IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 20.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.11010 of 2005

V.Balasubramanian ...Petitioner

V.

1.Tamilnadu Civil Supplies Corporation Limited
Rep. by its Chairman and Managing Director,
No.42, Thambusamy Road,
Kilpauk, Chennai 600 010.

2.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation Limited,
Nagapattinam Region,
Nagapattinam. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders of the first respondent dated 30.11.2004, bearing PROC.No.AD4/110349/2002 and the second respondent dated 24.12.1993, bearing ref.NRc.M3/206/93(IV) and RC.No.F1/12755/04 dated 09.03.2005 and to quash the same in so far as the petitioner herein is concerned and consequently, direct the respondents to pay the petitioner all arrears of amounts withheld from the salary of the petitioner by way of increment cut and recovery.

For Petitioner : Ms.Gopika Nambiar
for M/s.Sai Bharath

For Respondents: Mr.C.Munusamy,
Special Government Pleader

O R D E R

Heard Ms.Gopika Nambiar, learned counsel for the petitioner and Mr.C.Munusamy, learned Spl.Govt.Pleader appearing on behalf of the respondents.

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

The petitioner herein, while employed as a Helper in Modern Rice Mill, Erukkur, was served with a charge memo dated 27.02.1993, levelling him with five charges. The petitioner has submitted his explanation to the charges levelled against him on 08.04.1983. Not been satisfied with the explanation, the respondents had chosen to proceed with an enquiry and the findings of the Enquiry Officer dated 28.10.1993 was served upon the petitioner herein. On 02.12.1993, the petitioner herein, had submitted his further explanation to the findings of the Enquiry Officer. Thereafter, on 24.12.1993, the second respondent herein had imposed a punishment of stoppage of increment for 3 years without cumulative effect. Against the said punishment, the petitioner herein had filed an appeal before the first respondent, wherein, the punishment came to be confirmed by an order dated 30.11.2004, with an observation that the order is without prejudice to recover the expenditure incurred towards the repairs to the damaged boiler. Pursuant to the order of the first respondent, the second respondent herein had issued a recovery order on 09.03.2005, seeking to recover a sum of Rs.72,500/- from the petitioner. The challenge in the present Writ Petition is to the punishment imposed by the Original Authority as well as the Appellate Authority and the subsequent recovery order.

3. Ms.Gopika Nambiar, learned counsel for the petitioner submitted that, the second respondent herein ought to have followed the procedure for conducting the disciplinary proceedings for the purpose of awarding a major penalty and in the absence of the same, the original punishment itself cannot be sustained. For such a proposition, the learned counsel placed reliance on Regulation 3 of Chapter 5 of the Tamil Nadu Civil Supplies Corporation-Employees' Service Regulations, 1989. As such, she would submit that the procedure adopted during the disciplinary proceedings itself is improper. It is her further submission that, when the original punishment was challenged before the first respondent herein, the enhancement of punishment by the

Appellate Authority to recover the expenditure incurred towards the repairs of the boiler, amounts to an enhanced punishment and since recovery as such, is deemed to be a major punishment, the respondents ought to have followed the procedure contemplated under the Service Regulations by issuing a fresh show cause notice and calling for the explanation from the petitioner as to why such an enhanced major punishment should not be imposed. Since this procedure is also violative of the Service Regulations, the consequential recovery order passed by the second respondent, is bad in law.

4. The learned counsel for the respondents, on the other hand, opposed the submissions and stated that before passing of the final order on the show cause notice dated 29.07.2004, the Chairman and Managing Director called upon the Senior Regional Manager, Nagapattinam to obtain a representation from the individual as to whether he needs a personal hearing against the Show Cause Notice. Accordingly, the individual was requested to submit his option in writing, wherein he has stated that he did not need any enquiry and requested to confirm the previous punishment.

5. The learned Standing counsel also submitted that a lenient view has been taken in this matter by imposing a punishment of 3 years of stoppage of increment without cumulative effect alone. As such, the learned Standing counsel would submit that there are no infirmities in the order of the second respondent, as confirmed by the first respondent and the consequential recovery order by the second respondent, can be sustained.

6. I have given my anxious consideration to the submissions of the respective counsels.

7. As rightly pointed out by the learned counsel for the petitioner, Chapter 5 of Regulation 3 of the Tamil Nadu Civil Supplies Corporation-Employees Service Regulations, 1989 provides that on a given set of charges, if the Authority is of the view that the gravity of the charges is serious enough to warrant a major punishment or a major penalty, it may proceed against such an employee, by following the procedure contemplated under Regulation 4, which deals with the procedure to award major penalty.

8. Regulations 3 and 4 of Chapter 5 of the said Employees' Service Regulations reads as follows:-

"3. Procedure to impose minor penalties:

The competent authority to impose the penalties as per Regulation 2 may, either suo moto or on receipt of report as per explanation under that regulation either cause further enquiry or impose the penalty fair and just to meet the ends of justice, satisfying himself that the delinquent was given a reasonable opportunity to defend himself against the charges. If the authority is of view that the gravity of the charges is serious enough to warrant a major penalty, then he should initiate action as per Regulation 4 infra.

Every Charge Memo indicated under the Explanation in Regulation 2 or otherwise shall contain in detail the basis of the charge quoting the relevant Rules or instructions failed to be followed or the specific default committed. Besides, the default should be in the form of specific charge or charges and the delinquent should be given reasonable time and opportunity to offer his explanation against the charges. The explanation, if received in time, and presuming that there is no explanation if no such explanation is forthcoming within the time stipulated, should be carefully analysed to meet all the points raised therein to come to an objective decision whether the charges could be held as proved. There shall be separate analysis against each and every charge.

After taking a decision on the charges, as held proved or not proved, the punishing authority should consider the gravity of the charges that were held proved and then decide the quantum of punishment not more than minor punishment deemed fit to meet the ends of justice. The order shall conclude indicating the time for appeal to the appellate authority as specified in Regulation 8 below.

4. Procedure to award major penalties:

(a) The competent authority as per Regulation 2, may either suo moto or on receipt of report as per explanation under that regulation or as indicated in Regulation 3 shall issue a memo recording the basis of charge, quoting the relevant rules or instructions omitted to be followed, the consequent result of such omission with specific charges suitably framed and the delinquent should be informed of the list of documents relied upon as the basis of charge, the list of witnesses whose versions also form the basis of the charge. The delinquents should then be required to furnish the list of witnesses if any on his defence within a reasonable time failing which the presumption would be that he has no witnesses on his defence.

The competent authority to impose the Major penalty thereon shall appoint an enquiry officer, immediately subordinate to him (punishing authority) to conduct an objective enquiry into the charges in the presence of the delinquent who should have been given due notice therefor. At the enquiry the documents relied upon in the charge memo should be made available to the delinquent for perusal. The delinquents may also be permitted to peruse any other record of the Corporation that are relevant to the charges, if he/she so desires. If for any reason such records, desired to be perused, are considered to be not relevant to the charges, the enquiry officer shall record so in his findings. So also the witnesses whose versions form the basis of the charges should be examined providing opportunity to the delinquent to cross examine. Thereon the witnesses produced by the delinquent should be examined with due relevance to the charges. The delinquent may also be permitted to file his written statement.

The following para added to Regulation 4 (a) Chapter-V under Para 2 as per 226th Board meeting held on 25.03.1994 under item No.57 and as per reference No.138543/93-G4 dated 03.06.1994.

> "When department disciplinary action against an employee is taken up on a report from the Directorate of Vigilance and Anti-Corruption, the Departmental Officer conducting the enquiry should intimate to the Directorate, the exact date of enquiry sufficiently in advance so that arrangement may be made for the production of witnesses and for the Directorate Officer, who conducted the investigation to assist the Enquiry Officer"

The enquiry officer shall summarise the proceedings analyse the evidence put forth before him examine the written statement of the delinquent carefully and give his findings on the charges framed (charge by charge). It is not for the inquiry officer to recommend the quantum of punishment.

On receipt of the findings report of the inquiry officer, the competent authority to impose the penalty shall forward a copy of the findings report to the delinquent requiring him to file his further explanation within a reasonable time (to be specified). The further explanation, if received in time, shall be examined in detail with reference to every point raised therein and after perusing the entire records including the record of inquiry, the analysis of evidence and the findings of the inquiry officer. The authority competent to impose the penalty shall decide whether each and every charge could be held proved or otherwise.

After taking such a decision, the competent authority shall examine the gravity of the charges held as proved and decide on the quantum of punishment commensurate with the gravity of charges to meet the ends of justice. The order shall conclude indicating the time allowed for appeal to the appellate authority as specified in Regulation 8 below.

It is not necessary that following the procedure to impose a major punishment should end in inflicting a major punishment. Ends of justice may be met even with by minor punishment in deserving cases depending upon the gravity of the proved charges (But to inflict a major punishment after following the procedure in Regulation 3 will not be sustainable).

(b) In cases where a delinquent was kept under suspension, and ultimately removed, dismissed or compulsorily retired from service, the punishment order shall specifically add in the order to treat the period of suspension as one of substantive punishment (in addition to the punishment of removal, dismissal or compulsory retirement) since no order of removal, dismissal or compulsory retirement, shall have retrospective effect. The punishment could even be mere treating the period spent on suspension or a part thereof as a substantive penalty treating the remaining period as duty.

(c) If on the other hand the competent authority chooses to inflict any other penalty (i.e. other than removal, dismissal, compulsory retirement or period of suspension as substantial punishment) or totally exonerate the delinquent, the period spent on suspension shall be treated as duty.

Note: Part of the period of suspension can be treated as one of suspension as suspension as substantive penalty and remaining as one spent on duty." (emphasis supplied)

9. In the instant case, the very fact that the Disciplinary Authority had chosen to enquire into the matter, by appointing an Enquiry Officer, goes to show that the Original Authority was of the view that the gravity of the charges warrant a major penalty and therefore, had adopted the procedure contemplated under

Regulation 4 as above. When Regulation 3 warrants the Competent Authority to adopt the procedure under Regulation 4, if he is of the view that the gravity of the charges might warrant a major penalty, it is needless to point out that the entire procedure contemplated under Regulation 4 relating to the procedure of awarding a major penalty is to be followed scrupulously.

10. As per Regulation 4, the delinquent would be entitled to peruse any records of the Corporation that are relevant to the charges, an opportunity should be given to the delinquent to examine the witnesses, whose version confirms the basis of the charges and the witnesses can also be produced by the delinquent for examination with due relevance to the charges. It is stated by the learned counsel for the petitioner that all these procedures were not adopted during the course of enquiry which is in violation to Regulation 3. Therefore, when the findings of the Enquiry Officer was served on the petitioner herein, he had submitted a further explanation on 02.12.1993, wherein he had brought forth the irregularities in the procedure adopted during the course of enquiry. However, a perusal of the order of punishment issued by the second respondent on 24.12.1993 does not reveal consideration of the objections raised by the petitioner in his further explanation. Apparently, the enquiry itself has not been conducted in conformity with the Employees Service Regulations. As such, this Court is in agreement with the submissions of the learned counsel for the petitioner on this aspect.

11. As observed earlier, the Authorities had chosen to proceed with the enquiry, since they were of the view that the gravity of the charges may warrant a major penalty. Regulation provides that it is not necessary, that following the procedure to impose a major punishment should end in inflicting a major punishment. But when imposition of a major punishment is possible on the gravity of the offences, the procedure contemplated under Regulation 4 should be adhered to and in case, the procedure imposing minor penalty is adopted, the same will not be sustainable.

12. Insofar as the Appeal filed before the first respondent herein is concerned, it is seen that while

confirming the punishment imposed by the second respondent, the first respondent herein, had gone one step further and stated that the punishment is without prejudice to the recovery of the expenditure incurred towards the repairs of the boiler. In other words, the Appellate Authority had given liberty to the second respondent herein to recover the expenditure incurred for the repairs, which was not a part of the earlier punishment.

13. In this context, the learned counsel for the petitioner submitted that under Chapter V of the said Regulations, an order of recovery is deemed to be a major penalty and as such, the procedure for awarding major penalty as contemplated under the Regulations has to be adopted. The Appellate Authority without giving any opportunity to the petitioner to show cause notice as to why this major penalty of recovery should not be opened up, was not justified at all and therefore, such an observation will amount to imposition of another major penalty and therefore, deemed to be illegal.

14. As such, the original order passed by the second respondent herein as well as the order of the first respondent in the Appeal are not in conformity with the Employees Service Regulations and are liable to be set-aside. Following the order passed by the first respondent in the Appeal, the second respondent herein had chosen to issue a recovery order on 09.03.2005 to recover a sum of Rs. 72,500/- from the petitioner. In view of the above findings of this Court that the order of the first respondent herein dated 30.11.2004 itself is illegal, the consequential recovery order of the second respondent dated 09.03.2005 cannot be sustained.

15. For all the foregoing reasons, the impugned orders of the first respondent dated 30.11.2004, bearing PROC.No.AD4/110349/2002 and the second respondent dated 24.12.1993, bearing ref.NRc.M3/206/93(IV) and the consequential recovery order passed by the second respondent in RC.No.F1/12755/04 dated 09.03.2005 are quashed. Consequently, the petitioner shall be entitled for all monetary benefits that he may have been deprived of in view of the original punishment of stoppage of increment cut for a period of 3 years. In this connection, the petitioner is granted liberty to make an appropriate representation before the first respondent

herein, seeking for his monetary benefits. On receipt of such a representation, the first respondent shall consider the same favourably and pass orders in the light of the observations made in this order, which exercise shall be completed at least within a period of 8 weeks from the date of receipt of the petitioner's representation.

16. Accordingly, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

DP/jrs

To

1.The Chairman and Managing Director,
Tamilnadu Civil Supplies Corporation Limited
No.42, Thambusamy Road,
Kilpauk, Chennai 600 010

2.The Senior Regional Manager,
Tamilnadu Civil Supplies Corporation Limited,
Nagapattinam Region,
Nagapattinam

+1cc to Mr.C.Munusamy , Advocate SR.No. 26537
+1cc to M/s.Sai Bharath , Advocate SR.No. 26935

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vp(CO) A.SK(06/05/2019)