

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.1560 of 2013

M. Muthambika

... Petitioner

/Vs/

- 1.The Appellate Board,
Tamil Nadu Khadi & village Industrial Board,
Kuralagam,
Chennai 600 108.
 2. The Chief Executive Officer,
Tamil Nadu Khadi & Village Industrial Board,
Kuralagam,
Chennai 600 108.
 3. The General Manager,
Khadi Kraft (Main),
Kuralagam,
Chennai 600 108
- Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent Order No.11 dated 24.08.2011 confirming the second respondent order Na.Ka.No.1090/03/E4(2) dated 29.01.2004 and quash the same consequently directing the respondents to reinstate the petitioner in service with backwages, continuity of service and all attendant benefits.

For Petitioner : Mr. T.K.S.Bharathy Anandraj

For Respondents : Mr. S.K.Bose,
R1 to R3

* * * *

O R D E R

The writ petition has been filed by the petitioner challenging the removal of service.

2. The petitioner was working as a Helper Grade-II, in the respondents Khadi Board. Earlier, by an order dated 27.02.2003, a Disciplinary Proceedings has been initiated against the petitioner and a charge memo has been issued, with the following charges:

"(a) The petitioner while ordered to hand over old Khadi Varieties which were in her control in K1 Sales Section caused loss to the value of Rs.42,504,65/- Khadi Varieties working at K1 Sales counter.

(b) The petitioner while working at K1 Sales counter at Kuralagam acted against the regulation of the Khadi Board, causing loss of Rs.24,978/- to the Board.

(c) That the petitioner had violated Rule 20 of Tamil Nadu Government Servants Conduct Rules."

3. After obtaining explanation from the petitioner, disciplinary enquiry was conducted. During the enquiry, on the side of management 3 witnesses were examined to prove the charges and all the 3 witnesses were cross examined by the petitioner. After considering the entire materials available on record, the enquiry officer has held that all the charges have been proved. Thereafter, the second respondent, Disciplinary Authority, after perusing the copy of the enquiry report and also after obtaining further explanation from the petitioner, has held that all the charges have been proved and imposed punishment of removal from service. Thereafter, the petitioner has filed an appeal before the first respondent. The first respondent, by an order dated 07.12.2004, dismissed the appeal and confirmed the order of punishment. Challenging the above order, the petitioner had filed a writ petition before this Court in W.P.No.12735 of 2005, on the ground that the disciplinary authority is one of the members of the Appellate Board and he cannot hear the appeal. Accepting the contention, this Court by an order dated 23.04.2010 had set aside the order passed by the Appellate Authority and remanded the matter for fresh disposal to the Appellate Authority, and the Appellate Board has been re-constituted. Thereafter, the first respondent after considering the grounds raised by the petitioner has dismissed the appeal by an order dated 24.08.2011 and confirming the order of punishment of removal from service. Now, challenging the same, the present writ petition has been filed.

4. Heard both sides and perused the materials available on records.

5. The first charge levelled against the petitioner is that, the petitioner worked as Helper Grade-II, at Khadi Board, Kuralagam, Chennai. Subsequently she was transferred to Sevvapettai Branch, w.e.f. 31.07.2002. While handing over the charge, he failed to hand over the old and damaged stocks worth about Rs.41,504.65, along with the charges, the details of the missing clothes of 125 items had been given. The explanation of the petitioner during the enquiry was that, as per the order passed by the third respondent, he has handed over the entire stocks to one Kuprabanu, who was examined as Department witness in the enquiry. But the General Manager, who had some personal grievance against the petitioner has to wreak a vengeance against the petitioner, removed the above said clothes and the petitioner is not responsible for that.

6. During the enquiry, to prove the charge, the department has not examined the person to whom the petitioner said to have handed over the charges, and proved that the above said materials were handed over to her successor. Though, the petitioner has contended that the General Manager has removed all those goods, she has not produced any materials to establish the same. The Enquiry Officer after considering the entire evidence has held that the petitioner has not handed over the above said clothes and she is only responsible for that and held that the charge is proved.

7. So far as the second charge, namely, causing loss to the society to the tune of Rs.24,978/- is concerned, the only explanation given by the petitioner is that the General Manager, who is inimical to the petitioner was responsible for that and he has not caused any loss. However, there was a separate order has been issued for the recovery of the loss incurred to the Board. The petitioner did not challenge that order and now the amount has also been recovered from the petitioner. Hence, the Enquiry Officer has held that since the petitioner has accepted the charge and paid the amount, the above charge is also proved.

8. So far as the third charge is concerned, it is only violation of Conduct Rules. Since the other charges have been proved, this charge was also held proved.

9. Thereafter, the disciplinary authority, namely, the second respondent, after elaborately considering the entire materials concurrent with the findings of the enquiry officer, had held that the charges have been proved and removed her from service. Thereafter, challenging the said order, the petitioner filed an appeal

before the Appellate Authority, and the Appellate Authority after giving appropriate opportunity to the petitioner and also considering the grounds raised in the appeal, by an order dated 24.08.2011 dismissed the appeal.

10. The learned counsel appearing for the petitioner would contend that, even though petitioner handed over all the materials before the 3rd respondent before she was transferred, but he has removed the goods and blamed the petitioner for the same. Unfortunately, the petitioner has failed to substantiate the same. However, the respondent Board has established the charge with material. Hence, the contention of the petitioner cannot be accepted. In the above circumstances, in absence of any substantial allegation of any procedural violation in conducting the enquiry. I find no illegality or irregularity in the order passed by respondents.

11. So far as the punishment is concerned, the petitioner was working as Helper Grade II post, and now it is stated that nearly 80% of the amount has also been recovered from the petitioner. As the petitioner has made good the loss and he has put in 18 years of service and there is no bad antecedents against the petitioner, considering the above circumstances, and considering the gravity of the charges, this Court is of the view that the order of dismissal of service is not proportionate and it is excessive. Hence, I am inclined to modify the punishment of dismissal of service, into that of compulsory retirement and the petitioner is entitled for all the mandatory benefits as permissible under law.

12. With the above directions, the writ petition is partly allowed and the punishment imposed on the petitioner is modified into that of the compulsory retirement. No costs. सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To

1.The Appellate Board,
Tamil Nadu Khadi & village Industrial Board,
Kuralagam,
Chennai 600 108.

2. The Chief Executive Officer,
Tamil Nadu Khadi & Village Industrial Board,
Kuralagam,
Chennai 600 108.

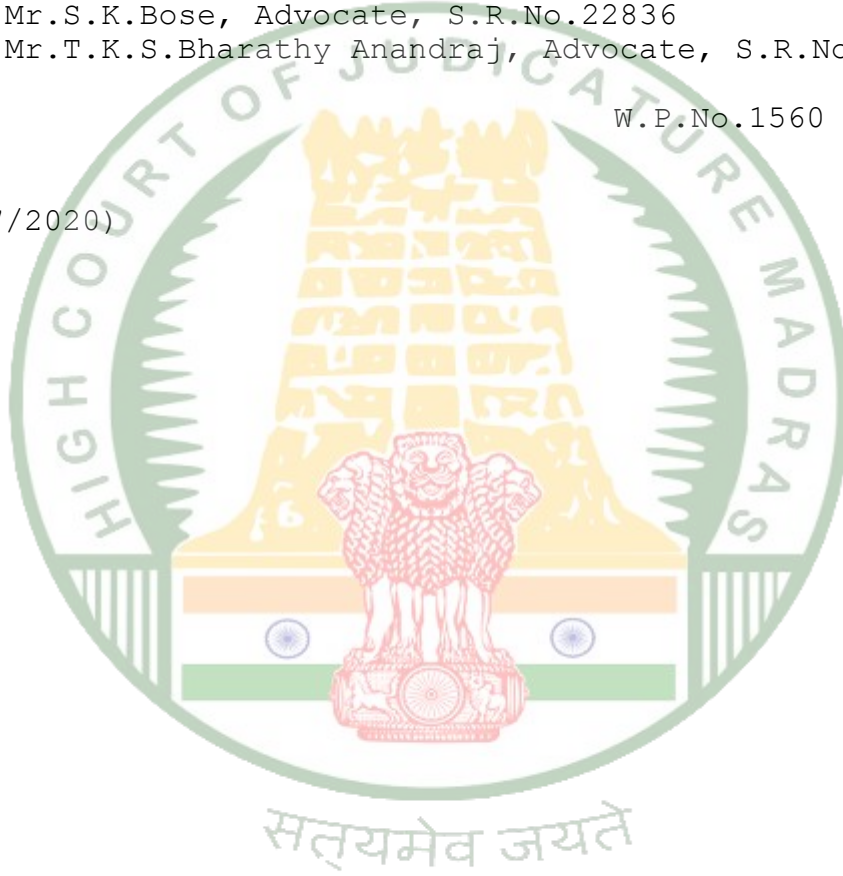
3. The General Manager,
Khadi Kraft (Main),
Kuralagam,
Chennai 600 108 .

+1cc to Mr.S.K.Bose, Advocate, S.R.No.22836

+2cc to Mr.T.K.S.Bharathy Anandraj, Advocate, S.R.No.22108

W.P.No.1560 of 2013

PVS (CO)
CB(31/07/2020)



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