

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.25272 of 2012

R.Shanmugam

.. Petitioner

Vs.

1. The Tamil Nadu Civil Supplies Corporation
rep. by its Senior Regional Manager,
Coimbatore Region,
Coimbatore - 641 030.

2. The Tamil Nadu Civil Supplies Corporation
rep. by its Chairman cum Managing
Director, 42, Thambuswamy Road,
Chennai - 10.

3. The Tamil Nadu Civil Supplies Corporation
rep. by its Regional Manager,
Tiruppur Region,
Tiruppur - 641 601.

.. 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 in Na.Ka.No.D2/4207/10 dated 25.03.2011 of the first respondent along with the proceedings No.AD 2/88026/2011 dated 16.08.2012 of the second respondent, quash both the orders and consequently direct the third respondent to release the consequential benefits with penal interest.

For Petitioner .. Mr.S.Venkataraman

For Respondents .. Mr.L.P.Shanmugasundaram

ORDER

Challenging the proceedings of the first respondent dated 25.03.2011 and the proceedings of the second respondent dated 16.08.2012 and for a consequential direction to the third

respondent to release the consequential benefits with penal interest, the petitioner has filed the present writ petition.

2.The case of the petitioner is that at the relevant point of time, he was working as a Superintendent in the respondent Corporation. While working as Superintendent, the petitioner was issued with a charge memo for certain acts of misconduct. The misconduct relates to certain shortage of quantity of grocery items which were to be packed and distributed through public distribution system. Immediately after issuance of charge memo, the petitioner attained the age of superannuation and he was allowed to retire on 30.06.2010.

3.In response to the charge memo, the petitioner submitted an explanation on 16.07.2010, denying the charges. According to the petitioner, he joined the godown only on 16.03.2009 and the predecessor of the petitioner handed over the charge of the stock to him except the stocks of "maligai porul", wherein the shortage was noticed. The petitioner, in his explanation, has contended that he cannot be held responsible for the shortage of grocery items since the suppliers alone were responsible. Moreover, according to the petitioner, it was humanly impossible to count lakhs of small packets of grocery items loaded and unloaded in a particular season as there were several persons involved in the operation and the petitioner alone therefore cannot be singled out for proceeding against him departmentally.

4.The Administration, notwithstanding the reply, conducted an enquiry and a report was submitted on 07.09.2010. The said report was communicated to the petitioner and an explanation was called for from him. In response to the same, the petitioner has submitted his explanation on 31.10.2010 pointing out certain infirmities in the conduct of enquiry, particularly, no oral evidence was let in in the enquiry and therefore, the findings holding the charges proved against the petitioner cannot be countenanced both on fact and in law.

5.Inspite of the legitimate objections of the petitioner, the first respondent passed an order on 25.03.2011, accepting the findings of the enquiry officer and imposing penalty of stoppage of increment for one year with cumulative effect and recovery of a sum of Rs.87,833.90. Thereafter, the petitioner preferred an appeal to the second respondent on 20.09.2011 with an enclosure. In the appeal, the petitioner had pointed out a lacuna in the conduct of the enquiry and stated that the findings are not supported by any evidence. He also pointed out that the disciplinary authority, without giving any finding on the issues raised by the petitioner in his objections to the enquiry report, had passed a cryptic order without delving into

the issues raised. However, the appellate authority rejected the appeal vide order dated 16.08.2012 stating that the petitioner did not disprove the charges against him and refused to sign the questionnaire asking for a full fledged oral evidence. The orders passed by the disciplinary authority and the appellate authority are put to challenge in the writ petition.

6.Mr.S.Venkataraman, learned counsel appearing for the petitioner would strongly contend that there was no proper enquiry as contemplated under the sub clause 4 of chapter V of Tamil Nadu Civil Supplies Corporation Employees Service Regulations, 1989. He would draw the attention of the Court to the specific provision and would contend that elaborate procedure is contemplated under the Rules and no such procedure has been followed. He would also draw this Court's attention to the order passed by the disciplinary authority dated 25.03.2011 stating that such an order is contrary to the Regulations and cannot be countenanced in law.

7.This Court has gone through the order passed by the disciplinary authority and is of the view that the order passed, to say the least, is non-speaking and the same is not in consonance with the specific Regulations, which are applicable to the service conditions of the petitioner. Moreover, it is incumbent upon the authority who passes an order which has adverse effect on the service conditions, to give specific finding on every aspect of the issue and in the absence of the same, the order passed by the authority cannot be validated in law.

8.Be that as it may, when infirmities are pointed out in the appeal by the petitioner, the appellate authority has completely misdirected himself in stating that the petitioner has not disproved the charges and moreover, the petitioner has not signed the questionnaire form at the commencement of the enquiry asking for oral evidence. Such conclusion by the appellate authority is once again cannot be countenanced in law. Needless to mention that it is for the prosecution to prove the case against the petitioner and not vice versa.

9.Learned counsel appearing for the petitioner relied on three decisions of this Court for the purpose of assailing the type of enquiry conducted against the petitioner herein. The first decision relied on by the learned counsel is dated 11.09.2006 passed by the Division Bench of this Court in W.A.Nos.1052 and 1053 of 2004. In the said decision, the Division Bench has held that it is the duty of the management to sustain the charges by adducing evidence. In that case, the management had not even examined any witness or produced any document to sustain those charges and in that context, the

Division Bench had affirmed the order passed by the learned single Judge for setting aside the disciplinary action initiated against the employee concerned.

10.Learned counsel for the petitioner would also rely on another order passed by the Division Bench dated 01.07.2009 in W.A.No.736 of 2008. The Division Bench has held in the said decision that though the charge memo was issued and the enquiry officer was appointed, no witnesses were examined and no documents were marked. The delinquent employee was questioned by the enquiry officer and the order of penalty was imposed on the basis of the finding. Such an enquiry cannot be considered to be in compliance with the procedure requiring for a detailed enquiry before imposition of major penalty. Learned counsel further relies on the decision of the Division Bench dated 08.10.2010 in W.A.(MD) No.130 of 2010, in which the Division Bench has observed on the similar lines as stated above in the other Division Bench matters.

11.As regards the appellate authority's order, the petitioner had not signed the questionnaire, the learned counsel would rely on the order passed by this Court in W.P.No.5239 of 1992 dated 01.09.1999, which clearly held that regardless of the fact whether the employee signed the questionnaire form or not, it is the duty of the management to decide over the charges by conducting proper enquiry.

12.Upon notice, Mr.L.P.Shanmugasundaram, learned counsel entered appearance on behalf of the respondents and filed counter statement. Learned counsel would further contend that the Corporation has suffered a loss due to negligence on the part of the petitioner and therefore, the Corporation had rightly proceeded against the petitioner by chargesheeting him. He would further contend that reasonable opportunity was afforded to the petitioner before the impugned penalty came to be slapped. In the said circumstances, there is no scope for interference by this Court, exercising jurisdiction under Article 226 of the Constitution of India.

13.Upon consideration of rival submissions of the parties and the submissions of the learned counsels on the legal aspect and the factual matrix and after perusing the materials and pleadings on record, this Court is of the firm view that there is considerable force in the contention of the learned counsel for the petitioner that there was no proper enquiry conducted for establishing the charges framed against the petitioner. The finding on the basis of the improper enquiry cannot be a basis for imposition of penalty by the disciplinary authority. Even otherwise, the disciplinary authority has abdicated his statutory duty for not considering the case and addressing the

issues raised by the petitioner against the findings of the enquiry officer. Needless to mention that in the absence of proper findings, it is imperative on the part of the disciplinary authority to give proper reasons for imposing penalty on the petitioner. In this case, particularly, when an employee was to retire in June 2010 and any penalty would have far reaching financial implications throughout the life of the petitioner. Moreover, the order passed by the appellate authority is also to be faulted with as the same is opposed to the basic principles of service jurisprudence. The findings of the appellate authority are per se on the basis of the complete misconception of law and the same, therefore, cannot be upheld. Lastly, the learned counsel for the respondents would submit that the matter may be remanded to the authority for fresh enquiry in terms of the Regulations.

14.This Court considered the said submissions, but, however of the view that the petitioner had already attained the age of superannuation and retired as early as in the year 2010. Moreover, the Corporation failed to mark any documents and failed to let in any oral evidence in the enquiry and this Court certainly is of the view that after a lapse of more than seven years, there will not be any scope for any evidence to be made available in respect of the enquiry, if freshly conducted against the petitioner. In that view of the matter, remanding the matter to the respondents for conduct of any fresh enquiry particularly, after a lapse of more than seven years, will not serve any purpose.

15.In the said circumstances, this Court has no hesitation in allowing the writ petition. The impugned orders passed by respondents 1 and 2 dated 25.03.2011 and 16.08.2012 are set aside and there shall be a direction to the respondents to release whatever amount withheld and restore the pay of the petitioner as it stood before the imposition of penalty and restore the pension payable on that basis. The respondents are directed to pass consequential order within a period of two months from the date of receipt of a copy of this order.

16.The writ petition is allowed on the above terms. No costs.

Sd/-

Asst.Registrar (CS VI)

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Sub Asst. Registrar

mmi

To

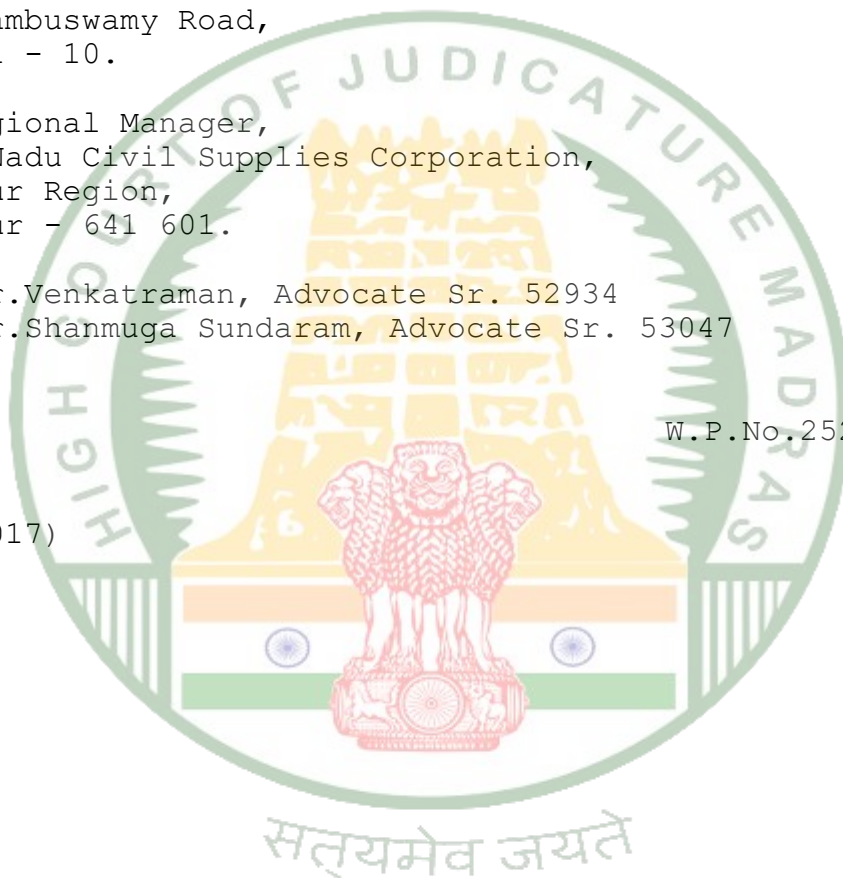
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+1cc to Mr.Venkatraman, Advocate Sr. 52934

+1cc to Mr.Shanmuga Sundaram, Advocate Sr. 53047

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MG (CO)
VR(29/8/2017)



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