

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.11.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No. 15231 of 2011 &
M.P.Nos. 1 & 2 of 2011

K.Asaimani

...Petitioner

vs

1. The Management of Civil Supplies Corporation Ltd.,
rep.by its Managing Director,
No.12, Tambusamy Road,
Kilpauk, Chennai-600 010.

2. The General Manager (Administration),
Tamil Nadu Civil Supplies Corporation Ltd.,
No.12, Thambusamy Road,
Kilpauk, Chennai-600 010.

...Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondents in connection with the impugned penalty issued by the 2nd respondent under proceedings No.AB6/36192/2010 dated 25.06.2010 as confirmed by the order of the appellate authority bearing Reference No.AD3/76931/2010 dated 3.11.2011 and the consequential proceedings No.AE/13/63400 dated 31.01.201 first respondent insofar as the petitioners name has been excluded from the panel on the ground of the impugned penalty and quash the same and direct the respondents to restore the petitioner's increment with effect from the date on which, it was stopped and further direct the inclusion of his name in the panel for promotion of the Assistant Manager (Quality Control) with effect from the date on which he was entitled to for the year 2010 with consequent benefits of seniority and monetary.

For petitioner : Mr.V.Prakash, SC for
Mr.K.Sudalakikannu

For respondents: Mr.C.Munusamy

ORDER

The present writ petition has been filed, seeking for the following relief:

"Issue Writ of Certiorarified Mandamus, to call for the records of the respondents in connection with the impugned penalty issued by the 2nd respondent

under proceedings No.AB6/36192/2010 dated 25.06.2010 as confirmed by the order of the appellate authority bearing Reference No.AD3/76931/2010 dated 3.11.2011 and the consequential proceedings No.AE/13/63400 dated 31.01.2011 first respondent insofar as the petitioners name has been excluded from the panel on the ground of the impugned penalty and quash the same and direct the respondents to restore the petitioner's increment with effect from the date on which, it was stopped and further direct the inclusion of his name in the panel for promotion of the Assistant Manager (Quality Control) with effect from the date on which he was entitled to for the year 2010 with consequent benefits of seniority and monetary."

2. The petitioner was originally appointed as Bill Clerk in the service of the respondents Corporation in 1984. He was promoted as Assistant Quality Inspector in 1991 and thereafter, further promoted as Quality Inspector in 2008. According to the petitioner, he rendered unblemished service throughout his career.

3. While he was working as Quality Inspector, a vacancy had arisen in the post of Assistant Manager at Kancheepuram Godown. The petitioner was therefore posted in the said godown as Incharge Assistant Manager apart from handling the duty attached as Quality Inspector in September, 2009. At this, the petitioner had written a letter dated 15.9.2009 expressing his inability since it was not possible for him to do the job of the Quality Inspector as well as Assistant Manager citing certain administrative reasons. While so, the petitioner was issued with a charge memo dated 17.12.2009 alleging that on 11.10.2009, Vigilance Cell team inspected the godown and found certain shortages in the food materials meant for public distribution.

4. The petitioner, in response to the charge memo, gave explanation, denying the allegations. However, not satisfied with the explanation, an enquiry was conducted. In the departmental enquiry, no witnesses were examined nor any documents were marked. However, on the basis of the statements obtained from the petitioner and on being satisfied with the legitimate explanation offered by him, the Enquiry Officer submitted a report holding that the charges were not proved. In the enquiry report, dated 9.4.2010, the Enquiry Officer has clearly held that the petitioner was no way responsible for the loss and therefore, all the five charges relating to the shortage, were held not established. However, the second respondent, who is the Disciplinary Authority, did not accept the findings of the Enquiry Officer and recorded his disagreement by proceedings dated 10.06.2010 and directed the petitioner to submit his explanation to the differed findings. According to the petitioner, the Disciplinary Authority had

recorded disagreement without any material evidence which was made available in the departmental enquiry and recording of his disagreement is completely unsupported by any piece of evidence. The petitioner had given a detailed explanation to the disagreement note by the Disciplinary Authority, on 18.6.2010.

5. However, the second respondent, notwithstanding the explanation given by the petitioner in response to the disagreement, passed an order by proceedings dated 25.6.2010 imposing a penalty of stoppage of increment for a period of three months. Against which, an appeal was preferred by the petitioner on 28.8.2010 and the same came to be rejected by the first respondent vide proceedings dated 3.11.2010. These orders passed by the Disciplinary Authority dated 25.6.2010 and the first respondent/Appellate Authority, dated 3.11.2010 are put to challenge in the present Writ Petition.

6. The petitioner would submit that during pendency of the disciplinary action, he came within the zone of consideration for regular promotion to the post of Assistant Manager (Quality Control) in the year 2010 and in view of the imposition of penalty on the petitioner, namely, stoppage of increment for a period of three months without cumulative effect, the petitioner was not considered for promotion along with his batch mates who were considered and promoted. Therefore, the petitioner, not only aggrieved by the imposition of penalty, but also by the denial of promotion to the post of Assistant Manager (Quality Control).

7. Upon notice, Mr.C.Munusamy, learned standing counsel entered into appearance for the respondents and filed a detailed counter affidavit.

8. Shri V.Prakash, learned senior counsel appearing for the petitioner, at the outset, would submit that the impugned penalty by the second respondent is grossly vitiated by the fact that no proper procedure was followed as contemplated in Regulation 4 of Chapter V of the Tamil Nadu Civil Supplies Employees Regulations, 1989 (in short, 'the Regulations') as admittedly, no witnesses were examined nor any documents were marked. He pointed out that although the enquiry findings were in favour of the petitioner, nevertheless ultimately, the Disciplinary Authority differed from the said findings and recorded his own findings based on his personal knowledge and not from any evidence made available in the departmental enquiry and imposed the impugned penalty. Therefore, he would submit that the penalty imposed on the basis of the findings, cannot be a valid punishment in the eye of law, which is liable to be set aside.

9. The learned senior counsel would also draw the attention of this Court to the clear findings rendered by the Enquiry Officer in respect of each Article of the charges framed against

the petitioner, wherein, the Enquiry Officer had clearly held that none of the charges framed against the petitioner could be established. That being the case, recording of disagreement by the Disciplinary Authority without drawing any support from the findings of the Enquiry Officer nor any evidence let in in the enquiry, cannot be the basis of imposition of any penalty whether it be a minor or major. Moreover, the imposition of penalty is also resulted in negation of right of the petitioner for consideration of his promotion as Assistant Manager (Quality Control) during the year 2010 while his batch mates were considered and promoted.

10. The learned senior counsel would further contend that the Appellate Authority, while rejecting the appeal, has not considered the infirmities pointed out by the petitioner in proper perspective and the rejection by the first respondent, namely, the Appellate Authority, suffers from non-application of mind and therefore, the same is liable to be interfered with. Further, the learned counsel would submit that as regards the service regulation is concerned, the Regional Manager is the competent authority to impose any minor penalty, against which, an appeal would lie to the General Manager/second respondent. But in the instant case, the second respondent himself has imposed the impugned penalty, thereby taking away the right of appeal available to the petitioner under the Regulations.

11. The learned counsel also rely upon the decision of this Court rendered in W.P.No.25272 of 2012 dated 26.7.2017, wherein, this Court had interfered with the order of penalty imposed on the employee of the Corporation inter alia on the ground that the procedure as contemplated in Regulation 4 of Chapter V of the Regulations, was not followed in respect of major penalty proceedings. In all, the learned senior counsel would implore this Court to allow the Writ Petition as prayed for.

12. Per contra, the learned counsel appearing for the Corporation, would submit that the Disciplinary Authority had rightly differed from the findings of the Enquiry Officer and therefore, decided to impose a minor penalty on the petitioner after taking into consideration the totality of the circumstances, which requires no interference by this Court.

13. According to the learned counsel, a detailed order was passed by the Disciplinary Authority in respect of each article of the charges and the Appellate Authority has also considered the appeal and passed detailed order. However, in regard to the legal submissions advanced on behalf of the petitioner, particularly, non-adherence to the procedure contemplated under Regulation 4 of Chapter V of the Regulations and also passing of minor penalty order by the General Manager/second respondent instead of the Regional Manager, there was no answer in the counter affidavit nor any submissions were made thereof.

14. In the above circumstances and after having considered the legal position, this Court is of the considered view that the action of the second respondent in recording disagreement without any supporting material, cannot be countenanced both in law and on facts. This was more so when the Enquiry Officer himself had given acceptable reasons for exonerating the petitioner in respect of each article of charges by rendering a clear finding. Admittedly, no witnesses were examined nor any documents were marked during the departmental enquiry. Therefore, this Court is unable to appreciate as to how the Disciplinary Authority can take a different view in the matter in the absence of any evidence made available in the departmental enquiry against the petitioner.

15. Moreover, the procedure that was followed is contrary to what is provided for under Regulation 4 of Chapter V of the Regulations and therefore, the Disciplinary Authority's action stood completely vitiated on that score alone. As rightly contended by the learned senior counsel for the petitioner, in similar circumstances, this Court has allowed the Writ Petition on the ground that the Corporation had not followed the procedure as envisaged under Regulation 4 of Chapter V of the Regulations. Therefore, in all fours, this Court has no hesitation in accepting the case of the petitioner.

16. For the foregoing reasons, the impugned penalty issued by the 2nd respondent under proceedings No.AB6/36192/2010 dated 25.06.2010 as confirmed by the order of the appellate authority bearing Reference No.AD3/76931/2010 dated 3.11.2011 and also the consequential proceedings No.AE/13/63400 dated 31.01.2011 of the first respondent insofar as the petitioner's name has been excluded from the panel for promotion to the post of Assistant Manager (Quality Control), are hereby set aside.

17. Accordingly, the Writ Petition is allowed. The respondents are directed to include the name of the petitioner in the panel for promotion to the post of Assistant Manager (Quality Control) with effect from the date on which, he was entitled to and grant all attendant service and monetary benefits. The said direction shall be complied with by the respondents, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

suk

To

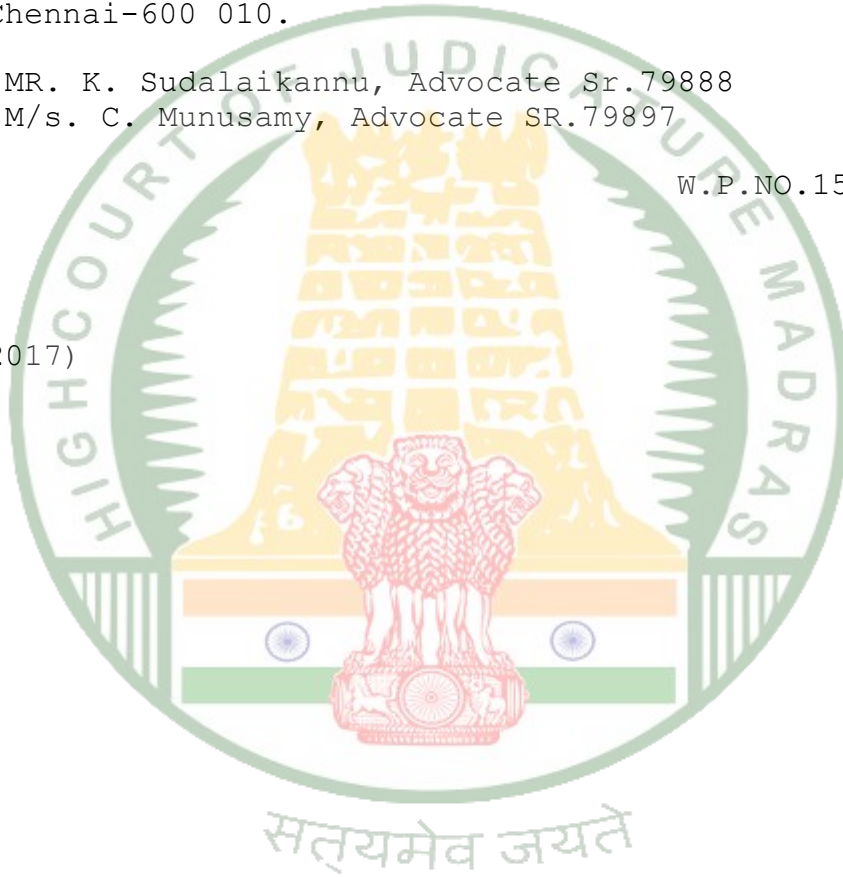
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+ 1 cc to MR. K. Sudalaikannu, Advocate Sr.79888
+ 1 cc to M/s. C. Munusamy, Advocate SR.79897

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EU(21/12/2017)



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