

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2018

CORAM :

The Hon'ble MR.JUSTICE HULUVADI G.RAMESH

AND

The Hon'ble MR.JUSTICE K.KALYANASUNDARAM

W.A.No.627 of 2018
and C.M.P.No.6141 of 2018

- 1.The Tamil Nadu Civil Supplies Corporation,
rep. by its Regional Manager,
(Chennai South)
Chennai-600 086.
- 2.The General Manager (Quality Control),
Tamil Nadu Civil Supplies Corporation Ltd.,
Chennai - 600 010. ... Appellants /Respondents

-vs-

P.Mathivanan ... Respondent/Petitioner

Appeal filed under Clause 15 of Letters Patent against the order dated 04.8.2017 made in W.P.No.13817 of 2011 on the file of this Court.

Prayer in W.P.No.13817 of 2011:

Petition filed U/Art.226 of the Constitution of India it is prayed that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate Writ or order or direction, calling for the records relating to the proceedings Na. Ka. No. A 20/3611/2009 dated 18.4.2011 of the 1st respondent, quash both proceedings.

For Appellants.. Mr.C.Munusamy
Spl. Government Pleader (Education)

For Respondent .. Mr.S.Dhayaleeswaran

JUDGMENT

(Judgment of the Court was made by Huluvadi G.Ramesh, J.)

Heard the learned Special Government Pleader (Education) appearing for the appellants and the learned counsel appearing for the respondent.

2. This appeal is directed against the order dated 04.8.2017 passed in W.P.No.13817 of 2011, wherein and whereby the learned Single Judge has allowed the writ petition. The operative portion of the order of the learned Single Judge reads thus:

"9.This Court has considered the said submission of the learned counsel and finds some force in it. In any event, the admitted position being that the charge itself lacks in details and the subsequent enquiry conducted was not in terms of Regulation 4 of Chapter V of the Regulations, the ultimate imposition of penalty and the order of recovery cannot be countenanced both in law and on facts and therefore, the same are liable to be set aside. In view of the same, the impugned orders dated 16.4.2011 and 18.4.2011 are set aside. The respondents are directed to refund the amount of Rs.85,008/- which was recovered from the petitioner within a period of two months from the date of receipt of a copy of this order.

10.The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed."

3. It appears that for the misconduct, the respondent was imposed with the punishment of stoppage of increment for six months without cumulative effect by the first appellant and also ordered recovery of a sum of Rs.85,008/- by the first appellant. As far as imposition of punishment of stoppage of increment for six months without cumulative effect is concerned, the respondent has got a remedy of appeal before the Appellate Authority. But, in the case on hand, admittedly, the respondent has not preferred any appeal and had straight away filed the writ petition seeking to quash the orders imposing punishment as well as the recovery of the variation amount of Rs.85,008/-.

4. It is pertinent to note that in the order of the first appellant dated 16.4.2011, itself it has been stated as under:

"If the individual wants to refer appeal against

this order, he should appeal before the General Manager (Administration) Head Office, Chennai - 10 within 60 days from the date of receipt of this order. While preferring appeal it was instructed to enclose this original order."

5. The learned counsel for the respondent submitted that the first appellant has given 60 days time to file an appeal and 60 days time period has already lapsed. He would submit that the first appellant has not heard the respondent before passing the impugned orders and, therefore, the same are in violation of principles of natural justice.

6. On a reading of the order of the learned Single Judge, it is seen that though the learned counsel appearing for the appellants have raised a plea that without availing of the appeal remedy, the respondent has filed the writ petition, the learned Single Judge has not considered the said issue in its order.

7. It is to be noted that if the respondent is really affected by the order of the first appellant, he ought to have filed an appeal before the Appellate Authority viz., the General Manager (Administration). Without exhausting the appeal remedy, the respondent has filed the writ petition seeking to quash the orders of the first appellant and the learned Single Judge was not right in quashing both the orders impugned in the writ petition.

8. In these circumstances, while setting aside the order of the learned Single Judge, we grant four weeks time to the respondent to file an appeal before the Appellate Authority with delay condonation application. On receipt of the appeal with an application for condonation of delay, the Appellate Authority shall consider the same and pass orders in accordance with law, after affording an opportunity to the respondent, within a period of two weeks thereafter.

9. With the above observation and direction, the writ appeal is disposed. No costs. Consequently, CMP.No.6141 of 2018 is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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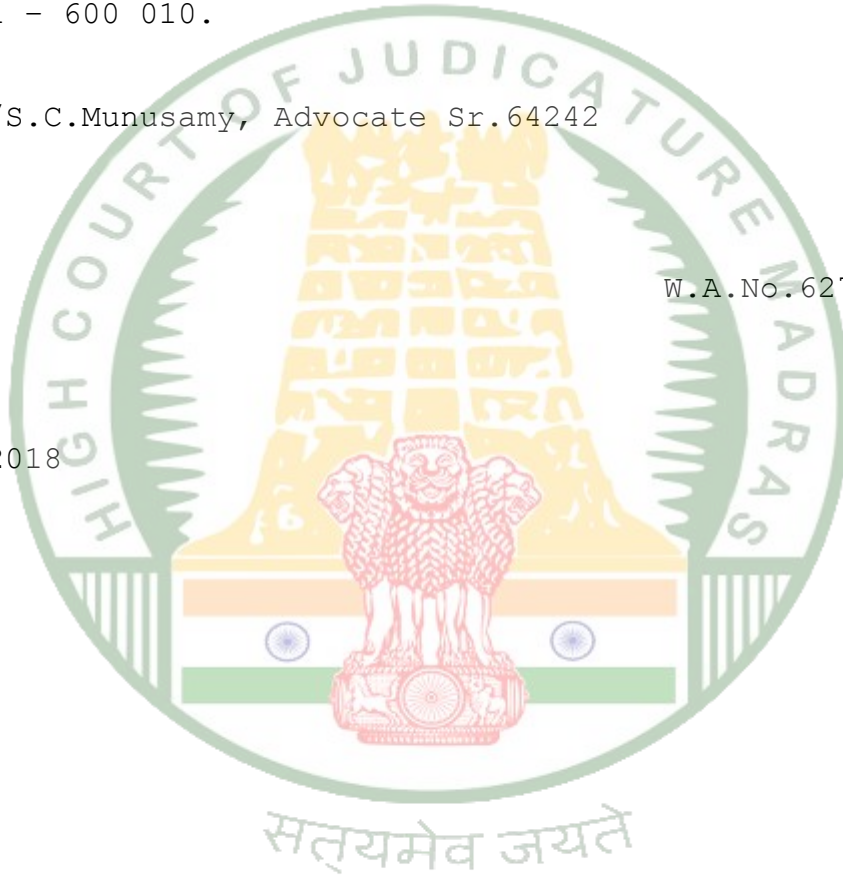
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+1cc to M/S.C.Munusamy, Advocate Sr.64242

W.A.No.627 of 2018

sj[col]
srg 8/10/2018



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