

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.25895 of 2011

M.Muthudurai

.. Petitioner

Vs

1.The Tamilnadu Civil Supplies Corporation Ltd.,
Rep.by its Senior Regional Manager,
Chennai South Region, Chennai 86.

2.The Tamil Nadu Civil Supplies Corporation Ltd.,
Rep.by its Managing Director,
Chennai 10. .. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records relating to the proceedings AD 4/5421/2010 dated 08.11.2010 of the 2nd respondent, quash the same and consequently direct the respondents to reinstate the petitioner in service with all attendant consequential benefits.

For Petitioner : Mr.S.Venkataraman

For Respondents : Mr.L.P.Shanmugsundaram
Spl.Govt.Pleader

O R D E R

This writ petition has been filed to issue a writ of Certiorarified Mandamus calling for the records relating to the proceedings AD 4/5421/2010 dated 08.11.2010 of the 2nd respondent, quash the same and consequently direct the respondents to reinstate the petitioner in service with all attendant consequential benefits.

2. According to the petitioner, while he was employed as a Bill Clerk in the ration shop at Brindawan Street, Kodambakkam, he was placed under suspension on 15.04.2008 for the allegation of misappropriation of funds. By order dated 04.06.2009, the 1st respondent imposed him punishment of stoppage of increment for a period of one year with cumulative effect. In the meantime, the appellant had remitted the amount. Not satisfying with the punishment imposed against the petitioner, considering the gravity of the charges framed against him, a further show

cause notice dated 22.01.2010 was issued by the second respondent by exercising the suo motu power of review under 13 (2) of the Regulations, directing the petitioner to submit his explanation within a period of fifteen days.

3. Aggrieved by the same, a writ petition was filed in W.P.No.2562 of 2010 which was dismissed on 08.06.2010 and against the said dismissal order, Writ Appeal was filed in W.A.No.1208 of 2010 and the same was also dismissed on 29.06.2010. Thereafter, the petitioner submitted his explanation to the 2nd respondent requesting to take lenient view in imposing further punishment against the petitioner.

4. In similar issue, this Court passed an order dated 20.02.2014 in W.P.No.21286 of 2014, which is extracted as hereunder:

"5. This Court finds full force in the submissions made by the learned counsel for the first respondent. The reason is that when the petitioner was issued with the charge memo dated 10.06.2008, even prior to the issuance of charge memo, when he was placed under suspension by memo dated 5.4.2008, the petitioner immediately rushed to the first respondent by paying a sum of Rs.11,002.92p. Subsequently, he had also paid the balance amount of Rs.9,623.10 p representing the difference between the procurement price and the sale price. Therefore, when the allegation of loss of Rs.20,623.05p made in the memo dated 05.04.2008 and the charge memo dated 10.06.2008 controversy to "Nil", the exercise to be undertaken by the enquiry officer has been completely reduced to nothing by the act done by the petitioner himself. Therefore, when the report of the enquiry officer dated 3.12.2008, on which the petitioner was called upon to submit his written representation vide the show cause notice dated 11.12.2008, has been responded by the petitioner, this Court is unable to agree with the contentions made by the learned counsel for the petitioner that since the copy of the report of the enquiry officer was not submitted to the petitioner, he was unable to submit his opportunity was given to the petitioner and no fair and proper opportunity was given to the petitioner, he was unable to submit his proper defence before the disciplinary authority. Moreover, the lapses for which he was prosecuted

departmentally have not been disputed by the petitioner. As mentioned above, when the petitioner on his own, brought the entire controversy by the repayment of the entire amount and also admitted the lapses in his repeated representations and explanation dated 2.7.2008, 20.11.2008 and 27.1.2009, this Court is unable to interfere with the impugned orders. In fact, the judgment relied upon by the learned counsel for the petitioner was dealing with a situation different to the one in which the petitioner is placed. As per the ratio of that judgment, this Court has come to the conclusion that harsh and disproportionate punishment should not be imposed against a person when he was not given a reasonable opportunity. In the said judgment, while imposing the punishment of dismissal, it was found that no full-fledged enquiry was conducted. But in the present case, a full-fledged enquiry was conducted, therefore, the ratio of that judgment cannot be applied to the present case. Moreover, it is well settled by the judgment of the Apex Court in Managing Director, ECIL v. B.Karunakar (1993) 4 SCC 727 that unless a party proves his prejudice to the satisfaction of the Court that non-furnishing of the report of the enquiry officer has resulted in injustice, no interference can be called for in the decision taken by the disciplinary authority. In the present case, the petitioner has not shown any prejudice suffered on account of non-furnishing of the enquiry report either to the appellate authority or revisional authority or before this Court. Therefore, the new plea of non-furnishing of the enquiry report has caused prejudice to the petitioner, belatedly taken only before this Court, is far from acceptance. For all these reasons, the writ petition fails and, accordingly, it is dismissed."

Yet another decision of this Court in W.P.Nos.6895 & 6896 of 2010, is as follows:

"3. The learned counsel appearing for the petitioners contended that the suo motu revision by the first respondent under Section 153 of the Tamil nadu co-operative societies Act, 1983, (for brevity), " the Act" is barred by Limitation, as any such revision can be exercised only within

ninety days. The learned counsel further contended that the second respondent, after considering the evidence and the fact that the petitioners had already remitted the amounts back, imposed a lesser punishment, and therefore, without any other incriminating material, the first respondent cannot re-open the case and pass orders on mere change of opinion. The learned counsel for the petitioners also placed reliance upon the judgments of this Court in M.Thangaivelu vs. The Joint Registrar of Co-operative Societies, reported in 200491) CTC 183; 200492) LW 734 and the unreported Judgment in S.Aruna vs. The Registrar of Co-operative Societies (W.P.No.18934 of 2013 dated 11.07.2013)

13. Now, coming to the quantum of punishment, the first respondent had terminated the services of the petitioners. The petitioners, who were entrusted with public property, meant for distribution, had misappropriated the same. As rightly contested by the Government Advocate appearing for the respondents, just because the loss is mitigated, it will not set at naught the offence committed. The petitioners must have known the consequences of their illegal acts. The employees of the co-operative societies entrusted with the work of distribution of essential commodities under the Public Distribution System are implementing the functions of the state. The scheme itself is for the benefit of the poor and middle class people. There cannot be any sympathetic view in cases relating to misappropriation. Hence, in the facts and circumstances, this Court does not find any valid reason to interfere with the orders of the first respondent."

4. In the light of the above decisions of this Hon'ble Court, this Court is not inclined to interfere with the punishment imposed by the respondent/Corporation. The writ petition fails and accordingly is dismissed. No costs.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

kkd

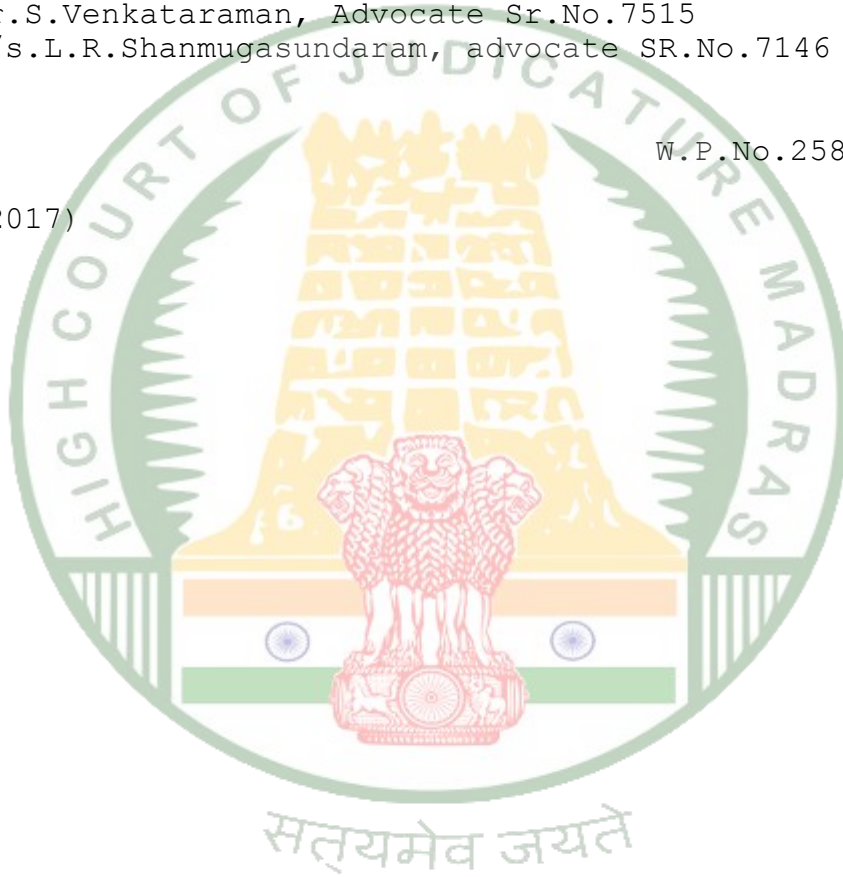
To

- 1.The Senior Regional Manager,
The Tamilnadu Civil Supplies Corporation Ltd.,
Chennai South Region, Chennai 86.
- 2.The Managing Director,
The Tamil Nadu Civil Supplies Corporation Ltd.,
Chennai 10.

+1cc to Mr.S.Venkataraman, Advocate Sr.No.7515
+1cc to M/s.L.R.Shanmugasundaram, advocate SR.No.7146

W.P.No.25895 of 2011

RK(CO)
GN(28/03/2017)



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