BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.08.2019**

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P.(MD)No.15905 of 2014

and

W.M.P.(MD).No.1 of 2014

J.Ramamoorthy ... Petitioner

Vs.

1.Tamil Nadu Civil Supplies Corporation,
Rep by its Managing Director,
12, Thampusamy Road,
Kilpauk, Chennai-600 010

2.The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Tamil Nadu Civil Supplies Corporation Building,
Anna Nagar, Madurai. ... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd respondent in Na.Ka.No.L1/1185/11, dated 17.09.2012 and quash the same and consequently, direct the respondents to forthwith pay all the service benefits payable to the petitioner with interest fro belated payment.

For Petitioner : Mr.S.Satheesh Kumar
For R1 & R2 : Mr.D.Mayarajan

ORDER

The show cause notice issued in proceeding dated 17.09.2012 directing the writ petitioner to submit his explanation within 7 days in respect of the financial loss occurred to the Corporation, is under challenge in the present writ petition.

2.The learned counsel for the writ petitioner states that the petitioner was employed as Junior Assistant in the respondent Civil Supply Corporation. The petitioner reached the age of superannuation on 31.05.2009 and he was allowed to retire from service without prejudice to the proceedings initiated against him. The learned counsel for the writ petitioner further states that the issuance of the show cause notice itself is untenable. In view of the fact that the respondent Corporation issued a circular on 16.10.1996 stating that the persons, who have not handled the stock should not be implicated in recovery proceedings. Thus, the impugned show cause notice is liable to be quashed.

3.The learned counsel for the respondent opposed the contention of the writ petitioner stating that all these aspects are to be considered by the competent authorities only after submission of explanation/objection by the writ petitioner, thus, the writ petition is liable to be rejected.

4.This Court is of the considered opinion that the Rules, Regulations and the Guidelines issued are to be followed by the authorities scrupulously. Undoubtedly, the persons concerned have to be penalized. However, during the course of conducting enquiry, the authorities are bound to issue show cause notice to the persons concerned, in order to cull out the truth and to ascertain the financial loss if any caused to the Corporation. Under these circumstances, mere issuance of the show cause notice would not provide any cause for the purpose of quashing the entire writ proceedings itself. The participation of the writ petitioner or otherwise, are to be ascertained only after the receipt of the explanation/objection from the writ petitioner and on verification of the files and the materials available on record. These all are the procedures to be followed before taking a final decision. Thus, the present writ petition filed challenging the show cause notice cannot be entertained.

5.No writ can be entertained against show cause notice in a routine manner. Judicial review against the show cause notice is undoubtedly limited. The show cause notice can be challenged if the same is issued by an incompetent authority having no jurisdiction or an allegation of malafides are raised or if the same is in violation of the statutory Rules in force. Even in case raising an allegation of malafide, the authorities against whom, such an allegation is raised, who is to be impleaded as respondent in his personal capacity. In the absence of any one of the legal grounds, no writ petition can be entertained against the show cause notice.

6.Intermittent intervention in such recovery proceedings are not preferable. The employee concerned must be submitted his explanation for the purpose of defending his case only in the event of passing final orders, then he is at liberty to approach the appellate authority for the purpose of redressing his grievances, contrarily, a writ proceedings cannot be entertained for the purpose of quashing the charge memo.

7.The fact remains that the financial loss was identified and assessed by the respondents Corporation that they have issued show cause notice to the employees, who were working during the relevant point of time. Thus, the petitioner is bound to submit explanation/objection on the allegations set out in the impugned show cause notice and the authorities competent also has to consider the explanation/objection if any submitted by the writ petitioner along with the materials available on record and by following the Rules as well as the Guidelines issued before taking a final decision in the matter. Since the writ petitioner has already retired from service, this Court is of the opinion that early disposal of the recovery proceedings are imminent. Under these circumstances, the respondents are directed to proceed with the enquiry, conclude the same and pass final orders on merits and in accordance with law by affording an opportunity to the writ petitioner as expeditiously as possible.

8.With the above direction, this Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

+1 cc to Mr.D.Mayarajan , Advocate SR.No.83666

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