

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.21038 of 2004 and
W.P.M.P.No.25338 of 2004

K.Selvanayagi

... Petitioner

Vs.

1. State of Tamil Nadu rep. by
the Secretary to Government,
Handlooms, Handcrafts, Textiles and
Khadi Department,
Secretariat, Chennai-9.
 2. Chief Executive Officer,
Tamil Nadu Khadi and Village
Industries Board,
Kuralagam, Chennai-108.
- ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 2nd respondent in Na.Ka.No.20111 E4(2) 98 dated 9.1.2003 as confirmed by the 1st respondent in G.O.Ms.No.11, Handlooms, Handicrafts, Textiles and Khadi (F1) Department, dated 21.1.2004 and quash the same and direct the respondents to confer all the consequential benefits to the petitioner.

For Petitioner : Mr.Vediappan
for M/s.C.Selvaraju

For Respondents : Mr.M.Elumalai,
Government Advocate for R1
Mr.S.K.Bose for R2

O R D E R

The present Writ Petition has been filed by the petitioner challenging the order of termination dated 9.1.2003 which was confirmed by the 1st respondent in G.O.Ms.No.11, Hand looms, Handicrafts, Textiles and Khadi (F1) Department, dated 21.1.2004.

2. The brief facts of the case are as follows:

The petitioner joined as Grade III Assistant on 24.12.1984 in the Khadi and Village Industries Board through Employment Exchange. Subsequently, she was promoted as Grade II Assistant in the year 1988 and Grade I Assistant in the year 1991 respectively. She served at various places. While she was working at Chennai, she was placed under suspension on 19.10.2000 on the ground that she has committed irregularities, while she was working as Grade I Assistant in Tailoring Unit, Anna Salai, Chennai-2. In this regard, two charge memos dated 3.7.1997 and 15.11.2000 have been served on the petitioner and the petitioner has also submitted her explanation for the same. Thereafter, an Enquiry Officer was appointed and an enquiry was conducted. The Enquiry Officer gave a finding as the charges were proved. Based on the same, the petitioner was removed from service by order dated 9.1.2003 by the 2nd respondent. The petitioner preferred an appeal to the Government on 9.3.2003 as against the same. The Government also confirmed the order of removal. Hence, the present Writ Petition.

3. The 2nd respondent has filed a Counter affidavit refuting the averments in the Writ Petition.

4. Learned Counsel for the petitioner submits that the 2nd respondent has ordered for recovery of the misappropriated amount and simultaneously conducted disciplinary proceedings. According to the learned Counsel, when once recovery is ordered, the disciplinary proceedings cannot go along with the recovery order and the 2nd respondent cannot punish twice for one offence and the procedure contemplated in the disciplinary proceedings is not valid and without considering the proper explanation given by the petitioner, the 2nd respondent has passed the order of removal which is non est in the eye of law.

5. The learned Counsel for the 2nd respondent would submit that the petitioner committed serious irregularities causing loss to the 2nd respondent Board to the tune of Rs.2,40,166/-. Therefore, Charge Memos were issued and after conducting a detailed enquiry, the Enquiry Officer has filed a report stating that all the charges were proved. Since the charges framed against the petitioner are grave in nature as she has misappropriated the fund of the Khadi Board and also made shortage in stocks, the 2nd respondent issued a recovery order as well as the order removing the petitioner from service for the welfare of the Khadi Board. Hence, the learned Counsel would pray to dismiss the present Writ Petition.

6. Heard the submissions made on either side and I have also perused the materials available on record.

7. On the face of the records, it is seen that though grave charges were levelled against the petitioner, to disprove the same, she has not given any proper explanation. Hence, considering the same, the 2nd respondent has passed an order of removal from service of the petitioner along with an order to recover the amount said to have been misappropriated by the petitioner.

8. In this regard, in the counter affidavit paragraph 6 of the 2nd respondent, it has been stated as follows:

''...The records and evidences based on which charges were framed on the petitioner has been clearly mentioned in Annexure II of the Charge Memo issued to her. Entire procedure as laid down under disciplinary and appeal rules were followed during oral enquiry. In fact, the prosecution side had sufficient records and witnesses to prove the charges levelled on the petitioner. The petitioner should have been produced her own witness before the Enquiry Officer for cross examination to defend her. The Enquiry Officer had also exhibited sufficient documents and prosecution witness during oral enquiry. In fact, the petitioner had also accepted the findings of the Enquiry Officer and offered no further explanation. The petitioner's statement that the collected amount is pick-pocketed is only an after thought since she had not made any police complaint or informed the higher officials about the theft. Having served for several years in the Board, she ought to know about the Board's rules, that collection amount more than Rs.500/- should be remitted into Board's account on the same day or the next day. But the petitioner having utilized the amount for her personal use, leisurely remitted the amount at her own convenience by telling lame stories.''

9. Further, re-appreciating of evidence under Article 226 of the Constitution of India is not permissible. In this regard, it is useful to rely on a decision of the Hon'ble Supreme Court in Lalit Popli vs. Canara Bank and others reported in (2003) 3 Supreme Court Cases 583 in which in paragraph Nos.17 to 20, it has been held as follows:

''17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its Jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice.

Judicial review is not akin to adjudication of the case on merits as an appellate authority.

18. In *B.C. Chaturvedi v. Union of India* the scope of judicial review was indicated by stating that review by the court is of decision-making process and where the findings of the disciplinary authority are based on some evidence, the court or the tribunal cannot reappreciate the evidence and substitute its own finding.

19. As observed in *R.S. Saini v State of Punjab* in paras 16 and 17 the scope of interference is rather limited and has to be exercised within the circumscribed limits. It was noted as follows: (SCC p.96)

16. Before advertng to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

17. A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the

inquiring authority. Likewise, the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard."

20.As noted above, the employee accepted that there was some lapse on his part but he pleaded lack of criminal intent. A bank employee deals with public money. The nature of his work demands vigilance with the inbuilt requirement to act carefully. Any carelessness invites action.''

10. In the afore cited decision, it has been held that when a person committed misappropriation of the fund of the employer by preparing bogus entries in the records and swindled the money to the tune of more than Rs.2,00,000/-, the Court cannot show any leniency for misappropriation and the illegal act of the petitioner. Applying the principles laid down in the above said decision to the case on hand, I am not inclined to interfere with the order passed by the 2nd respondent.

11. In the result, the Writ Petition fails and the same is accordingly dismissed. No Costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1. Secretary to Government,
State of Tamil Nadu,
Handlooms, Handcrafts, Textiles and
Khadi Department,
Secretariat, Chennai-9.

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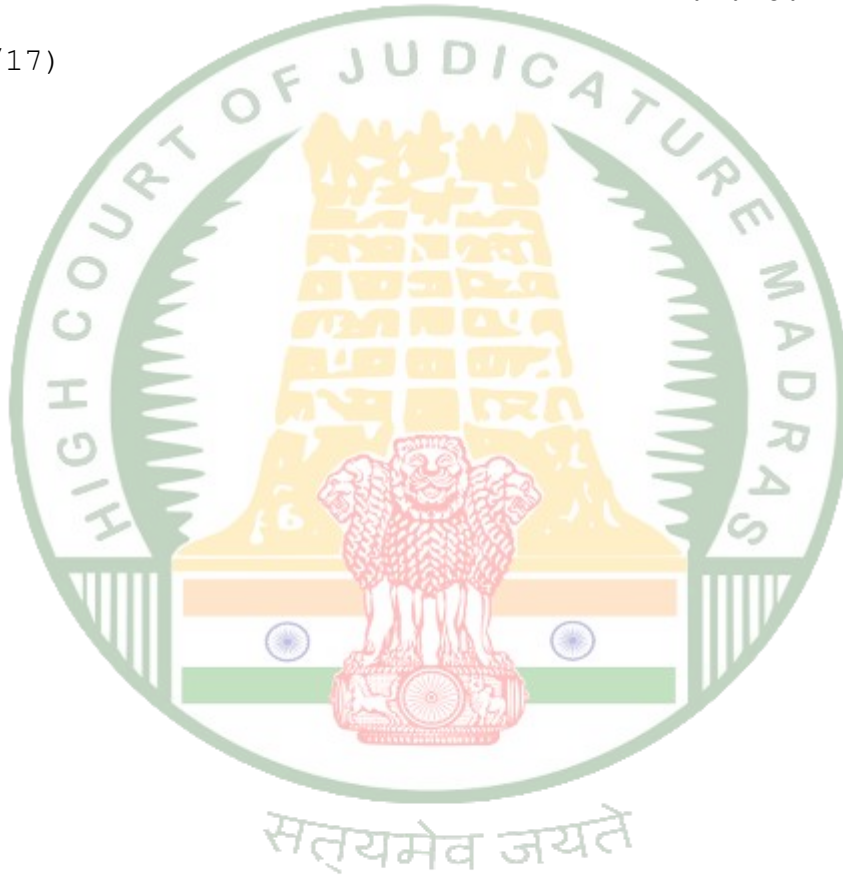
2. Chief Executive Officer,
Tamil Nadu Khadi and Village
Industries Board,
Kuralagam, Chennai-108.

+1cc to Mr.S.K.Boss, Advocate, S.R.No.66569

+1cc to the Government Pleader, High Court Madras, S.R.No.67610

W.P.No.21038 of 2004

PPA (CO)
Rmp (07/11/17)



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