.Mathivanan

.. Petitioner

Vs.

1. The Tamil Nadu Civil Supplies Corporation
rep. by its Regional Manager
(Chennai South), Chennai - 86.

2. The General Manager (Quality Control),
Tamil Nadu Civil Supplies Corporation,
Chennai - 10.

.. Respondent

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the records relating to the proceedings Na.Ka.No.A20/3611/2009 dated 16.04.2011 along with the consequential proceedings Na.Ka.No.A20/3611/2009 dated 18.04.2011 of the first respondent and quash both the proceedings.

For Petitioner .. Mr.S.Venkataraman

For Respondent .. Mr.S.Ramachandran

ORDER

Challenging the proceedings of the first respondent dated 16.04.2011 and the consequential proceedings dated 18.04.2011, the present writ petition has been filed.

2.The case of the petitioner is as follows:

(i)The petitioner was working as Assistant Quality Inspector in the respondent Corporation. He was originally working at the Gopalapuram Godown and was deputed to Nandanam Godown on 26.12.2008 during the absence of permanent employee in the said

godown on that particular date. During the time when he was posted at Nandanam Godown on 26.12.2008, he received two loads Toor Dhal and according to the petitioner, as per the standing instructions, he took samples and analysed one sample and since it was within the permissible norms, he unloaded the stock of dhal. Two other samples were sent to the Regional Lab for analysis. Since his job was over on that day, he reported back to his original place of posting in Gopalapuram Godown.

(ii) It appears, subsequently some variation was noticed in the norm of Toor Dhal unloaded in the Nandanam Godown at the instance of higher officials, a charge memo was issued on 18.04.2009 alleging that in view of the poor quality of the Toor Dhal unloaded on that particular date, loss was caused to the Corporation to the tune of Rs.85,008/-. The charge memo was issued under Regulation 4 of Chapter V of Tamil Nadu Civil Supplies Corporation Employees Service Regulations, 1989 (for short 'the Regulations'). Subsequent to the issuance of charge memo, another show cause notice was issued on 28.04.2009 directing the petitioner to show cause as to why the amount of Rs.85,008/- could not be recovered from him for causing loss to the Corporation.

(iii) In response to the above charge memo and the show cause notice, a detailed representation has been submitted denying the charges and also explaining that he had carried out his duties in terms of the standing instructions and he cannot be faulted if there was any variation, which was subsequently noticed at the head office. An enquiry was conducted into the charges but admittedly, no oral or documentary evidence was let in on behalf of the management. However, on behalf of the petitioner, few witnesses were examined and they gave evidence in support of the contention put forth by the petitioner before this Court. However, the enquiry officer submitted his report dated 18.03.2011, holding the charges proved. In response to the enquiry report, the petitioner had given a detailed explanation setting out the infirmities in the conduct of the enquiry since there was no evidence at all which was made available in the enquiry and charge memo itself was extremely vague from the same, no guilt of the petitioner could be established. However, notwithstanding the explanation, the first respondent has imposed penalty of postponement of increment for a period of six months vide order dated 16.04.2011 and also by consequential order dated 18.04.2011, ordered recovery of a sum of Rs.85,008/-. The said orders are put to challenge before this Court.

3. Upon notice, Mr.S.Ramachandran, learned counsel entered appearance on behalf of the respondents and filed detailed counter affidavit.

4.Mr.S.Venkataraman, learned counsel appearing for the petitioner would strongly contend that the charge sheet by itself cannot be sustained in view of its vagueness as nothing has been spelt out in detail and no documents or witnesses which were to be marked or examined had been mentioned in the charge memo. Therefore, the charge memo by itself is contrary to the Regulation 4 of Chapter V of the Regulations. Moreover, admittedly, no witness was examined or documents were marked on behalf of the prosecution/management and therefore, the report submitted by the enquiry officer holding the charges proved against the petitioner cannot be countenanced both on facts and in law. In the said circumstances, imposition of penalty on the basis of vague charge and also on the basis of incorrect findings of the enquiry officer cannot be sustained. He would strenuously contend that the procedure as contemplated under Regulation 4 of Chapter V of the Regulations has not been followed at all while conducting the enquiry against the petitioner and while imposing the penalty impugned in the present writ proceedings. Learned counsel would also draw this Court's attention to the order passed by this Court in similar circumstances in W.P.No.2222 of 2004 dated 30.03.2011, wherein this Court, in similar circumstances, has quashed the recovery proceedings passed against the petitioner therein.

5.Learned counsel appearing for the Corporation would vehemently submit that the negligence of the petitioner in discharging his duties as a Quality Controller has been established since ultimately the samples which were analysed at the head office was not found to be within permissible norms and therefore, the petitioner has been rightly imposed with the penalty and also recovery of a sum of Rs.85,008/-.

6.This Court has given its anxious consideration to the rival submissions of the learned counsel for the parties and the materials placed on record and the pleadings. As contended by the learned counsel for the petitioner, the charge framed against the petitioner lacks in its specific details as to point out the negligence of the petitioner while discharging his duties on the particular date ie. on 26.12.2008. Moreover, there is considerable force in the contention of the learned counsel appearing for the petitioner and no proper enquiry has been conducted in terms of Regulation 4 of Chapter V of the Regulations. In the absence of proper enquiry, the petitioner has been denied reasonable and proper opportunity to defend his position.

7.At this, learned counsel appearing for the Corporation would submit that the petitioner has not availed the statutory remedy of filing of appeal to the appellate authority viz.,

General Manager (Administration).

8.Learned counsel appearing for the petitioner would submit that the entire disciplinary action has been initiated at the instance of the higher officials and any appeal to the General Manager (Administration) would not have served any purpose as his hands were tied in the matter.

9.This Court has considered the said submission of the learned counsel and finds some force in it. In any event, the admitted position being that the charge itself lacks in detail and the subsequent enquiry conducted was not in terms of Regulation 4 of Chapter V of the Regulations, the ultimate imposition of penalty and the order of recovery cannot be countenanced both in law and on facts and therefore, the same are liable to be set aside. In view of the same, the impugned orders dated 16.04.2011 and 18.04.2011 are set aside. The respondents are directed to refund the amount of Rs.85,008/- which was recovered from the petitioner within a period of two months from the date of receipt of a copy of this order.

10.The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

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To

1. The Regional Manager (Chennai South),
Tamil Nadu Civil Supplies Corporation,
Chennai - 86.

2. The General Manager (Quality Control),
Tamil Nadu Civil Supplies Corporation,
Chennai - 10.

+1 CC to Mrs. Venkatesan, Advocate sr 55998.

+1 CC to Mr.S. Ramachandran, advocate sr 56061.

W.P.No.13817 of 2011

SP (05/09/2017)