

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.36301 of 2003

T.Murugesan,
Junior Assistant
Tamil Nadu Civil Supplies Corporation Ltd.,
Regional Office
Trichirapalli

... Petitioner

Vs.

1.The State of Tamil Nadu
rep.by its secretary to Government
Department of Food and Consumer Protection,
Fort St.George,Chennai-9.

2.The Chairman Cum Managing Director
Tamil Nadu Civil Supplies Corporation Ltd.,
Head Office
No.42,Thambusamy Road
Kilpauk
Chennai-600 010.

3.The Senior Regional Manager
Tamil Nadu Civil Supplies Corporation Ltd.,
Regional Office
Thanjavur.

4.The Senior Regional Manager
Tamil Nadu Civil Supplies Corporation Ltd.,
Regional Office
Nagapattinam.

5. The General Manager (Administration)
Head Office
No.42,Thambusamy Road
Kilpauk
Chennai-600 010.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the relevant records relating to the impugned order issued in proceedings in R.C.No.D1/4018/99, dated 22.11.2002 passed by the 4th respondent herein & the Appellate authority's order in proceedings No.G9/161530/2002, dated 16.06.2003 passed by the 5th Respondent herein and quash the same except the period already regularised in the impugned order as arbitrary, unreasonable, improper, illegal against the rules and regulations of the respondents therein, to re-pay the recovered amount from the petitioner's salary as per the impugned proceedings dated 22.11.2002 and 16.06.2003.

For Petitioner : Mr.S.Srinivasan

For RR1 : Mr.Zakkir Hussain

Government Advocate

For RR2 to RR4 : No Appearance

ORDER

The petitioner challenging the punishment imposed by the respondents treating the suspension period as "substantive punishment" and ordered recovery of a sum of Rs.30.817.86/- towards the loss sustained by the corporation as agreed by the delinquent. The period of his absence from 01.02.1984 to 23.02.1997 is treated as "non-duty". The appellate authority/ fifth respondent in its proceedings No.G9/1616530/2003 dated 16.06.2003 , confirmed the order and also the modified punishment of the appellate authority, against which, the present writ petition has been filed.

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

The petitioner joined in the Tamil Nadu Civil Supplies Corporation Ltd., as helper on 03.09.1975 in the office of the Manager (Purchase & Movements) Mayooram, the then Thanjavur District. Subsequently, the petitioner was promoted to the post of Junior Assistant from 18.01.1980. Thereafter, on 04.02.1980, he was transferred to the Satellite Godown at Tanjore. While so, the third respondent placed the petitioner under suspension vide his order dated 22.11.1980. Consequently, on 19.06.1981, the third respondent issued the charge memo containing eleven charges. After issuance of chargememo, the petitioner submitted his explanation on 18.11.1981.

3. The nutshell of the charge memo was that the petitioner has misappropriated, manipulated and failure to account for some of the commodities.

4. Though the petitioner denied the charge levelled against him for the shortage of essential commodities, after conducting enquiry, the provisional show cause notice was issued on 12.07.1982. The petitioner replied to the provisional show cause notice on 25.09.1982 denying the allegations made in the charge memo. After conducting detailed enquiry, the third respondent, in his proceedings dated 31.01.1984, passed an order dismissing the petitioner

from service. As against the dismissal order, the petitioner made an appeal to the second respondent on 17.03.1984, for which, he confirmed the order of the third respondent and rejected the appeal filed by the petitioner.

5. Aggrieved by the above dismissal order of the respondents 2 and 3, the petitioner filed a writ petition in W.P.No.18426/1990. This Court, by an order dated 08.10.1996, allowed the writ petition with liberty granted to the respondents 2 and 3 either to reinstate the petitioner into service pending enquiry or to keep him under suspension as may be considered appropriate.

6. In compliance of the order of this court, the petitioner rejoined service as Junior Assistant on 18.02.1997. After rejoining the duty, an Enquiry Officer was appointed to conduct an oral and personal hearing of the petitioner. When the enquiry is pending, again the petitioner has approached this court by way of a writ petition in W.P.No. 24318/2002 and on 08.07.2002, this court directed the third respondent to pass final order on the enquiry proceedings No.2012/1999/A1 dated 03.12.1999 and pay all the consequential and other monetary benefits to the petitioner, within a period of eight weeks from the date of receipt of a copy of the order. The third respondent has held that the four charges are not proved and the remaining seven charges are held proved and for the proven charges, though the

petitioner deserved for severe punishment, considering his lesser number of years of service for retirement, the suspension undergone by the petitioner from 11.01.1980 to 31.01.1984 is treated as "substantive punishment" and ordered for recovery of a sum of Rs.30.817.86/-.

7. Aggrieved by the order of the disciplinary authorities, the petitioner filed an appeal on 19.12.2002 to the General Manager (Administration)/ fifth respondent and thereafter, he passed an order wherein the same reads as follows:

"I held that the substantive punishment imposed by the Senior Regional Manager, Nagapattinam to order the period of suspension undergone by the Delinquent (ie., on 11.11.1980 to 31.01.1984) is treated as substantive punishment, as excess punishment and modified the order to reduce to impose 50% of the substantive punishment i.e., the period from 11.01.1980 to 20.06.1982 to be treated as the delinquent was in service and the period from 21.06.1982 to 31.01.1984 as the period of substantive punishment and also ordered that the orders of Senior Regional Manger, TNCSC Ltd., Nagapattinam treating that the period from 01.02.1984 to 23.02.1997 is to be treated as non duty and there is no change in the order."

8. Aggrieved by the same, the present writ petition is filed.

9. While entertaining the writ petition, this court initially granted an order of interim stay. Subsequently on 15.03.2005, it was modified with a direction to the respondents for recovery of the amount in easy instalments from the salary payable by the petitioner and subsequently, petitioner retired from service and the order of recovery was made and petitioner suffered punishment from 11.11.1980 to 31.01.1984.

10. The petitioner has committed grave charges regarding misappropriation of funds and failed to discharge his legitimate duties and make loss to the essential commodities to the Corporation and ultimately, he accepted the punishment specifically ordered as stated supra. Once a lesser punishment is accepted by the petitioner, at a later point of time, he cannot take a different view in the order passed by the authorities on misappropriation of funds.

Considering the order passed by the Delinquent Officer as well as the Appellate Authority, this court deems it fit that there is no need to interfere with the order passed by the Appellate Authority. Accordingly, the writ petition is dismissed. No costs.

29.08.2017

gv/gmd

To

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M.DHANDAPANI,J.
gv/gmd



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