

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.25605 of 2012 and
M.P.No.2 of 2012

T.Manivachagan

... Petitioner

Vs.

1.The General Manager (Administration,
TN Civil Supplies Corporation Limited,
Head Office, Kilpauk, Chennai - 10.

2.The Senior Regional Manager,
TN Civil Supplies Corporation Limited,
Thanjavur Region, Thanjavur.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondents in connection with the impugned order passed by the second respondent in Na.Ka.No.M3/1311/2007 dated 09.11.2011 and by the first respondent in Proceedings Order No.AT3/2743/2012 dated 23.07.2012 and quash the same.

For Petitioner : Mr.R.Thiagarajan, Senior Counsel
for T.Ayngaraprabhu

For both Respondents: Mr.L.P.Shanmuga Sundaram

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सत्यमेव जयते
O R D E R

Heard Mr.R.Thiagarajan, learned Senior Counsel appearing for the petitioner and Mr.L.P.Shanmuga Sundaram, learned counsel appearing for the respondents.

2.The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorari, calling for the records of the respondents in connection with the impugned order passed by the second respondent in Na.Ka.No.M3/1311/2007 dated 09.11.2011 and by the first respondent in Proceedings Order No.AT3/2743/2012 dated 23.07.2012 and quash the same."

3. The case of the petitioner is as follows:

The petitioner entered the service of the respondents as Bill Clerk in 1981. The petitioner was promoted as Assistant Quality Inspector. Subsequently in 1994, while he was working as Assistant Quality Inspector, he was issued with the charge memo for certain acts of misconduct vide Charge Memorandum dated 24.05.2007. In response to the charge memo, the petitioner submitted his explanation on 09.07.2007, denying the charges. The charge memorandum contained eight articles of charges. Thereafter, an enquiry was conducted and the enquiry report was submitted on 30.03.2010, holding that except second charge, other charges were held not proved.

4. The Disciplinary Authority recorded a dissenting note of the enquiry report stating that all eight charges were proved and provided an opportunity to the petitioner to represent against the differed findings dated 27.05.2010. At this, the petitioner submitted a further representation on 31.08.2010. However, the representation by the petitioner was rejected by the Disciplinary Authority vide proceedings dated 09.11.2011, holding that all the charges were proved and a punishment of stoppage of increment for a period of two years with cumulative effect was imposed apart from an order of recovery of Rs.9,52,801.05/- (Rupees Nine lakh fifty two thousand eight hundred and one and five paise only).

5. As against the order dated 09.11.2011, passed by the Disciplinary Authority, the petitioner filed an appeal and also raised additional grounds on 16.05.2012. The appellant authority/first respondent herein rejected the appeal. The petitioner is therefore before this Court, challenging the order passed by the second respondent, namely, Disciplinary Authority dated 09.11.2011 and confirmed by the appellate authority in its order dated 23.07.2012.

6. Mr. R. Thiagarajan, learned Senior Counsel appearing for the petitioner at the outset would submit that the entire disciplinary action ought to be quashed, for the reason that the procedure contemplated in Tamil Nadu Civil Supplies Corporation Limited Employees' Service Regulations, 1989 has not been followed under clause 4 of Chapter-V, of the Service Regulations, wherein an elaborate procedure has been provided in respect of major penalty proceedings.

7. The learned Senior Counsel would also submit that neither witnesses were examined, nor any documents marked in enquiry. But the enquiry report was submitted only on the basis of the surmises and conjectures. This submission was made by the learned Senior counsel only with respect to the charge that was held proved by the Enquiry Officer.

8.The learned Senior Counsel appearing for the petitioner would further submit that the findings rendered by the Enquiry Officer in respect of other seven charges holding the same not proved was differed by the Disciplinary Authority. But no legal and acceptable reasons were stated in the enquiry proceedings. Since neither witnesses were examined nor any documents were marked in the Departmental Enquiry, the different findings recorded by the Disciplinary Authority is unsupported by any evidence and therefore the conclusion of the Disciplinary Authority is that all the charges were proved against the petitioner, cannot be countenanced in law or on facts.

9.The learned Senior Counsel would therefore submit that the impugned punishment imposed on the petitioner on the basis of the flawed findings by the Enquiry Officer, in respect of the second charge and the flawed findings of the Disciplinary Authority in respect of all other seven charges cannot be sustained in law in any circumstances. Accordingly, the learned Senior Counsel, in the absence of any acceptable materials available on record, submitted either before the Enquiry Officer or before the Disciplinary Authority, the impugned punishment cannot be a proceeding in the eye of law.

10.Be that as it may, when such infirmity was pointed out in the appeal filed by the petitioner, the first respondent/the appellate authority has not appreciated the appeal filed by the petitioner in proper perspective and mechanically confirmed the order passed by the Disciplinary Authority. Therefore, the learned Senior Counsel submitted that the impugned punishment is liable to be set aside. He would also rely on the decision passed by this Court in Writ Petition in W.P.No.25272 of 2012 dated 26.07.2017, wherein this Court has allowed the Writ Petition filed by an employee, who was similarly placed on the ground that the Management of Tamil Nadu Civil Supplies Corporation did not follow the procedure contemplated in Tamil Nadu Civil Supplies Corporation Limited Employees' Service Regulations, 1989, in respect of major penalty proceedings. He would submit that the said order squarely covers the present case.

11.Upon notice learned counsel appearing for the respondents submitted that the charges framed against the petitioner were serious in nature and therefore, after due enquiry, the punishment came to be imposed. However, the learned counsel is unable to effectively present any contra case, while resisting the legal submission advanced by the learned Senior Counsel.

12.This Court has considered the rival submission of the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused

the relevant materials and pleadings placed on record.

13. From the records, it could be seen that the Departmental Enquiry was not conducted in terms of the service regulations, particularly, the procedure contemplated for major penalty proceedings. No witnesses were examined nor any documents were marked in the Departmental Enquiry. Although, the petitioner exonerated by the Enquiry Report which held seven out of eight charges were held as not proved, but, the petitioner was aggrieved by the Enquiry Report in respect of the second charge only which was held proved. In the absence of evidence in the Departmental Enquiry, this Court is unable to appreciate how the Disciplinary Authority could have a different view in the findings rendered by the Enquiry Officer, in respect of seven charges which were held not proved. This Court has no hesitation in holding that the conclusion by the Enquiry Officer, in respect of the second charge was unsupported by any evidence and the conclusion by the Disciplinary Authority, in respect of other seven charges were not supported by any evidence which formed part of the departmental enquiry.

14. In the above circumstances, the punishment imposed by the second respondent, namely Disciplinary Authority on the basis of his own findings in respect of seven charges and the finding rendered by the Enquiry Officer, in respect of the second charge cannot be sustained in law and therefore, the same is to be quashed. Moreover, when the infirmities were pointed out by the petitioner in the appeal and the same were not dealt with properly by the appellate authority in his order, which is therefore liable to be set aside. Further, this Court in similar circumstances has found that the Disciplinary Proceedings against similarly placed employee was not valid. The said decision squarely applies to this case also. Moreover, the procedure which is contemplated for major penalty is mandatory and it is incumbent upon the respondent administration to follow the procedure in its letter and spirit. Any infraction in that regard cannot make the disciplinary action valid in the eye of law. In the upshot, this Court has no hesitation to allow the Writ Petition and the impugned orders dated 09.11.2011 and 23.07.2012 of the second and first respondents are hereby quashed.

15. Hence, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The General Manager (Administration,
TN Civil Supplies Corporation Limited,
Head Office, Kilpauk, Chennai - 10.

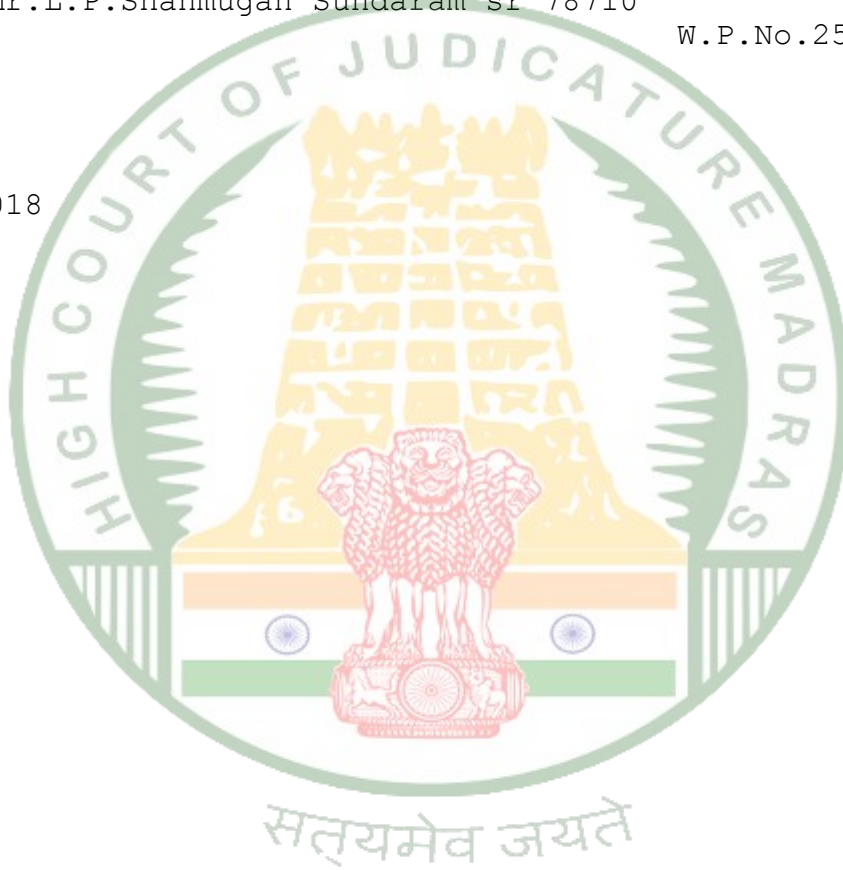
2.The Senior Regional Manager,
TN Civil Supplies Corporation Limited,
Thanjavur Region, Thanjavur.

+1 cc to Mr.M.Muthappan Advocate sr78463

+1 cc to Mr.L.P.Shanmugan Sundaram sr 78710

W.P.No.25605 of 2012

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