

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 17.02.2017

Pronounced on 12.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.26983 of 2012

P.Ramakrishnan

.. Petitioner

vs.

1.Tamil Nadu Civil Supplies Corporation,
rep.by its Senior Regional Manager,
Tiruvarur Region,
Vilamal Post, Tiruvarur – 613701.

2.Tamil Nadu Civil Supplies Corporation,
rep. by its Chairman cum Managing Director,
12, Thambuswamy Road, Chennai – 600 010.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings Na.Ka.No.S L 5/602/98 dated 23.12.2009 of the first respondent along with the proceedings Na.Ka.No.BSLA 17/18694/10 dated 30.7.2012 of the 2nd respondent, quash both the orders and consequently direct the first respondent to release the consequential benefits with penal interest.

For petitioner : Mr.S.Venkataraman

For respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader

ORDER

Challenging the recovery proceedings of the respondents, the petitioner has filed the present Writ Petition.

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

The petitioner was working as Junior Assistant at the Central Warehousing Corporation Godown, Pamani, under the control of the first respondent during the period between 1997 and 1999. A few days before his retirement, he was issued a show cause notice dated 22.5.2007 by the first respondent holding that he is responsible for storage loss of paddy/rice beyond admissible norms during the aforesaid period. The petitioner offered his explanation denying his liability and requested the first respondent to drop the recovery. In the meantime, he was permitted to retire from service without prejudice to the pending recovery proceedings. Accordingly, he was retired from service on 31.5.2007. Thereafter, the petitioner's explanation dated 22.5.2007 was rejected stating that the reasons are not convincing and confirmed the recovery of Rs.96,108/- as per the show cause notice dated 22.5.2007 vide impugned order of the first respondent dated 23.12.2009. Aggrieved by the said proceedings, the petitioner preferred an appeal dated 24.2.2010 to the second respondent and the second respondent rejected his appeal by proceedings dated 30.07.2012 confirming the order of the second respondent. Hence, the present Writ Petition has been filed by the petitioner.

3. Assailing the impugned orders of the respondents, the learned counsel for the petitioner submitted that the alleged charges levelled against the petitioner had occurred during the year 1997 to 1999 whereas the impugned show cause notice was issued by the respondent Corporation in the year 2007, that is after lapse of 8 years. The respondent Corporation has not shown any reason or material for belated initiation of recovery proceedings against the petitioner after a period of 8 years. It is further submitted by the learned counsel for the petitioner that the respondents admitted that the petitioner was not entrusted with the work of handling the stocks but was only entrusted with the clerical work of maintenance of records. Merely because, the petitioner had worked in the Godown, he cannot be taken to task but his involvement has to be proved. It is the duty of the respondents to prove the charges, they cannot expect the employee to produce the documents after several years of his retirement from service. Moreover, keeping of documents by employee itself would amount to a misconduct. Merely because, the appeals of other employees have been rejected alone cannot be a reason to reject the petitioner's appeal for the simple reason that the involvement of each employee varies and the role of each employee has to be analysed before imposing penal order. The explanation offered by the petitioner was also not considered by the respondent Corporation. Therefore, the entire proceedings initiated by the respondent Corporation is

vitiated. As such, the learned counsel for the petitioner prays this Court to set aside the impugned proceedings and allow the Writ Petition.

4. On the contrary, denying averments of the petitioner, the first respondent has filed a counter affidavit. The learned Special Government Pleader for the respondent Corporation would submit that the even though there is delay of 8 years in initiating the proceedings, the respondent Corporation is not charging any interest for the delay period while ordering recovery. The petitioner was permitted to retire without prejudice to the recovery proceedings. The explanation given by the petitioner was duly considered by the respondent Corporation and thereafter only, the impugned orders were passed. It is only the petitioner and his co-workers closed 361 stacks which resulted in the loss and it is not due to others. It is submitted that the Regional Heads are empowered to decide cases below 1% loss. Therefore, all recoveries were legally sustainable and there is no illegality in the order passed by the respondents. As such, the impugned orders were passed in accordance with law and there is no infirmity in the impugned orders. Therefore, the petitioner has on *locus standi* to file the present Writ Petition. The Writ Petition deserves to be dismissed.

5. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents and perused the materials on record.

6. On perusal of the show cause notice, it shows that the same was issued on 22.5.2007 whereas the petitioner had been working during 1997 to 1999. As such, the show cause notice has been issued after a period of 8 years. It is seen from the impugned order of the first respondent dated 23.12.2009, he has not considered the objection raised by the petitioner. The petitioner has specifically raised a ground that during that period, he served only as a Junior Assistant looking after the maintenance of books and records and he had not handled the stock as Point Clerk as per the Storage Loss Manual. Even in the order passed by the second respondent has mentioned that it is stated by the first respondent that the petitioner had not handled the stock physically but he was entrusted with the work of maintenance of accounts and records and that the nature of work entrusted to the petitioner was only clerical work. When the petitioner was not entrusted with the work of handling stock during that period, he cannot be made liable jointly and severally along with other employees. This aspect was not considered by the appellate authority. The respondent Corporation has not explained reasons for

the inordinate delay in issuing show cause notice for recovery from the petitioner.

7. In the light of the above reasons, I have no hesitation to interfere with the impugned orders passed by the respondents. Hence, the impugned orders passed by the respondents are quashed and the Writ Petition is allowed. No costs.

12.04.2017

Index : Yes / no
Internet: yes /no
asvm

To

- 1.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Tiruvarur Region,
Vilamal Post, Tiruvarur – 613701.
- 2.The Chairman cum Managing Director,
Tamil Nadu Civil Supplies Corporation,
12, Thambuswamy Road,
Chennai – 600 010.

D.KRISHNAKUMAR, J

(asvm)

Order
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