

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.27475 of 2011

T.Nagarajan

.. Petitioner

Vs.

1.The Tamil Nadu Civil Supplies Corporation
rep. By its Senior Regional Manager,
Thanjavur Region, Thanjavur - 613 001.

2.The Tamil Nadu Civil Supplies Corporation
rep. By its Managing Director,
Chennai - 10.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the proceedings AD 4/48561/2010 dated 25.08.2011 of the second respondent, quash the same and consequently direct the respondents to release the withheld increments.

For Petitioner .. Mr.S.Venkataraman

For Respondents.. Mr.C.Munusamy

ORDER

The petitioner has approached this Court seeking the following relief:

to issue writ of certiorarified mandamus to call for the records relating to the proceedings AD 4/48561/2010 dated 25.08.2011 of the second respondent, quash the same and consequently direct the respondents to release the withheld increments.

2.The case of the petitioner is that he was originally working as Assistant Quality Inspector in the second respondent Corporation. He was promoted as Quality Inspector in the month

of June, 2010. On 19.05.2008, the petitioner was placed under suspension contemplating an enquiry into certain acts of misconduct. Thereafter, charge memo was issued on 12.06.2008. In response to the charge memo, reply was submitted by the petitioner denying the charges. However, notwithstanding the same, an enquiry was ordered and the enquiry officer submitted his report holding the charges as not proved. However, the disciplinary authority, the second respondent herein, disagreed with the findings of the enquiry officer and called for explanation from the petitioner by proceedings dated 15.07.2009. The petitioner submitted his explanation on 05.08.2009. Thereafter, on 11.11.2009, final order was passed by the disciplinary authority imposing the penalty of severe warning.

3.The above order imposing penalty of severe warning had attained finality. Thereafter, the petitioner came to be promoted as Quality Inspector in June, 2010, as stated earlier. While matter stood thus, the second respondent invoking suo motu power of review, issued a show cause notice on 17.06.2011, directing the petitioner to show cause as to why penalty of severe warning could not be enhanced. At this, the petitioner submitted explanation on 25.07.2011 pointing out that there was no scope for enhancing the penalty as the power of suo motu review cannot be exercised indiscriminately. In the instant case, according to the petitioner, the power of review has been exercised belatedly and the period of six months is construed to be reasonable period for exercising such power in the absence of any regulation to that effect.

4.However, the second respondent without considering the representation of the petitioner in proper perspective, rejected the same and imposed the penalty of stoppage of increment for a period of two years with cumulative effect vide order dated 25.08.2011. Since no appeal is provided for against the suo motu review, the petitioner is before this Court seeking the relief as stated supra.

5.Mr.S.Venkataraman, learned counsel appearing for the petitioner would submit that originally the enquiry officer himself held charges were not proved since there was no evidence let in in the enquiry in proving the charges by the management. However, inspite of the same, the disciplinary authority disagreed with the findings and without any evidence in support of his disagreement, imposed the penalty of severe warning. Since the penalty being the severe warning, the petitioner had not chosen to pursue the matter and he was promoted as Quality Inspector thereafter in June, 2010.

6. That being the case, the second respondent invoked his power of suo motu review after a period of 16 months, without any fresh circumstances which came to the knowledge of the authority. Learned counsel would also draw this Court's attention to the decision of the Division Bench of this Court in W.A.Nos.182 and 12 of 2012. The Division Bench relied on the earlier decision passed by this Court and held that the exercise of review power has to be undertaken within the reasonable time which is construed to be six months even in the absence of any specific regulation to that effect. The operative portion of the order passed by the Division Bench in paragraphs 7 to 9, which are extracted below:

7. It is true that section 13(2) of the Regulations does not provide any time limit for reviewing the order of the Disciplinary Authority. However, it does not mean that the review may be taken at any point of time. It is settled principle of law that when no time limit is prescribed for exercise of power under a statute, it should be exercised within a reasonable time. If the Appellate Authority or the Reviewing Authority wants to enhance the punishment, they have to give notice, calling for explanation from the delinquent officer, but the same has to be done within a reasonable time.

8. Similar issue came up for consideration before this Court in the case of A.Thangavelu v. Tamil Nadu Civil Supplies Corporation reported in (1998(I) CTC 283), wherein the learned Single Judge viz P.Sathasivam.J., (as he then was) in paragraph 9 has held as follows:-

"9. The reading of the above Rule makes the position clear that if the appellate authority (original authority) the same has to be done within six months from the date of the order. In this case, as seen from the proceedings of the respondent in Rc.G-4/85431/89 dated 16.11.1989 ie., beyond the period of six months prescribed under sub-clause (iii) of the above said Rules. I have already mentioned that the date of order and the review order dated 16.11.1989 has not been disputed by the learned counsel appearing for the petitioner. In the light of the above factual position, I am of the view that the first contention of the learned counsel appearing for the petitioner is well-founded. If the first contention is accepted there is no need to go into the other contentions

raised by the learned counsel appearing for the petitioner. I am satisfied that the action of the respondent reviewing the order of the Regional Manager dated 17.04.1989 on 16.11.1989 is clearly prohibited as per sub-clause (iii) of the above referred Rule. Hence, I hold that the proceedings initiated by the respondents on 16.11.1989 is in violation of Rules 36(1) (iii) of the Rules. In those circumstances, as already stated I need not go into the other factual position. Accordingly, the impugned order based on the proceedings of the respondent dated 16.11.1989 is quashed. "

The said view was confirmed by a Division Bench of the Court in the case of T.N.C.S. Corporation Ltd., v. A.Thangavelu (1999 WRIT L.R.180). 9. In view of the same, we have no hesitation to hold that the present case is squarely covered by the decisions referred to above. Hence the common order dated 18.10.2011 passed by the learned single Judge of this Court in W.P.Nos.1836 and 1310 of 2011 respectively is liable to be set aside and accordingly the same is set aside. The writ appeals are allowed. Consequently, the connected M.Ps are closed. However, there shall be no order as to costs.

7. Moreover, it has to be seen that the original authority, who passed the order of severe warning had taken into consideration the circumstances of the case. While passing the order of severe warning, he had categorically held that there was no loss caused to the Corporation and on that account, a lenient view was taken. The second respondent who exercised the power of suo motu review has not spelt out any acceptable and valid reasons for taking a different view, that too, after a lapse of considerable time. Moreover, it has to be seen that the petitioner himself came to be promoted in June, 2010. That being the case, there is no justification for invoking the power of suo motu review after his promotion in 2010. Further, it has to be seen that the petitioner having been promoted to the higher post, the punishment of stoppage of increment cannot be given even otherwise since the charge was relating to the period when he was working in the lower post and therefore, it is not open to the second respondent to set the clock back after his promotion to the next higher post of Quality Inspector.

8. Upon notice, Mr.C.Munusamy, learned counsel entered appearance on behalf of the respondents and he does not have any dispute with regard to the law laid down by the Division

Bench of this Court as stated supra. However, he would place his submissions generally resisting the claim of the petitioner herein.

9. In view of the above discussion and the narrative, the writ petition is liable to be allowed. The impugned order passed by the second respondent dated 25.08.2011 is set aside and consequently, the second respondent is directed to release the withheld increments to the petitioner. Consequently, the respondents are directed to pay the arrears of salary consequent upon quashing the order of penalty and also release retirement benefits as admissible to the petitioner. The said order shall be passed by the second respondent 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.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Thanjavur Region, Thanjavur - 613 001.
2. The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Chennai - 10.

+1 cc to M/s.S.Venkataraman Advocate sr 60202
+1 cc to M/s.C.Munusamy Advocate sr 60374

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