

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.33770 of 2004

and

W.M.P.No.378 of 2011

S.Sivanandam

... Petitioner

Vs.

1. The Secretary to Government,
Khadi Handicraft and Cotton Dept.,
Fort St.George,
Chepauk, Chennai - 600 009.

2. The Chief Executive Officer,
Tamil Nadu Khadi and Village,
Industries Board,
Kuralagam,
Chennai - 600 108.

3. The Assistant Director,
(KHADI Village Industries),
Tamil Nadu Khadi and Village,
Industries Board,
Thanjavur.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the Board proceedings bearing No.43 dated 09.07.2004 by the second respondent and to quash the same illegal, arbitrary, unconstitutional and violative of the principles of natural justice and further direct the respondent to reinstate the petitioner into service in Khadi Craft Asst. Grade-I.

For Petitioner : Mr.H.Nazirudeen

For R1 : Mrs.K.Bhuvaneshwari
Government Advocate

For R2 and R3 : Mr.S.K.Bose

O R D E R

The petitioner has filed this writ petition, challenging the Board proceedings bearing No.43 dated 09.07.2004 passed by the second respondent to quash the same as illegal, arbitrary, unconstitutional and violative of the principles of natural justice and to direct the respondents to reinstate the petitioner into service in Khadi Craft Assistant Grade-I.

2.The brief facts of the case are that the petitioner was appointed in the year 1984 in Khadi Board. While he was working as a Manager in the cadre of Assistant Grade-I (Khadi) in Khadi Showroom, Thanjavur, a charge memo purporting sale of silk Sarees to the tune of Rs.2,52,273.55/- contrary to regulations, was served on the petitioner by the third respondent, vide proceedings Na.Ka.No.2207/97/K3 issued on 17.07.1997, alleging that the petitioner brought loss on sale of silk sarees to the tune of 2,52,273.55/-.

3.The said charge memo was issued under Regulation 31 of Tamil Nadu Khadi and Village Industries Board Service Regulations. After receipt of the charge memo, a reply was filed by the petitioner on 09.08.1998, denying the charges, answering each and every charges and substantiating that there was no irregularity on the part of the petitioner. After lapse of four years, Enquiry report was submitted on 12.10.2001. Thereafter, the Chief Executive Officer / second respondent passed the order of termination on 30.05.2002.

4.Aggrieved by the order of the second respondent, the petitioner filed an appeal on 06.06.2003 before the Appellate Authority / Secretary to Government, Khadi Handicraft and Cotton Department, under Regulation 39 of the Tamil Nadu Khadi and Village Industries Board Service Regulation. The said appeal was rejected on 09.07.2004 based on the instructions of the Chairman. Aggrieved by the same the present writ petition is filed.

5.Though the appeal was filed under Regulation 39 of the Tamil Nadu Khadi and Village Industries Board Service Regulations, however, the order was passed by the disciplinary authority / third respondent under Regulation 39 and the same was confirmed by the Secretary to Government/ Appellate Authority on 18.05.2004, and the said order dated 18.05.2004 is extracted hereunder:

"2.In this connection, I am to point out that in G.O.(Ms)No.26, Handlooms, Handicrafts, Textiles and Khadi Department, dated 10.03.1998, the Government have issued an amendment to regulation 38 of the Tamil Nadu Khadi and Village Industries

Board service Regulations to the effect that the "Commissioner and Secretary to Government" in the Department dealing with the subject "Khadi and Village Industries" the expression "the Board" shall be substituted.

3. In view of the above amendment, it is considered that there seems to be no need to examine the appeal preferred by Thiru.S.Sivanandam, who comes under the Group "C" at Government level. Hence, the appeal preferred by the individual is returned. I am, therefore, to request you to pass final orders after approval of the Board. The original records pertaining to this case are also returned herewith".

6. Though the order was passed after the meeting was conducted by the Board as per Regulation 38, the Chairman of Khadi Board, the Assistant Director / the disciplinary authority and the Chief Executive Officer/ second respondent participated in the Board meeting and decision was taken by the members and the above said order was passed. Regulation 38 & 39 reads as follows:

38. Appeals in respect of categories in Group C & D;

" A member of the service belonging to any of the categories in Group C & D shall be entitled to appeal from an order imposing on him any of the penalties specified in regulation 28 if such an order was passed by the competent authority to the next higher authority to whom the competent authority is administratively sub-ordinate and if such an order was passed by the Chief Executive Officer, to the Commissioner and Secretary to Government in the Department dealing with the subject "Khadi and Village Industries".

(Khadi Board Proceedings Ms.No.349/dated 20.08.1978)

39. Procedure for Appeals:

(1) In the case of an appeal against an order imposing any penalty specified in Regulation 28 the appellate authority shall consider:-

(a) whether the facts on which the orders were based have been established;

(b) whether facts established afford sufficient ground for taking action and

(c) whether the penalty is excessive, adequate or inadequate and pass orders.

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that -

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v), (vi), (vii), and (viii) or regulation 28 and an inquiry under clause (b) of regulation 34 has not already been held in the case, the appellate authority shall, subject to the provisions of clause (a) of regulation 34, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of clause (b) of regulation 34 and thereafter on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v), (vi), (vii) and (viii) of regulation 28 and an inquiry under clause (b) of regulation 34 has already been held in the case, the appellate authority shall, after giving the appellate reasonable opportunity of making representation against the penalty imposed on the basis of the evidence adduced during the enquiry make such orders as it may deem fit; and

(iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of clause (b) of Regulation 34 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing that the error defect was not material and has neither caused injunction to the person concerned nor affected the decisions of the case.

7. On a perusal of the above provisions, the first respondent returned the appeal on 18.05.2004 since the petitioner comes under Group 'C' at Government level, the order has to be passed only by the Appellate Board which was constituted under Regulation 38. Thereafter, the Appellate Board passed the impugned order dated 09.07.2004, wherein, the claim of the petitioner was rejected and confirmed the second respondent's order.

8.The original impugned order was passed by the second respondent in the capacity of Executive Officer. However, the said Executive Officer also participated in the Board meeting and on perusal of the impugned order dated 09.07.2004, the said order was issued as per the order of the Board President and it was forwarded by the Chief Executive Officer, who is the second respondent herein, passed the original impugned order.

9.The second respondent passed the original impugned order and he also participated in the Board meeting and confirmed the original order passed by him. The law is well settled that "no one can be a judge of his own cause". The said principle of natural justice stresses that the accuser must not sit in judgment over the accused. Hence the impugned order is liable to be quashed.

10.In view of the above discussion, this Court is inclined to interfere with the impugned order passed by the second respondent. Accordingly, the impugned order dated 09.07.2004 is set aside and the matter is remanded back to the Khadi Board appointed under Regulation 38 of Tamil Nadu Khadi Village Industries Board for passing a fresh order. The Board is directed to complete the proceedings within a period of six months.

11.Accordingly, this writ petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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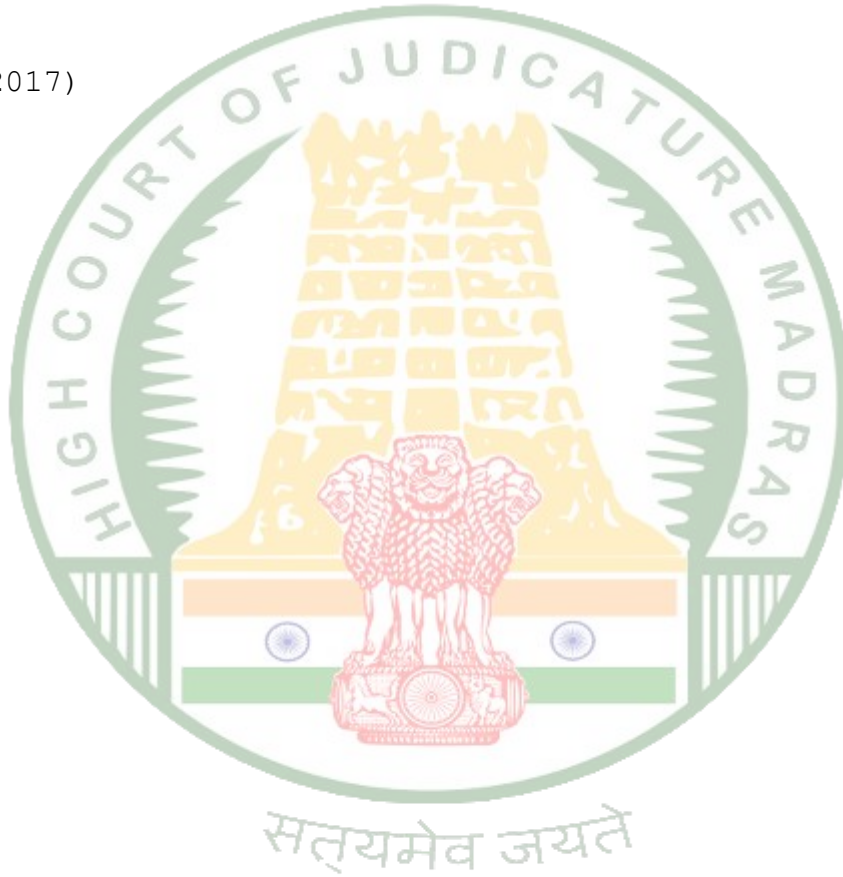
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+1cc to Mr.S.K.Bose, Advocate, S.R.No.69749
+1cc to Mr.R.Tholgappian, Advocate, S.R.No.69799
+1cc to the Government Pleader, S.R.No.70889

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CA(16/11/2017)



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