

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 12776 OF 2013

S.Rajamanickam

.. Petitioner

- Vs -

1. The Managing Director  
Tamil Nadu Civil Supplies Corporation  
No.12, Thambusamy Road,  
Kilpauk, Chennai - 10.
  2. The General Manager (Administration)  
Tamil Nadu Civil Supplies Corporation  
No.12, Thambusamy Road,  
Kilpauk, Chennai - 10.
  3. The Regional Manager,  
Tamil Nadu Civil Supplies Corporation  
Regional Office,  
Co-operative Spinning Mill Compound,  
Ammappettai, Salem - 14.
- .. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the 3<sup>rd</sup> respondent in his Proceedings No.N.K.E2/3752/2007 dated 24.12.09 which was confirmed by the appellate authority, the 1<sup>st</sup> respondent herein in his proceedings No.S.M.O. NO.AT1/27990/2010 dated 27.7.12 and quash the same and consequently direct them to give all the benefits such as promotion and monetary benefits to the petitioner herein.

For Petitioner : Mr. S.Vijayakumar

For Respondents: Mr. L.P.Shanmugasundaram, Spl. GP

ORDER

It is the case of the petitioner that he joined as Packer in the respondent Corporation and, thereafter, promoted to the post of Bill Clerk in the year 1987 and subsequently promoted to the post of Junior Assistant in the year 1988 and posted at the Salem Regional Office and has been working there since then.

2. The 3<sup>rd</sup> respondent issued a charge memo dated 30.8.07 under the provisions of the Corporation Service Rules, 1989 for serious misconduct that there was a shortage/excess of food grains in the godown situated at Seelanaickenpatti Village, Salem District from 5.7.07, which was detected during the inspection by the Head Office on 11.7.07 and 12.7.07. Four other persons, viz., Jagannathan, Quality Inspector, A.Palaniappan and P.Munusamy, Bill Clerks and V.Subbarayan, Watchman were also visited with the said charge memo. However, the enquiry was separately conducted insofar as Jagannathan is concerned, while a common enquiry was conducted against all other employees, including the petitioner. In spite of repeated requests/representations from the petitioner to peruse the documents, however, the said opportunity was not granted and the petitioner was forced to submit his explanation, which he duly complied with on 20.2.08. The explanation offered by the petitioner was not accepted and the enquiry was proceeded with.

3. In spite of repeated requests even during the enquiry to peruse the documents, the said request was not acceded to and the enquiry officer proceed with the enquiry, which stands vitiated for violation of the rights of the petitioner. On completion of the enquiry, the enquiry officer submitted his report on 27.3.08 and in spite of explanation offered by the petitioner to the findings rendered by the enquiry officer, the said explanation was not accepted and the disciplinary authority accepted the findings and imposed the punishment of stoppage of increments for a period of three months without cumulative effect vide order dated 24.12.09. Further, a sum of Rs.5.032/- was also recovered from the salary of the petitioner towards the value of the alleged shortage of food grains, which act amounts to double punishment.

4. While the petitioner preferred an appeal reiterating the grounds taken by him in the enquiry proceedings, the enquiry against the other delinquent, viz., Jagannathan was completed, in which the enquiry officer held that the case against the said delinquent was proved beyond doubt that the said Jagannathan alone is solely responsible for the alleged shortage of food grains in the godown and punishment of stoppage of increment for a period of two years without cumulative effect was awarded to the said Jagannathan. These particulars relating to the enquiry against the said Jagannathan was obtained by the petitioner under the Right to Information Act.

5. In the appeal preferred by the petitioner before the appellate authority, the appellate authority passed the order confirming the order of the disciplinary authority vide order dated 27.7.12 without appreciating all the contentions and

documents placed before the appellate authority. Therefore, aggrieved by the said act of the disciplinary and appellate authorities, the petitioner is before this Court by filing the present petition.

6. Learned counsel appearing for the petitioner submits that opportunity of fair hearing was not afforded to the petitioner, which vitiates the whole enquiry proceedings. It is the further submission of the learned counsel for the petitioner that the documents obtained by the petitioner under the Right to Information Act, pertaining to the details sought for by him throughout the enquiry proceedings as also the enquiry against the said Jagannathan, categorically reveal that the findings recorded against the said Jagannathan unerringly points the finger only on the said Jagannathan as the person, who was responsible for the alleged shortage of food grains. There is no imputation as against the petitioner.

7. It is the further contention of the learned counsel that the petitioner was only given temporary in-charge of the godown, which charge was not actually taken over by the petitioner as could be evident from the leave letter submitted by him on 9.7.07, which has been accepted by the authorities. It is therefore contended that the petitioner having been on leave on the crucial dates when inspection had taken place, viz., 11.7.07 and 12.7.07 and he not being in-charge of the godown during the relevant period, no liability can be fastened on him. It is the further submission of the learned counsel for the petitioner that the respondents themselves have admitted that the petitioner had availed leave for securing engineering admission for his son during the relevant point of time and, therefore, the findings recorded by the enquiry officer, as accepted by the disciplinary and appellate authorities shows clear non-application of mind to the materials placed before them and cumulatively absolves the petitioner from the commission of any offence. Therefore, it is prayed that this Court may allow the writ petition.

8. Per contra, learned Special Government Pleader appearing for the respondents does not dispute the facts projected by the learned counsel for the petitioner.

9. This Court heard the submissions of the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

10. True it is that non-grant of opportunity to the petitioner at the initial stage as well as during the enquiry to peruse the material documents relied on by the Corporation to

substantiate the charge against the petitioner definitely vitiates the whole proceedings and on this ground itself, the whole proceedings is liable to be set aside.

11. However, what is more curious in the present case is the fact that the records placed before this Court categorically reveal that the petitioner was not in-charge of the godown during the particular point of time. The said fact is further substantiated by the finding recorded in the enquiry conducted against Jagannathan, where the enquiry officer has held that the said Jagannathan alone was responsible for the shortage of food grains. Added to the above is the fact that the petitioner had availed leave by submitting application for leave on 9.7.07, which has been granted to him and the petitioner was not available during the inspection conducted on 11.7.07 and 12.7.07. The petitioner not being in-charge of the godown during the relevant point of time and was also on leave prior to and also during the inspection, fastening of liability on the petitioner is wholly unsustainable, more so when the materials available on record categorically reveals that the whole disciplinary proceedings initiated against the petitioner is a vitiated one for reasons stated supra. The leave availed by the petitioner is further strengthened by the fact that the petitioner had been involved in securing academic admission in engineering college for his son during the relevant period. Therefore, the act of the respondents in failing to take note of all the materials while arriving at a finding and not providing the materials sought for by the petitioner, which vitiates the whole enquiry proceedings, definitely warrants this Court to interfere with the orders passed by the disciplinary and appellate authorities.

12. For the reasons aforesaid, this Court is inclined to allow the writ petition by setting aside the orders passed by the disciplinary and appellate authorities, impugned herein. Accordingly, the punishment imposed on the petitioner by the disciplinary authority as confirmed by the appellate authority is set aside. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

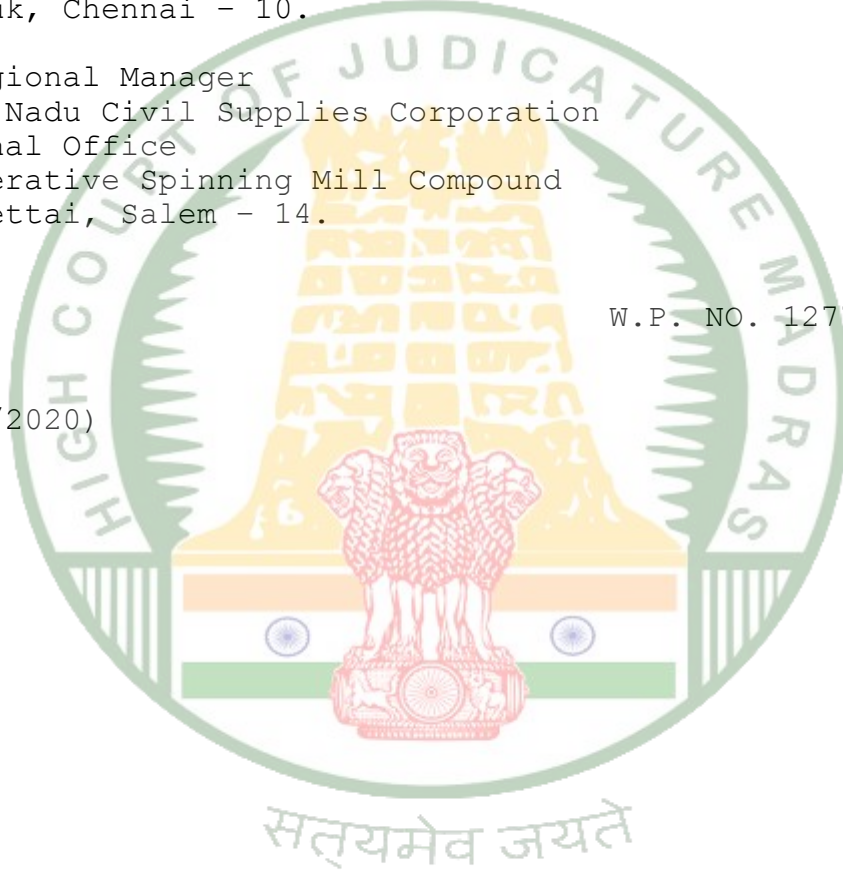
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To

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Ammapettai, Salem - 14.

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MR (CO)  
RMP (02/09/2020)



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