

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2018

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.38143 of 2003 & WMP No.46309 of 2003

S.Sivanandan

...Petitioner

-Vs-

The Senior Regional Manager,
Tiruvavur Region,
Tamil Nadu Civil Supplies
Corporation Ltd.,
Tiruvavur.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari or any other appropriate writ, order or direction in the nature of writ, calling for the records of the respondent relating to the orders passed in Na.Ka.No.B1/827/98 dated 27.10.2003 and quash the same.

For Petitioner : Mr.V.Sanjeevi

For Respondent : Mr.L.P.Shanmuga Sundaram
Spl.Govt.Pleader

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the records of the respondent relating to the orders passed in Na.Ka.No.B1/827/98 dated 27.10.2003.

2. Heard Mr. V.Sanjeevi, learned counsel appearing for the petitioner and Mr.L.P.Shanmuga Sundaram, learned Additional Government Pleader appearing for the respondent.

3. The short facts which are required to be noticed for the disposal of this writ petition are as follows:

(i) The petitioner was appointed as Seasonal Bill Clerk in the respondent Corporation in its Direct Purchase Centers in the Thanjavur Region on 25.10.1985. The petitioner as such had

been continuously working in the direct purchase centers of the respondent Corporation as Seasonal Bill Clerk during both Kuruvai as well as Samba procurement seasons.

(ii) During the year 1988, he was deployed in Direct Purchase Centre at Udayamarthandapuram in Thiruthuraipoondi Taluk. While so, a surprise check seems to have been taken place during the headquarters team on 24.01.1998. According to the respondent, the team found that some inferior paddy grains purchased and procured at the Center where the petitioner was working.

(iii) In the result, based on the report prepared by the special team, an enquiry officer was appointed and he had conducted the enquiry. After having completed the enquiry, it is claimed by the respondent that, the enquiry officer had given a report giving findings that the charge made against the petitioner that, he was responsible for the loss, which was quantified as Rs.46,185.80 for having procured the inferior quality of paddy, had been proved. Based on such enquiry officer's report, after having considered the same, the respondent has passed the impugned order of punishment of recovery from the petitioner, by order dated 27.10.2003, whereby the petitioner also has been kept in black list for a period of four years.

4. Challenging the said order dated 27.10.2003, the present writ petition has been filed.

5. Mr.V.Sanjeevi, learned counsel appearing for the petitioner would submit that, the petitioner had given explanation to the show cause notice including the special inspection team statement. He in fact denied that, he had willingly signed in the said statement given by the special inspection team, as he has been compelled to sign. Unless he signs in the statement, he would be reported to the police and would be arrested and remanded. Learned counsel appearing for the petitioner would further submit that, after enquiry, before taking final decision of inflicting any punishment/recovery, the petitioner should have been given an opportunity to give explanation by supplying the copy of the enquiry report of the enquiry officer. In this regard, the learned counsel appearing for the petitioner would submit that, the enquiry officer's report was not at all furnished to the petitioner and this has been stated by the petitioner in the affidavit filed in support of the writ petition. Based on which, the learned counsel appearing for the petitioner would submit that, on the ground of non-furnishing of the enquiry report before coming to the final

conclusion and inflicting punishment on the petitioner, the impugned order has to be set aside.

6. Further, the learned counsel appearing for the petitioner would submit that, in so far as the finding of the enquiry officer that the petitioner is responsible for the alleged loss of a sum of Rs.46,185.80/- absolutely there was no material and no working sheet was given to the petitioner as to on what basis such conclusion has been made and the amount has been found as the loss to the respondent Corporation. Without furnishing all these details, straight away impugned order has been passed as if that the petitioner had been the reason and instrumental for the loss of a sum of Rs.46,185.80 to the respondent Corporation.

7. I have heard the learned Additional Government Pleader appearing for the respondents, who would submit that, the special inspection team made a sudden inspection on 24.01.1998. After the inspection was completed, the team prepared a statement where it was stated that the petitioner was instrumental for the procurement of inferior quality of paddy which was found in the Direct Procurement Center, where the petitioner was working and in the said statement, the petitioner had voluntarily signed, accepting his guilt. When that being the position, the subsequent enquiry conducted by the respondent department is only a formality ofcourse the same also had been completed in accordance with law.

8. He would further submit that, the enquiry officer's report also has been furnished to the petitioner and after getting his views by way of second show cause notice, the respondent Corporation has come to the conclusion that the charges framed against the petitioner had been proved as per the enquiry officer's report for which, there was no explanation from the petitioner's side thereby there had been reason to construe that the charges framed against the petitioner have been proved. Therefore, he shall alone be responsible to make good of the loss sustained by the respondent Corporation and hence, the impugned order fixing such responsibility of loss caused to the Corporation by the petitioner and therefore, the impugned order is sustainable and requires no interference from this Court.

9. I have considered the said submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

10. No doubt an inspection suddenly was conducted on the Direct Procurement Center wherein, the petitioner was working as Seasonal Bill Clerk. It is the case of the respondent Corporation that, after the sudden inspection, a statement was prepared by the special team, where the petitioner voluntarily signed accepting his guilt.

11. However, it is the vehement contention on the part of the petitioner that, the said statement wherein the petitioner alleged to have voluntarily signed, is denied and in fact he has been compelled, coerced to sign it and if the petitioner did not do so, he would have faced the consequences by which he would have been arrested and jailed.

12. To take into account these statements made by both sides the Court has to look into the other aspect of the issue. In this regard, in the impugned order the respondent Corporation has stated as follows:

“விசாரணை அதிகாரியின் குறிப்பு,
தலைமை அலுவலக விழிப்புக் குழுவினரால் நேரடி நெல்
கொள்முதல் நிலையம், உதயமாரத்தாண்டபுரம் நிலையத்தில் ஆய்வ
, மேற்கொண்டபொழுது 24.198 அன்று தர வேறுபாடு ரூ.46,185.80
கண்டறியப்பட்டது உண்மையாகும் என்றும் ஆதலால் குற்றச்சாட்டு
நிரூபணமாகிறது என்றும் தெரிவித்துள்ளார்கள்.”

13. When the disciplinary authority/respondent has stated that the enquiry officer has given a report through which he found that the charge made against the petitioner that he is the reason for the loss sustained by the respondent Corporation to the extent of Rs.46,185.80, it is not proved before this Court by way of documents especially, by the enquiry report to substantiate the said contention of the disciplinary authority, as recorded in the impugned order.

14. If at all, the enquiry was conducted pursuant to which the enquiry officer had given the report, the copy of the report should have been given to the petitioner and after serving the same, the second show cause notice should have been made seeking explanation or reply. When a specific stand is taken by the petitioner through the affidavit that the enquiry officer's report was not given to the petitioner and in the absence of any proof to show that the enquiry officer's report was served on the petitioner before passing the impugned order, it can be concluded safely, as no other evidence available to this Court to come to a different conclusion, that the enquiry officer's report was not furnished on the petitioner. Moreover, since the contention of the enquiry officer's report also has not been extracted in the impugned order it cannot be presumed that the disciplinary authority only after applying his mind in

the findings of the enquiry officer, had come to the conclusion that the charges framed against the petitioner has been proved.

15. Further, when it was quantified that the petitioner was the cause for the loss sustained by the respondent Corporation for a sum of Rs.46,185.80, it is the duty of the disciplinary authority to discuss the said aspect also as to how and what basis such a conclusion has been made. In this regard, no working sheet seems to have been either served on the petitioner or communicated along with the impugned order.

16. When that being the position, the calculation made by the respondent Corporation based on which, the alleged loss caused to the Corporation due to the dereliction on the part of the petitioner, cannot be accepted. Therefore, the said findings given by the disciplinary authority, in the impugned order, that the petitioner alone shall be responsible for the loss caused to the respondent Corporation cannot be accepted.

17. Further, it is also the case of the petitioner that, the entire paddy procured in Center where the petitioner was working, had subsequently been utilised and there had been no complaints whatsoever by the respondent Corporation that because of the alleged inaction on the part of the petitioner large quantity of inferior paddy procured by the Corporation became useless.

18. In the absence of any such finding and without any materials to that effect, this Court cannot accept the findings given by the disciplinary authority as set out in the impugned order. For all these reasons and discussions made above, this Court is of the considered view that, the impugned order is unsustainable as the basic requirement under law before concluding of the disciplinary proceedings since have not been followed and therefore, on that ground also, the impugned order is liable to be interfered with.

19. In the result , the impugned order is quashed and the writ petition is allowed and there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Senior Regional Manager,
Tiruvavarur Region,
Tamil Nadu Civil Supplies
Corporation Ltd., Tiruvavarur.

+lcc to M/S.L.P.Shanmugasundaram, Advocate Sr.55812

+lcc to M/S.V.Sanjeevi, Advocate Sr.55928

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