

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.01.2020

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.34848 of 2012

P. Rajendran

...Petitioner

vs

1. The Managing Director
Tamil Nadu Civil Supply Corporation (TNCSC)
Head Office No.12, Thambusamy Salai,
Kilpauk, Chennai 600 010.

2. The Regional Manager,
Tamil Nadu Civil Supply Corporation (TNCSC),
Namakkal Region,
Namakkal

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ, order or direction more particularly a writ in the nature of Writ of Certiorarified Mandamus or any other appropriate Writ, Order or Direction in the nature of Writ calling for the records on the file of the first respondent relating to the order issued in proceedings No. AD1/11546/2010 on 10.05.2012 and quash the same and direct the first and second respondents herein to reinstate the petitioner into service with all consequential service and attendant benefits.

For Petitioner : Mr. A. Asuvathamam

For Respondents : Mr. C. Munusamy

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O R D E R

The petitioner was initially appointed as Bill Clerk in one man shop of Tamil Nadu Civil Supply Corporation (TNCSC) in the year 1982. He was regularized and promoted as packer in the year 1989 and subsequently promoted as Bill Collector in the

year 1997. On 17.12.2008, a surprise inspection was conducted by the Assistant Tahsildar in the Fair Price Shop Complex. At that time, at the backside of the shop, a lorry containing 75 Nos of Rice bags meant for public distribution system was stationed. The District Supply officer seized the lorry and the essential commodities and initiated proceedings through Food Cell of the Department. The employees of all the six shops were kept under suspension. The petitioner is one among them. The petitioner was the bill collector of Shop No.8. Subsequently, a charge memo was issued against all these people for attempting to stealthily removing the PDS Rice and attempting to sell it in the black market and thereby causing dis-reputation to the corporation and that dereliction of duty. An enquiry was conducted and the enquiry officer held that the charges against them were proved and pursuant to that, the petitioner was removed from service and on appeal, the order of the Regional Manager was confirmed by the appellate authorities. Aggrieved over the same, the petitioner has preferred this Writ Petition.

2. The respondents filed a detailed counter affidavit. The learned counsel for the respondents would vehemently contend that the petitioner was one of the Bill Collectors among six shops. All the six shops have a common back entrance and that all the six employees have colluded together and smuggled 75 bags of PDS rice. On the date of incident, the petitioner absconded and failed to report the facts to his superiors. Therefore, he was kept under suspension and upon conclusion of enquiry, he was removed from service. There is no violation of principles of natural justice and therefore, the order of removal is very much legal and sustainable. On his arguments, he would pray that the Writ Petition be dismissed.

3. I heard the submissions. On a perusal of the materials produced before this Court, it is seen that the petitioner was employed in Shop No.8. The Stock Register, subsequent to the seizure of the PDS rice, shows that there is no deficiency of stock in this shop except for 41 Nos of Tea packets. In other words, there is no deficiency in the stock of the PDS rice in shop No.8, which is under the control of the writ petitioner. The respondent framed the charges that the petitioner attempted to stealthily remove the rice bags, but, in fact, he was not present at the time of seizure of the vehicle nor it was alleged that he was indulged in such a stealthily removal. If that be the case, there should be a specific allegation as to how the petitioner had involved or colluded in the illegal act. The delinquency is not specifically pleaded and absconding from the

shop is not a charge. In fact, the inspection was conducted at 3 a.m. in the morning on 17.12.2018. Nobody will expect that an employee of the ration shop would be present at that odd hour. If at all a person should be there, it should be a watchman of the shopping complex and none else. From the enquiry report, it could be seen that the enquiry officer has relied only on the explanation submitted by the petitioner to find fault with him. But there was no witness or material on the side of the management to speak about the nature of misconduct and dereliction of duty attributed to the petitioner. In the absence of any evidence, the findings of the enquiry officer and the reliance on that by the disciplinary authority is not sustainable. The punishment imposed is removal from service. It is well settled that while imposing a capital punishment, it is necessary that the principles of natural justice must be adhered to. From the conduct of enquiry and the order of removal, it could be easily inferred that no proper enquiry was conducted by the enquiry officer and the charges were not proved in the manner known to law. From the beginning, the principles of Natural Justice is given go by and it does not appear to be a major Penalty proceedings. When six persons are involved, the allegation shall be specific as to the role played by each of the individual. The respondents in a hurried manner, made vague charges and vague allegations against all these people put together. The involvement of the petitioner in the misconduct and his role is not specifically stated. On vague pleadings, depending on the personal knowledge, it appears, the order has been passed. Even though it is stated that the petitioner had absconded and did not report to the higher officers, nothing is discussed about his presence at the time of the inspection and no witness was examined to prove that he has absconded from the place during office hours. In fact, it is stated that on that particular day, the petitioner was on leave. Be that as it may, without specific details of charge and corroborative evidence, there is no preponderance of probability to hold that the petitioner had committed the misconduct, more particularly, when there is no deficiency of rice in the shop manned by the petitioner after the physical verification conducted by the inspecting team. Even though the petitioner has raised various grounds, the appellate authority had simply stated that the grounds raised by the petitioner are not acceptable and the findings of the disciplinary committee were confirmed. The order passed by the appellate authority does not disclose any reasons for accepting the findings of the disciplinary authority. But, the approach is purely mechanical. In such circumstances, this court is of the considered opinion that the impugned order

passed by the respondent is not sustainable in law and accordingly it is set aside. The petitioner is entitled to reinstatement into service with all consequential and attendant benefits. Resultantly, this writ petition is allowed. No costs.

Sd/-

Assistant Registrar (C.S.VI)

/True Copy/

Sub Assistant Registrarr

To

1. The Managing Director
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2. The Regional Manager,
Tamil Nadu Civil Supply Corporation (TNCSC),
Namakkal Region,
Namakkal

+1 cc to M/s.G.Sankaran, Advocate Sr.No.2880
+1 cc to M/s.C.Munusamy, Advocate Sr.No. 2938

AKM/16.03.2020/4P-5C /

W.P.No.34848 of 2012

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