IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
And
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.A.No.2236 of 2018
and
C.M.P.No.17661 of 2018

1.The General Manager (Administration),
Tamil Nadu Civil Supplies Corporation Limited,
Head Office,
No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010.

2.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation Limited,
Thanjavur Region,
Thanjavur. ... Appellants/Respondents

Vs.

T.Manivachagan ... Respondent /Petitioners

Prayer:

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 03.11.2017 made in W.P.No.25605 of 2012.

Prayer in W.P.No.25605 of 2012:Writ Petition filed under Article 226 of the Constitution of India praying for issue a Writ of Cetiorri, Calling for the records of the respondents in connection with the impugned order passed by the 2nd respondent in Na.Ka.No.M3/ 1311/2007 dated 9.11.2011 and by the 1st respondent in proceedings Order No.AT3/ 2743/2012 dated 23.7.2012 and quash the same.

For Appellants : Mr.C.Munusamy

For Respondent : Mr.K.Venkatramani
Senior Counsel for
Mr.Iyankaraprabu

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN,J.)

The challenge in this intra Court appeal is to the order setting aside the punishment, primarily on the ground that the Disciplinary Authority disagreed with the findings arrived at by the Enquiry Officer without any basic materials.

2. The respondent was initially appointed as a Bill Clerk and thereafter, he was promoted as Assistant Quality Inspector. The Disciplinary Authority of the Civil Supplies Corporation initiated disciplinary proceedings against the respondent by issuing a charge memo dated 24.05.2007. The charges relates to the loss sustained by the Civil Supplies Corporation on account of the misconduct committed by the respondent and other employees. The Enquiry Officer conducted enquiry and submitted a report holding that expect the second charge all the other charges were not proved.

3. The Disciplinary Authority recorded the dissenting note and opined that all the eight charges were proved. The Disciplinary Authority finally passed an order imposing punishment of stoppage of increment for a period of two years with cumulative effect. The respondent was directed to pay a sum of Rs.9,52,801.05/-, being the proportionate amount taking into account the total loss sustained by the Corporation. The Appellate Authority rejected the related appeal. Thereafter, the respondent filed the writ petition.

4. The learned Single Judge was of the view that the departmental proceedings was not conducted in accordance with the service regulations. According to the learned Single Judge, the procedure prescribed for conducting major penalty proceedings was violated with impunity. There was no examination of witnesses or exhibiting documents in the departmental proceedings. The learned Single Judge, therefore concluded that there was no basis for the ultimate punishment imposed by the Disciplinary Authority. The order passed by the Disciplinary Authority and the related order passed by the Appellate Authority were quashed.

5. The learned Special Government Pleader appearing on behalf of the Corporation contended that serious charges were framed against the respondent on account of his misconduct.

According to the learned Special Government Pleader, the respondent was instrumental in causing substantial loss to the Corporation and as such, the impugned order was rightly passed by the Disciplinary Authority. The learned Single Judge was not correct in quashing the charge memo solely on the ground that the procedure was not complied with. It was further contended that in case of non compliance of the procedure the proper remedy is only to remit the matter to the Disciplinary Authority.

6. The learned Senior Counsel appearing for the respondent took us through the charge memo, enquiry report, dissenting note prepared by the Disciplinary Authority and the final order passed by the said Authority. The learned Senior Counsel contended that there was absolutely no evidence to connect the respondent with the misconduct in question. According to the learned Senior Counsel, the Corporation was not correct in directing recovery of the alleged loss from the respondent without there being a factual adjudication as to how he was responsible.

7. The respondent was an employee of the Tamil Nadu Civil Supplies Corporation Limited. The Disciplinary Authority initiated disciplinary proceedings by issuing a charge memo dated 24.05.2007. The Enquiry Officer conducted enquiry and arrived at a finding that except Charge No.2, there was no evidence to prove the other charges. The Disciplinary Authority considered the final report and resolved to disagree with the findings. The Disciplinary Authority issued notice to the respondent and after hearing him passed an order disagreeing with the findings given by the Enquiry Officer. The Disciplinary Authority imposed the punishment of stoppage of increment for a period of two years with cumulative effect. The respondent was directed to reimburse the loss sustained by the Corporation at Rs.9,52,801.05/-.

8. The learned Single Judge interfered with the order passed by the Disciplinary Authority on the ground that the regulations were not followed, while conducting the enquiry.

9. We have perused the proceedings of the Enquiry Officer, the dissenting note prepared by the Disciplinary Authority and the order passed by the Appellate Authority. The Disciplinary Authority has recorded sufficient reasons to proceed against the respondent. It was not a case of nil evidence. The Corporation was in a position to prove that the respondent was also involved

in a misconduct. In case, the learned Single Judge was of the view that interference of the Court is necessary on account of the violation of the regulations while conducting enquiry, the proper course is to set aside the order and remit the matter to the Authority. No such course was adopted by the learned Single Judge. We are therefore of the view that the order setting aside the punishment of stoppage of increment deserves to be set aside.

10. The next question is as to whether there is evidence to show that the Corporation sustained a loss of Rs.9,52,801.05/-, on account of the misconduct committed by the respondent. There was no independent evidence adduced before the Enquiry Officer to prove that the respondent alone contributed for the loss assessed by the Disciplinary Authority. There was no clear indication in the order passed by the Disciplinary Authority with regard to the part played by the respondent in the misconduct which resulted in causing loss to the Tamil Nadu Civil Supplies Corporation. In the absence of direct evidence regarding the involvement of the respondent in causing loss to the Corporation and the percentage of his liability, the Disciplinary Authority was not correct in directing him to pay a sum of Rs.9,52,801.05/-, by apportioning the liability. We are therefore of the view that the direction given to the respondent to pay the loss sustained by the Corporation deserves to be set aside.

11. The order passed by the learned Single Judge is modified. We restore the punishment of stoppage of increment for a period of two years with cumulative effect as indicated in the order passed by the Disciplinary Authority dated 09.11.2011. We set aside the portion of the said order directing the respondent to reimburse to the Corporation, a sum of Rs.9,52,801.05/- being his contribution to the alleged loss.

12. The intra Court appeal is allowed in part as indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The General Manager (Administration),
Tamil Nadu Civil Supplies Corporation Limited,
Head Office,
No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010.

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

+1cc to M/S.M.Muthappan, Advocate Sr.24935
+1cc to the Government Pleader sr.25149, 25150

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