

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26.07.2017

DELIVERED ON: 03.08.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.Nos.34765 to 34773 of 2014
and M.P.Nos.1 to 1 and 2 to 2 of 2014

A.Thirumurugan ..Petitioner in W.P.No.34765/2014
P.Kazhugachalam ..Petitioner in W.P.No.34766/2014
R.Gnanasekaran ..Petitioner in W.P.No.34767/2014
G.Renganathan ..Petitioner in W.P.No.34768/2014
S.Balraj ..Petitioner in W.P.No.34769/2014
G.Renganathan ..Petitioner in W.P.No.34770/2014
K.T.Sureshkumar ..Petitioner in W.P.No.34771/2014
M.Kannadasan ..Petitioner in W.P.No.34772/2014
C.Panneerselvam ..Petitioner in W.P.No.34773/2014

Vs.

- 1.The Tamil Nadu Civil Supplies Corporation
rep. by its Managing Director,
No.144, Thambusamy Street,
Kilpauk, Chennai - 10.
- 2.The Chairman and Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.144, Thambusamy Street,
Kilpauk, Chennai - 10. ..Respondents in all WPs.

Common Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records in connection with the impugned proceedings of the second respondent bearing Proc.No.AD4/73782/13, Proc.No.AD4/73787/13, Proc.No.AD4/73786/13, AD4/73781/13, AD4/73788/13, AD4/73771/13, AD4/73785/13, AD4/73778/13, AD4/73772/13 dated 27.08.2014, & 26.8.2014, respectively and quash the same and direct the first respondent Corporation to include the name of the petitioner in the panel for promotion to the post of Superintendent for the year 2013 and 2014 with all consequential benefits.

For Petitioner .. Mr.V.Prakash, Sr. Counsel
for Mr.K. Krishnamoorthy
in all the W.Ps

For Respondents .. Mr.S.T.S.Moorthy,
Addl. Advocate General
assisted by
Mr.L.P.Shanmugha Sundaram

COMMON ORDER

All the writ petitions raise common issues and grounds and therefore, the same are heard and disposed of together.

2.The petitioners herein are working as Assistants/Superintendents under the control of the respondents. They were involved as Procurement Officers for purchase of paddy and other materials from the farmers during the marketing season and while discharging their duties, there appears to be some shortage in the procurement, due to which, loss was occasioned to the Corporation. In the said circumstances, the petitioners were chargesheeted by charge memo dated 07.06.2013 and the common charges which are framed against the petitioners are extracted below:

குற்றச்சாட்டு எண்.1

கொள்முதல் நிலையத்தில் கொள்முதல் செய்யப்பட்ட நெல்லினை சரிவர இயக்கம் செய்வதை கண்காணிக்க தவறியதால் இயக்க இழப்ப , போழக்குடி ரூ.44,702/- கற்கத்தி ரூ.66,774/- ஆக கூடுதல் ரூ.1,11,476/- ஏற்பட காரணமாக இருந்துள்ளது.

குற்றச்சாட்டு எண்.2

தனியார் தனக்கு வழங்கப்பட்ட பொறுப்பான பணியினை சரிவர செய்யாமல் அலட்சிய போக்குடன் செயல்பட்டுள்ளது.

3.An explanation was submitted to the charge memo denying the charges. In the explanation, it has been clearly spelt out as to the difficulty faced by the petitioners in counting of the gunny bags of paddy, which is the subject matter of procurement and particularly, the paddy was stored in the open site during the summer under bright sun light and therefore, any shortage or loss of paddy could have been the natural consequence of such storage in the open area. Moreover, the petitioners have also stated that there was also a very high possibility of loss and shortage due to loading and unloading of the paddy bags by

conventional method of using hooks which practice was not upto the standard. Moreover, it was also explained that paddy which was in the open area was susceptible to damage caused by goats and other domestic animals. The petitioners have pointed out several discrepancies which were beyond their control right from the procurement of paddy, storage etc., Moreover, any loss occasioned was assessed and the same was recovered from the bill clerk, who was incharge on the field and due to which, there was actually no loss to the Corporation.

4. Not satisfied with the explanation offered by the petitioners, an enquiry was conducted. The enquiry officer has submitted a report on 15.08.2013. From the report, it is seen that it merely concluded that there was failure to discharge the duties properly on the part of the petitioners and therefore, the charges framed against the petitioners stood established. The enquiry officer does not refer to any evidence or documents marked in the enquiry and such a report is merely prepared on the basis of the statement obtained from the respective petitioners.

5. It is relevant to mention here that the charges as framed against the petitioners is under Clause IV of Chapter V of the Tamil Nadu Civil Supplies Corporation Limited Employees' Service Regulations, 1989. The said provision provides for elaborate procedure to be followed in dealing with the employees who were chargesheeted under the said Clause of the said Chapter. However, from the enquiry report, which runs into only a few lines, this Court does not see any procedure as contemplated under said Clause IV of Chapter V of the Tamil Nadu Civil Supplies Corporation Limited Employees' Service Regulations, 1989 is followed. In any event, eventually, the Regional Manager, vide proceedings dated 26.08.2013 has concluded that there was no loss caused to the Corporation by the so called negligence of the petitioners and hence the charges were dropped with the severe warning to the petitioners not to repeat such acts.

6. While matter stood thus, the first respondent has issued the proceedings dated 19.11.2013 calling for a suo motu review of the order passed by the Regional Manager. In response to the said proceedings, a detailed reply was given by the petitioners reiterating their explanation, which was offered by them in response to the charge memo. However, the first respondent, without due appreciation and examination of the explanation in proper perspective, has ultimately imposed the penalty of stoppage of increment for a period of one year without

cumulative effect. The said penalty order is under challenge in all these writ petitions.

7. Upon notice, Mr. L. P. Shanmugha Sundaram, learned counsel entered appearance on behalf of the respondents and filed counter affidavit in respect of all the writ petitions.

8. Mr. V. Prakash, learned senior counsel appearing for the petitioners would submit that the entire disciplinary action initiated by the Corporation cannot be sustained in law since there was absolutely no material to show that there was any negligence on the part of the petitioners, which can warrant issuance of charge memo particularly in major penalty proceedings. Learned senior counsel would strenuously contend that when the Corporation has chosen to initiate major penalty proceedings against the petitioners by issuing charge memo under Clause IV of Chapter V of the Tamil Nadu Civil Supplies Corporation Limited Employees' Service Regulations, 1989, the Corporation ought to have followed the entire gamut of procedure as contemplated under the said Clause and ought to have afforded a reasonable opportunity to the petitioners to defend their position. In support of his contention, learned senior counsel would draw the attention to the enquiry officer's report and would emphasise on the said report does not disclose any application of mind and does not also disclose that there was any enquiry at all which had taken place in consonance with the said Clause IV of Chapter V of the Tamil Nadu Civil Supplies Corporation Limited Employees' Service Regulations, 1989. The learned senior counsel would submit that the penalty which was ultimately imposed on the basis of major penalty proceedings is invalid since the procedure as contemplated under the rules is mandatory and in the absence of an enquiry as contemplated under the rules, the entire disciplinary action is liable to be set aside.

सत्यमेव जयते

9. The learned senior counsel would also submit that the punishment of stoppage of increment for a period of one year without cumulative effect in culmination of the disciplinary action initiated against the petitioners has not only resulted in the loss of emoluments for the period in question but also loss of promotion during the relevant period. The learned senior counsel would draw this Court's attention to the proceedings of the first respondent dated 22.01.2014, in which a panel was prepared for the year 2013 for the purpose of promotion to the post of Superintendent from the post of Assistant and to the post of Assistant Manager from the post of Superintendent as the case may be. The names of the petitioners, who are

Assistants/Superintendents have been specifically mentioned, their promotion was deferred due to pendency of major penalty proceedings against them. The learned senior counsel would submit that in view of the pendency of the disciplinary proceedings and the ultimate slapping of the penalty on the petitioners, due promotion as Superintendents/Assistant Managers, as the case may be, has been deferred, which resulted in the juniors of the petitioners getting promoted to the higher post ahead of the petitioners. Therefore, he would contend that it is not a mere penalty of stoppage of increment of a period of one year but also deferment of promotion and such consequence of the disciplinary action is quite severe and harsh, particularly, when the original authority has thought fit not to impose any penalty, in view of the facts and circumstances of the case. When the original authority has clearly observed that there was no loss to the Corporation and therefore the petitioners were not liable to be punished with any minor punishment as enumerated under the regulations, without any materials whatsoever, the second respondent has caused suo motu review and imposed the impugned penalty. Learned senior counsel would emphasise the fact that any revision/review is permissible only on the basis of the evidence which was made available in the departmental enquiry and in the instant case, no such evidence was available as no proper enquiry was conducted at all, in the first place. In such a scenario, the impugned penalty, as a consequence of suo motu review cannot stand the test of judicial scrutiny and therefore, the same has to be set aside with the consequential benefit.

10. On behalf of the Corporation, Mr. S. T. S. Moorthy, learned Additional Advocate General appeared and relied on the averments contained in the counter affidavit. He would vehemently oppose grant of any relief to the petitioners in view of the categorical finding by the first respondent in suo motu review about the lack of proper supervision, which resulted in loss to the Corporation. The learned Additional Advocate General would contend that the original authority passed an order by administering severe warning to the petitioners had lost sight of the fact that the loss which was caused due to the negligence on the part of the petitioners was actually recovered from the employees who were deputed in the field. Therefore, it cannot be construed by the original authority that there was no loss to the Corporation. In the said circumstances, the second respondent has rightly taken up the case for suo motu review and the penalty imposed was only a minor penalty and therefore, it was not incumbent on the administration to go through the entire procedure as contemplated in the major penalty proceedings. As regards the promotional aspect is concerned, the learned Additional Advocate General would admit that there was a

deferment and such a deferment was well in tune with the law since the petitioners were facing disciplinary action during the relevant period, which disciplinary action culminated in the imposition of penalty and therefore, the promotion could not be granted to them, when a panel was drawn for the year 2013. He would submit that in any event, subsequently after the penalty was over, promotion was given to the petitioners. Therefore, he would request the Court to dismiss the writ petitions as devoid of merits.

11. Upon consideration of the submissions of Mr.V.Prakash, learned senior counsel for the petitioners and Mr.S.T.S.Moorthy, learned Additional Advocate General appearing for the Corporation, this Court is of the view there is a force in the contentions put forth by the learned senior counsel for the petitioners. From the materials perused and the pleadings of the parties, this Court has no hesitation in coming to the conclusion that there was no enquiry at all as contemplated under Clause IV of Chapter V of the Tamil Nadu Civil Supplies Corporation Limited Employees' Service Regulations, 1989. When the Corporation deemed it fit to proceed against the employees under major penalty proceedings by issuing charge memo under the said Clause, it is imperative and incumbent upon the management to proceed in accordance with the said Clause in the said Chapter for fulfilling the requirement of law. In the absence of following such procedure contemplated in the regulations, the entire disciplinary action cannot be held to be valid in the eye of law.

12. As rightly contended by the learned senior counsel for the petitioners in the suo motu review, no fresh inputs have been taken into consideration for differing from the order passed by the original authority. Any suo motu revision or review is permissible only on the basis of the evidence which is made available in the departmental enquiry and in the absence of evidence in the departmental enquiry, the suo motu revision or review to the disadvantage of the employees cannot have any legal sanctity. The order passed in the suo motu review does not disclose as to what clinching material available for imposing the penalty against the petitioners. Moreover, there is no proper legal explanation forthcoming from the Corporation as to how the procedure contemplated for major penalty proceedings can be departed from except saying that the penalty imposed was only minor in nature. Such explanation is legally not acceptable. Moreover, as pointed out by the learned senior counsel, it was not only the minor punishment which the petitioners had suffered but also deferment of promotion as Superintendents/Assistant Managers during drawing up of panel for the year 2013 because of

the pendency of the disciplinary action and the eventual imposition of penalty. Therefore, there is a clear case of loss of emoluments coupled with the loss of promotion at the appropriate time.

13. In view of the above discussion and the narrative, this Court is of the view that the impugned orders of penalty imposed on the petitioners are required to be interfered with. Therefore, the orders passed by the second respondent dated 27.08.2014 are set aside and the consequently, there shall be a direction to the first respondent Corporation to grant promotion to the petitioners to the posts of Superintendents/Assistant Managers, as the case may be, from the panel of the year 2013 from the date when their immediate juniors were promoted with all consequential and attendant benefits. The said order shall be complied with within a period of two months from the date of receipt of a copy of this order.

14. The writ petitions stand allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Tamil Nadu Civil Supplies Corporation
rep. by its Managing Director,
No.144, Thambusamy Street,
Kilpauk, Chennai - 10.

2. The Chairman and Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.144, Thambusamy Street,
Kilpauk, Chennai - 10.

+ 9 ccs to Mr. K. Krishnamoorthy, Advocate SR.55792
+ 1 cc to Mr. L.P. Shanmugasundaram, Advocate SR.55607

W.P.Nos.34765 to 34773
of 2014

SK(CO)
Eu 18.08.17