

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 30.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.3251 of 2013
and WMP.Nos.1 of 2013 & 36820 of 2018

T.N.Subramani

.. Petitioner

Vs.

- 1.The Chief Executive Officer,
Tamil Nadu Khadi & Village
Industries Board, Kuralagam,
Chennai 600 108.
2. The Commissioner and Secretary to Government,
Department of Khadi and Village Industries,
Secretariat, Fort St.George,
Chennai - 600 009.
3. The Assistant Director,
Khadi and Village Industries Board,
Uthagamandalam.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records bearing reference N.K.No.38583/E3/(2)/03 dated 10.07.20016 from the first respondent the Chief Executive Officer Tamil Nadu Khadi and Village Industries Board, Kuralagam, Chennai and quashing the order of dismissal of Khadi Board proceedings vide order No.23, dated 27.05.2010 and directing the respondents to reinstate the petitioner in service with all back wages and attendant benefits.

For Petitioner : Mr.O.R.Abdul Kalam

For Respondents: Mr.S.K.Bose for R1
Mr.Akhil Akbar Ali for R2
Govt Advocate
No Appearance for R3

O R D E R

The instant writ petition has been filed for a Writ of Certiorarified Mandamus, calling for the records bearing reference N.K.No.38583/E3/(2)/03 dated 10.07.20016 from the first respondent, Chief Executive Officer, Tamil Nadu Khadi and Village Industries Board, Kuralagam, Chennai and quashing the order of dismissal of Khadi Board proceedings vide order No.23, dated 27.05.2010 and directing the respondents to reinstate the petitioner in service with all back wages and attendant benefits.

2. The petitioner was appointed as Helper Grade-II in the Tamil Nadu Khadi & Village Industries Board. He served in the year 1972. His service was regularized in the year 1992. In the year 2002 - 2003, while working in the district godown at Uthagamandalam, he was made in-charge of the godown. The petitioner was also placed under suspension by the Assistant Director, Khadi & Village Industries Board, vide his proceedings R.C.No.3104/2003/E dated 04.03.2003, on the ground that the petitioner had committed grave irregularities. The petitioner was told not to leave the head quarters at Ooty without prior permission.

3. A charge memo dated 09.10.2003 was issued to the petitioner, asking him to give his reply. The charges framed against the permission were,

"(i) Prepared bogus seals of the Assistant Director office and Officer seal, and forged signature of the officer for obtaining housing loan from Divan Housing Finance Corporation Limited for Rs.1,50,000/-

(ii) While incharge of ooty godown misappropriated to the tune of Rs.1,93,443.26/- for his personal gain.

(iii) Not properly kept the sticks item-wise. Mixed up the higher grades and lower grade in one and caused loss to the board.

(iv) Number noted in the silk sarees and the number given in the slips are different, thereby lower price sarees converted as higher period sarees whereby committed irregularities against the boards.

(v) Not properly kept the stocks in proper place thereby causing damages to the cloths and the cloths are not fit for sale thereby caused loss to the board."

4. The petitioner gave a reply letter dated 14.10.2003, seeking the following documents.

" I submit that I have been working as Helper Grade-II in Tamil Nadu Khadi & Village industries district godown at udhagamandalam until I was placed under suspension by the Assistant Director of khadi & Village Industries, Udhagamandalam by his reference

first cited.

2. The Assistant Director of Khadi & Village Industries, Udhagamandalam vide his reference second cited issued charge memo, which was received by me on 11.10.2003, wherein the Assistant Director directed me to submit my written explanation within 15 days from the date of receipt of the said charge memo.

"3. Hence, I request that I may be furnished with the copy of the following documents and I shall submit my written explanation within 15 days from the date of receipt of copy of the following documents.

1. The job description of Grade II Helper in Tamilnadu Khadi & Village Industries.
2. The job description of Grade II Helper posted in District Godown in Tamilnadu Khadi & Village Industries
3. The rules, regulations, proceedings and office orders in respect of establishment, administration, appointment of officials, their duties, their responsibilities, the duties and responsibilities of supervisory officers in respect of Khadi & Village Industries District Godown in general and District Godown in Udhagamandalam in particular.
4. Stock Register of Udhagamandalam Godown for the years 2002-2003 & 2003-2004.
5. The list of registers to be maintained in District Godown and the copy of such registers.
6. [The rule/regulation/proceeding empowering the appointment of Grade-II Helper, the last grade servant, as sole incharge of District godown in general and Udhagamandalam in particular
7. The list of officials incharge of District Godown in Udhagamandalam since its establishment with the name of the officials and their official designation such as Khadi Assistant Grade-I or Khadi Assistant Grade-II or Khadi Assistant Grade-III or Helper Grade-I or Helper Grade-II
8. The details of inspection of Udhagamandalam Khadi Godown by Assistant Director of Khadi and Village Industries, Udhagamandalam during the years 2002-2003 & 2003-2004.

4. I shall submit my written explanation within 15 days from the date of receipt of the above documents. I further request that if the disciplinary authority is not satisfied with my explanation to be offered on

receipt of the above documents, full fledged enquiry may be held as contemplated under Regulation 34 of Tamilnadu Khadi s. village Industries Board Service Regulations."

5. Enquiry officer was appointed. Enquiry Officer issued summons to the petitioner on 12.02.2004. The petitioner states that he appeared before the enquiry officer on the date mentioned and answered all the questions to his satisfaction. The petitioner also states that on 11.10.2004, he submitted his petition before the enquiry officer, appraising the details as to why he was not at fault in the alleged transactions.

6. On 08.11.2004, the petitioner got a letter stating that a new enquiry officer has been appointed. It is pertinent to mention here that earlier enquiry officer had been placed under suspension. The enquiry officer by his report dated 08.12.2004, found that charges 1, 2 and 4 were proved and charge 3 and 5 are not to be proved. It was found that the petitioner had obtained loan from the DIWAN Housing Finance Corporation Limited, by preparing bogus seal of Assistant Director, and affixing the signature of Assistant Director by himself, to the tune of Rs.1,50,000/-. It is also found that the petitioner did not maintain the stocks properly, but kept the high value stocks with the low value stocks, thereby caused financial loss to the Board.

7. The Chief Executive Officer after going through the enquiry report, passed the order of dismissing the petitioner from service. The appellate authority being the Assistant Director, Khadi and Village Industries, affirmed the order of disciplinary authority and dismissed the appeal filed by the petitioner. Aggrieved by the order of the appellate authority, the petitioner filed the instant writ petition.

8. On notice, the respondents have filed a counter. In the counter, para 4 to 7 reads as under:-

"4) For the averment under para IV-(e) to (m) of the affidavit under reply, it is submitted that the petitioner was working in the category of Helper Gr.11. for which the duties and responsibilities includes the "holding of stocks". The District Godown is a place where the khadi goods are received from the production centres and kept. Actually, khadi goods kept in the godown will be transferred to other khadi sales depots as per the instructions of the concerned officer and under proper invoice No sales could be effected from the godown directly. Since the duties and responsibilities of the post in which the petitioner

served includes holding of stocks, there is no wrong in placing him as incharge of District Godown, Ooty. Further, the petitioner at the time of taking over charge of the said depot had not objected the orders of the concerned officer and took charge of the godown. But he blames the said activity only to get sympathy from the Honourable High Court.

At the time when the petitioner served in the said godown, he obtained loan from the REPCO Bank by putting forgery signature as that of the Assistant Director, Khadi and Village Industries, Ooty and also used the forgery seal of the office for which he was placed under suspension by the Assistant Director, Khadi and Village Industries, Ooty vide his proceedings dated 4.9.03. While handing over charge of the District Godown, Ooty by the petitioner, huge shortage of khadi goods to the tune of Rs. 1,93,443.25 was found for which the Assistant Director, Khadi and Village Industries, Coimbatore (Ooty office subsequently merged with Coimbatore district) had issued recovery orders on 2.3.04. The petitioner had not submitted any appeal challenging the recovery orders thereby accepting the recovery orders.

Subsequently, charges under Regulation 34(b) of Tamilnadu Khadi and Village Industries Board's Service Regulations were framed on him by the Assistant Director, Khadi and Village Industries, Ooty on 9.10.03. After obtaining explanation from the petitioner, the Assistant Director, Khadi and Village Industries, Tirupur was appointed as Enquiry Officer and the Enquiry Officer conducted the enquiry on 10.1.05 and furnished his enquiry report on 23.5.05 to the respondent / Board. The Enquiry Officer's report was properly communicated to the petitioner vide Board's memo dated 8.11.05 for offering his further explanation. Accordingly, the petitioner offered his further explanation to the Board 17.1.06.

After adopting all the formalities, considering the serious gravity of the proved charges on the petitioner final orders were issued on the petitioner dismissing him from Board's service and to recover the loss amount already ordered to be recovered from him under RR Act.

At the time of handing over of stocks, there were some shortage and some excess in the Godown in which the petitioner served. The shortage noticed were in respect of certain khadi goods whereas excess noticed were in respect of some other goods. As per the Board's rules, the excess could not be set right for the shortage of goods, since the excess belongs to one

variety and the shortage belongs to another variety. As such the excess of stocks will be taken into Board's account. The same analogy was applied for in the case of the petitioner also and recovery orders were issued for the shortage noticed in the District Godown, Ooty.

In fact, excess and shortage is possible in the District Godown, Ooty in which the petitioner served. The stocks available in the Godowns will be transferred to the other retail sales outlets of the same district, on the directions of the Assistant Director. Moreover, only Board's employees will take delivery of the goods from the Godown. The required goods as ordered will be transferred to the respective sales outlets under proper Inter Transfer Invoices. So there is no chance for excess or deficit in the stocks as stated by the petitioner.

5) For the averment under para IV-(n) to (w) of the affidavit under reply, it is submitted that soon after receipt of the final order, the petitioner preferred an appeal to the Chief Executive Officer, Tamilnadu Khadi and Village Industries Board instead of appellate authority i.e. Board. The appeal petitions received by the Board have to be considered as per the seniority. The appeals received by the Board prior to the appeal of the petitioner has to be considered first and then only his appeal could be examined.

When his appeal papers were pending to be disposed by the Board, the petitioner filed a case in W.P. No. 25826/09 with a request to issue directions for the disposal of his appeal. Before judgement delivered by the Honourable High Court in the above case, the turn of seniority of the petitioner reached and accordingly, his appeal was placed before the Board and orders were issued in KBP Ms No. 23 / 27.5.10 rejecting his appeal. The statement of the petitioner that the orders passed by the appellate authority too spoke in the same lines as that of the order of the Chief Executive Officer is totally false. In fact, the petitioner had not put forth any additional fresh grounds in his appeal for examination by the Board. However, the Board had in detail examined the appeal preferred by the petitioner and as there were no fresh grounds or records put forth by the petitioner to deny the charges already proved on him, his appeal was rejected by the Board.

6) I deny the averment under para 1 - 5 of the "Grounds" under reply. The petitioner was appointed in the Board as early on 14.7.72 and working in the post

of Helper Grade 2 w.e.f. 20.7. 92. The duties and responsibilities assigned by the Board in respect of the post of Helper Grade 2 in which the petitioner served is as follows:-

1. Attend to sales in the counters
2. Responsible for the stock in the counters
3. Responsible for the maintenance of Accounts in the Counters
4. Raising of credit bills
5. Raising of invoices
6. Raising of Rebate claims
7. Maintenance of Stock Registers both for issues and receipts in respect of the goods and articles in the counters
8. Responsible for the proper accounting of goods and articles received on consignment basis from the producers and suppliers.
9. Responsible for the losses, if any, in respect of the stocks in the counters attached to them.

Having worked in the post of Helper Gr.11 for more than 14 years the petitioner should be well-versed with the maintenance of stocks and khadi sales. As per the above duties and responsibilities, the petitioner should keep the stocks under his control without any shortage. As indicated under SI.No.9 above, he is responsible for the loss in respect of the stocks with him.

When the petitioner served in Ooty, he obtained loan from the REPCO Bank, Ooty by furnishing his pay certificate with office seal. But, actually the pay certificate was not issued by the competent authority i.e. the Assistant Director, Khadi and Village Industries, Ooty and the signature found in the pay certificate attached to loan form was not actually signed by the officer. While referring the application form submitted by the petitioner to the forensic department, the said department had confirmed that the signature available in the loan application does not tally with the signature of the Assistant Director. It clearly proves that the petitioner had put in forged signature and used forged office seal for the purpose of obtaining loan from the Repco Bank without the knowledge of the concerned Assistant Director. Again the statement of the petitioner to make good the shortage with reference to the excess available could not be considered as per the details already furnished in the foregoing paragraphs. The petitioner had not

objected the recovery for the shortage ordered on him but accepted to recover the same from his salary in instalments. This itself clearly proves that the petitioner had made irregularities and obtained pecuniary gain by way of misappropriating the khadi goods. The petitioner's statement that the stocks of the District Godown should not be handed over to the lower level employee could not be accepted. In fact, when posting him to the said godown, he had not objected it and accepted the order. The petitioner had not previously put forth this request before his officer but now blames the department after making huge shortage in the godown. As per the duties and responsibilities vested for the post of Helper Grade II, he should maintain the stocks properly without deficit or excess. Further the petitioner took more than one month to and over the stocks to his successor.

The Enquiry officer had given all sufficient opportunities to the petitioner to examine the records, to cross-examine the witnesses etc. But the petitioner simply stated that he does not want to see any records and also not want to examine any witnesses in his favour. The Enquiry Officer had properly conducted the enquiry and given the report based on records. But the petitioner had failed to utilize the opportunities miserably to defend himself.

7) For the averment under para 6-8 of the "Grounds" under reply, it is stated that the Enquiry Officer permitted the petitioner to peruse all the documents he claimed for perusal before him on 20.2.04. Even before that date, after framing charges on him, he was permitted to peruse the documents base on which charges were framed on him. But the petitioner had miserably failed to utilize the opportunities extended to him but now gives a false statement before the Hon'ble Court. Handing over and taking over the stocks was done in his presence and he pretty well knew that there was a shortage in the stocks maintained by him for which he requested to set right the shortage with reference to excess. It is also to be stated that before passing final orders on him, recovery orders for the shortage noticed in the District Godown, Ooty was passed on him by the Assistant Director, Khadi and Village Industries, Coimbatore on 2.3.2004. In fact, he had not objected for the recovery orders also. So, now he cannot state that there was no proper handing over and taking over of the stocks. The petitioner had also changed the price tags in the silk sarees. The higher rate sarees were tied with price tags of lower rate and

lower rate sarees fixed with higher rate tags. As stated by the petitioner, he made no sales directly to the customers, but on transfer from the silk godown to various sales outlets, the silk sarees will be sold only as per the price tags tied to the sarees. It is his primary duty to keep watch the price tag of the sarees. But, he failed to do so thereby creating a situation that the general public were cheated."

9. The learned counsel for the petitioner has stated in his written submission which reads as under:-

"No audit report or verification report regarding the shortage of of the monetary loss to the Board or of the alleged misappropriation of funds by the petitioner or alleged forgery of the signature of the Asst. Director or exfacie no other material available before the authority either prior to suspension or prior to the issuance of the charge memo as to enable the authority to act thinking or to contemplate enquiry as against the writ petitioner. Admittedly there was no pendency of enquiry on the date of suspension.

Therefore the suspension and the enquiry done in pursuance of it are wholly unwarranted arbitrary and violation of Article 14 of the constitution and ergo liable to be quashed.

Submission:2.

Regulation 28 of the Board's regulation speaks "Disciplinary Control Penalties and Appeal" among the penalties the item (v) (a) relates to recovery from pay of the whole or part of any pecuniary loss caused to the Board by negligence or breach of orders.

The Assistant Director of Khadi without placing the question of loss of Rs. 1,93,443.25 as purely the matter of enquiry by the enquiry office that took place on 20.02.2004 or without placing the said matter as a subject of enquiry that took place on 10.01.2005 and without waiting for the conclusion of the enquiry, he himself variedly passed or imposed a penalty on the writ petitioner by way of recovery orders".

Submission:3.

The first enquiry by Thiru.RJayaraj, Regional Director, Tiruppur took place on 22.02.2004. The second enquiry by Thiru. R.Mani Junior Accountants officer, Thiruppur took place on the same set of charges and material on record, so the second enquiry is not permissible and the dismissal of the writ petitioner on

such second enquiry would amount to abuse of process of law.

Submission:4.

The suspension order was made on 14.09.2003 and charge memo issued on 09.10.2003 instead of holding the charge promptly, the authority put the writ petitioner off duty without payment of full salary and allowances for an unduly long period of fifteen fair long months, and held enquiry only on 10.01.2005 was malafide and unauthorized act.

Submission:5

In the impugned order passed on 10.07.2006 by the Chief Executive Officer the Chief Executive Officer never incorporated or mentioned the fact r: appointed on 04.12.2003 one Shri. Jayaraj as enquiry officer who conducted the enquiry on 20.02.2004 or the reasons of his being discarded and appointing another enquiry officer and of the records on which he continued the enquiry and of the conclusion that he had drawn.

His omission to incorporate the aforesaid facts smells dishonesty and suspicion on his part in his impugned order.

Submission:6

Forensic Report:

- a) Chief Executive Officer not incorporated the Forensic Report in full.
- b) He has not informed on what date he sent the documents for Forensic Test.

c) He has not informed in what format he has sent documents for Forensic Report nor he informed who the expert who accorded the opinion the scientific examiner never was brought before the enquiry officer so as to enable the writ petitioner to cross examine and to establish thereby his defence.

The Chief Executive Officer ought to have seen that the expert opinion is of advisory character and the expert is not the witness of the fact, so the expert ought to be subjected for cross examination.

- d) However the Forensic Report never disclosed that the writ petitioner forged the documents whereas it opined only the documents were forged.

Submission:7

Likelihood of bias or malafied intention run on the part of Asst. Director Khadi Industries by name Shri.

Mariappan as he,

- a) initiated the suspension order
- b) Without having a material on record before passing of suspension order
- c) He himself signed the charge memo wherein he made the charge of forgery without any ex-facie material for him to charge.
- d) He himself took special initiative to get documents from the financial institution.
- e) All records that he allowed to say that the writ petitioner never wanted to examine his witnesses of his own are maneuvered."

The learned counsel for the respondents primarily reiterated the submissions made in the counter.

10. Heard the counsel for the parties and consider the material available on record.

11. The first allegation against the petitioner is that he had signed the loan document by obtaining loan of Rs.1,50,000/- by DIWAN Housing Finance Corporation Limited, by preparing bogus seal and has forged the signature of Assistant Director. The enquiry officer had sent this document to the Forensic Science Department. The Forensic Science Department confirmed that the application for loan had been forged and the department had given a detailed opinion.

12. The learned counsel for the petitioner very strenuously argued that the department should have produced the Officer who gave the report for the purpose of cross examination. It is trite law that rules of evidence are not strictly applicable to disciplinary proceedings. The enquiry officer sent a letter for the purpose of expert opinion and the expert had given a opinion against the petitioner. There is nothing on record to state that the petitioner had sought for cross examining the officer. It was the petitioner to ask for cross examination of the officer who had prepared the forensic report. The report was from the Office of the Forensic and Science Department. The Forensic and Science Department by letter Rc.No.3232/2004/TOC/no.202/2004 dated 01.01.2005, confirmed that the signature of the petitioner was there on the loan application. The authority had obtained the loan application from DIWAN Housing Finance Corporation Limited.

13. No useful purpose would be served in arguing now that he was not given any opportunity to cross examine the officer. Had the petitioner sought for cross examination and had the authority denied such cross examination, then this Court would have considered as to whether denial of such opportunity would amount to infringement of the principles of natural justice. In

the absence any letter or document seeking for cross examination of the officer, the argument raised by the learned counsel for the petitioner deserves to be rejected. The reliance of the petitioner on the judgment of the Hon'ble Supreme Court of India, in the case of S.C.Girotra Vs. United Commercial Bank (UCO Bank) & Others, reported in (1995) Supp 3 SCC 212, is of no help to the petitioner. The petitioner should have asked for cross examination of the officer.

14. The second submission of the learned counsel for the petitioner is that, he had already given his explanation with the first enquiry officer and he had to face yet another enquiry before the second enquiry officer on the same set of charges. The learned counsel for the petitioner would contend that two enquiries on the very same set of charges is not permissible. The petitioner for this purpose relies on judgment of the Hon'ble Supreme Court of India, in the case of Union of India Vs. K.D.Pandey & Another, reported in (2002) 10 SCC 471. The said case is distinguishable on facts. In the case before the Hon'ble Supreme Court of India, proceedings were initiated against the delinquent officer and enquiry report was made, wherein, none of the charges were proved. Thereafter, the Railway Board in exercise of power under Rule 25, of the Railway Servants (Discipline and Appeal) Rules, 1968, examined the matter and found that four of the six charges could be substantially proved beyond doubt and remitted back the matter for further enquiry under Rule 25(1)(c). In the present case, no enquiry was made by the first enquiry officer. The first enquiry officer had been put under suspension. He did not make any report. In fact no proceedings were conducted before him. When the enquiry officer was put under suspension by an order dated 20.07.2004, the second enquiry officer was appointed before whom the enquiry proceedings were conducted. It cannot be said that the petitioner faced two enquiry proceedings. The submission of the learned counsel for the petitioner cannot be accepted.

15. There was a shortage of Rs.1,93,443.25/-, the petitioner have not challenged the quantum. Since the petitioner has not challenged the quantum, it amounts to admitting the findings of a shortage made by the enquiry officer. The findings of the enquiry officer that there was a loss of Rs.1,93,443.25/- cannot be find fault with.

16. The learned counsel for the petitioner has made allegation of malafides against the Assistant Director, 2nd enquiry officer, Shri.S.Mariappan, stating that he initiated suspension order which was without any basis or material. He himself signed the charge memo, wherein, he made charges without any material before him. He himself took documents from DIWAN Housing Finance Corporation Limited. The argument cannot be

accepted. There was a shortage of Rs.1,93,443.25/-. The petitioner had signed the application and had forged the seal. When clear findings have been submitted by the third party, regarding the forgery, the petitioner cannot allege malafides against the Assistant Director.

17. The learned counsel for the petitioner thereafter contended that there was undue delay in the enquiry which cause prejudice. The learned counsel for the petitioner relies on the judgment of the Kerala High Court in the case of A.P. Augustine Vs. Superintendent of Post offices, reported in (1984) KLJ 68. The facts in that case are distinguishable. In the present case, charge memo is dated 04.03.2003, and enquiry was completed in 2004. It cannot be said that there was much delay on the part of the respondents to conclude the enquiry. A perusal of the order of the appellate authority would show that the appellate authority had gone in details and had considered every aspect of the matter. The appellate authority found that the petitioner had not made any application for cross examination of any person. It is also found that the petitioner faced only one enquiry and not two enquiries. There was no procedural infirmity in the disciplinary proceedings.

18. The orders impugned do not require any interference. Writ Petition is dismissed. No Costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

सत्यमेव जयते

Pkn.
To

- 1.The Chief Executive Officer,
Tamil Nadu Khadi & Village
Industries Board, Kuralagam,
Chennai 600 108.
2. The Commissioner and Secretary to Government,
Department of Khadi and Village Industries,
Secretariat, Fort St.George,
Chennai - 600 009.

3. The Assistant Director,
Khadi and Village Industries Board,
Uthagamandalam.

+1 cc to Mr.S.K.Bose Advocate sr 74969

W.P.No.3251 of 2013

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