

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2019

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.13633 of 2014

and

M.P.No.1 of 2014

T.Marimuthu

...Petitioner

Vs.

1.Tamil Nadu Civil Supplies Corporation  
Rep. by its Regional Manager  
Sivagangai Region  
Sivagangai 639 562

2.The Tamil Nadu Civil Supplies Corporation  
Rep. by its Managing Director  
Chennai 600 010

...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the proceedings Na.Ka.No.BS1 / 9585 / 2010 dated 25.04.2014 of the 1<sup>st</sup> respondent, quash the same.

For Petitioner : Mr.S.Venkataraman

For Respondents : Mr.C.Munusamy, Standing counsel  
for R1 & R2

O R D E R

This petition has been filed by the petitioner, challenging the impugned recovery order dated 25.04.2014.

2.The case of the writ petitioner is that he was working as Assistant quality inspector at the Devakottai godown of the Tamil Nadu Civil Supplies Corporation. During the Pongal season 2011, the Government decided to give grocery items free of cost to the ration card holders. Jaggery was one such item. About 11,440 packets of Jaggery came to be received from M/s.CMK Traders at the godown. The Jaggery packets were of substandard quality and hence the petitioner declined to receive the stock and informed the respondents. Later, the Trader agreed to replace the Jaggery and accordingly sent 11440 of packets of

Jaggery on 28.10.2010. The stock was unloaded at the godown and simultaneously on instructions from the respondents, the substandard jaggery which was in the godown was unloaded in the same lorry duly acknowledged by the lorry driver and thus the issue was settled. The 2<sup>nd</sup> respondent was also duly informed of the developments, who approved the same. However, belatedly the trader seems to have informed the 2<sup>nd</sup> respondent that the substandard jaggery which was loaded in the lorry did not reach him. The office of the 2<sup>nd</sup> respondent without verifying the bonafide of the trader raising the issue belatedly and without making any inquiry with the driver, gave instructions to the 1<sup>st</sup> respondent to recover the cost of the 11,440 packets of Jaggery from the petitioner after complying with an empty formality. The 1<sup>st</sup> respondent who was repeatedly informing the 2<sup>nd</sup> respondent that the jaggery was loaded and returned to the Trader. However, the 1<sup>st</sup> respondent, had no alternate except to comply with the direction of the 2<sup>nd</sup> respondent, issued a show cause notice to the petitioner. The petitioner submitted an explanation and the same was rejected in two words as 'not acceptable' and passed the impugned order for recovery of Rs.2,65,079/- being the cost of 11440/- packets of Jaggery from the petitioner with further direction to commence the recovery from the month of April 2014. Hence, the present petition.

3.The contention of the petitioner is that the Appellate remedy shown in the impugned order to the 2<sup>nd</sup> respondent is just an eye wash and no useful purpose would be served and the writ petition is maintainable inspite of the so called appellate remedy for the following reasons;

a)The recovery proceedings were not initiated by the 1<sup>st</sup> respondent on his own, but was compelled by the written instructions of the office of the 2<sup>nd</sup> respondent. In the said circumstances preferring any appeal to the 2<sup>nd</sup> respondent would be futile exercise and no justice will be done by the 2<sup>nd</sup> respondent.

b)It is submitted that as per chapter V of the Tamil Nadu Civil supplies corporation employees service regulations recovery from pay is a major penalty and such penalty could not be imposed by the formality of a show cause notice and full fledged enquiry as contemplated under the Rules should be complied with. But in my case the recovery came to be imposed by a mere issuance of a show cause notice and no enquiry was held. Hence there is violation of mandatory service regulations and in such circumstances filing any appeal would be futile exercise.

c) It is further submitted that the fact that the show cause notice was predetermined is fortified by the fact that the explanation submitted by me was rejected in two words NOT ACCEPTABLE. Such an order violates principles of natural justice and I have been imposed with recovery of huge amount of Rs.2,65,079/- which order infringes my Right under the Constitution of India and hence applying the ratio laid down by the apex court in Whirlpool India's case availability of alternate remedy is not bar for preferring the writ petition.

d) It is submitted that as per Service Regulations the appeal time 60 days. Whereas the 1<sup>st</sup> respondent has given 30 days time which itself discloses that the so called appeal remedy is only a farce.

4. The learned standing counsel appearing for the respondent / Civil Supplies Corporation, submitted that the petitioner has not satisfied the claim for enhancing the alternative remedy, hence, the writ petitioner cannot invoke Article 226 of the Constitution of India.

5. Counter affidavit has been filed by the 1<sup>st</sup> respondent wherein it is stated that the petitioner was working as Assistant Quality Inspector at Devakottai Godown during the period 2010-2011 Pongal Season under the control of the 1<sup>st</sup> respondent. A show cause notice was issued to the petitioners on 05.03.2014. After receiving his detailed explanation, the 1<sup>st</sup> respondent passed a recovery order on 25.04.2014 for loss of 11,440 packets of jaggery to recash a sum of Rs.2,65,079/- from the petitioner. The above jaggery transaction has made at Devakotti Godown. It is submitted that the entire cause of action for the impugned recovery arose and emanated from the office of the 1<sup>st</sup> respondent at Sivagangai.

6. He further submitted that the petitioner has appellate remedy from the 2<sup>nd</sup> respondent. The impugned order has been passed after receiving explanation from the petitioner. The petitioner has made pecuniary loss to the corporation by negligence and failure to follow the instructions. According to the Employees Service Regulation V8, the petitioner has to file an appeal before the appellate authority concerned for appellate remedy within thirty days. Without exhausting the said remedy the petitioner has approached this court.

7. The Government decided to give gift of groceries to the Card holders for Pongal festival 2011. According to the Regional Manager, Sivagangai letter BS1/9585/2010 dated

07.12.2012 based on the letter received from Head Office in Letter No.Com5/98439/ 2010 dated 07.12.2012, the godown incharges were instructed to unload only the good quality of jaggery after inspecting the quantity and quality in each and every pack. The petitioner failed to follow the above instructions and he has unloaded 11440 substandard jaggery packets and failed to report the same to the Regional Manager's Office Sivagangai immediately. Without prior permission and knowledge of the 1<sup>st</sup> respondent, the petitioner dispatched the substandard jaggery to CMK traders, hence issued Memo No.S348002935 dated 29.12.2010. Later, CMK traders informed that they have not received any substandard jaggery at their end. It was the sole default of the petitioner to accept the substandard jaggery and also despatched the same without proper record. Hence, the responsibility was fixed against the petitioner. Finally, a show cause notice was issued to the petitioner on 05.03.2014 to explain as to why the cost of 11440 packets of jaggery should not be recovered from the petitioner. The explanation of the individual was received on 25.03.2014. Being not satisfied with the explanation of the individual the same was rejected as 'not acceptable', and passed the impugned recovery order against the petitioner. Therefore, the order impugned in the present writ petition is valid in law.

8.Heard the learned counsel on either side and perused the materials available on record.

9.In the light of the above submissions and on a perusal of the materials produced before this Court, it is seen that the petitioner has challenged the impugned recovery order dated 25.04.2014. Admittedly, the writ petitioner without exhausting the Appellate remedy, has approached this Court. The learned counsel for the petitioner submitted that based on the direction of the 2<sup>nd</sup> respondent dated 17.01.2014 and 03.02.2014, impugned recovery order was passed by the 1<sup>st</sup> respondent. The learned counsel for the petitioner relied upon the communication dated 17.01.2014 and 03.02.2014. The learned counsel for the petitioner further submitted that the said communications are internal correspondence between the 2<sup>nd</sup> respondent and the 1<sup>st</sup> respondent. The copy of the communication dated 17.01.2014 and 03.02.2014 has not been enclosed before this court. Hence the contention of the petitioner cannot be accepted and the said claim is rejected.

10.Writ petitioner without exhausting the appellate remedy has approached this court and the same cannot be entertained.

Thus, the writ petition stands disposed of on the following terms:

(i) It is open to the petitioner to prefer an appeal before the Appellate Authority within a period of three weeks from the date of receipt of a copy of this order.

(ii) On such appeal being preferred within the aforesaid period, the respondents are directed to consider the same on merits and in accordance with law as expeditiously as possible within a period of twelve weeks.

(iii) At the time of admission, this court has granted interim stay and the same is in force till date. Hence the impugned order shall be kept in abeyance till the disposal of the Appeal.

With the above terms, this petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To.

1. The Regional Manager  
Tamil Nadu Civil Supplies Corporation  
Sivagangai Region  
Sivagangai 639 562

2. The Managing Director  
Tamil Nadu Civil Supplies Corporation  
Chennai 600 010

+1 cc to M/s.S.Venkataraman, Advocate Sr.No. 101501

AKM/11.12.19/5P-4C /

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