

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.10378 of 2020 and
W.M.P.Nos.12620 & 12621 of 2020

H.Gunasekaran

... Petitioner

Vs.

1.The Secretary,
Department of Fertilizers,
Ministry of Chemicals and Fertilizers,
Government of India,
A-Wing, Shastri Bhavan,
Dr. Rajendra Prasad Road,
New Delhi-110 001

2.The Chairman and Managing Director,
Madras Fertilizers Limited,
Manali, Chennai-600 068

3.The Chief Vigilance Officer,
Madras Fertilizers Limited,
Manali, Chennai-600 068

4.The Appellate Authority cum
The Chairman and Managing Director,
Madras Fertilizers Limited,
Manali, Chennai-600 068

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for all relevant records relating to the impugned order of major penalty issued in No.CMD/Vig./058/2020, dated 17.06.2020 passed by the Chairman and Managing Director cum Disciplinary Authority, Madras Fertilizers Limited, Manali, Chennai-600 068, the second respondent herein and quash the same as arbitrary, unreasonable, improper, illegal, against the rules and regulations of the respondents and thereby directing the respondents to notionally grant all the promotional/elevation benefits which are all entitled to the petitioner consequently, to sanction and disburse all the monetary, service, terminal and pensionary benefits of the petitioner namely Provident Fund Pension, Gratuity, Leave Encashment and Superannuation Fund and Pension payable to the petitioner alongwith the interest at the

rate of 12% per annum from the date of superannuation till the date of disbursement to the petitioner.

For Petitioner : Mr.K.Venkataramani, SC for
Mr.S.Srinivasan

For Respondents: Mr.Jayesh Dolia for
M/s.Iyer and Dolia

O R D E R

This matter is taken up through Web hearing.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a Writ of Certiorari and Mandamus to call for all relevant records relating to the impugned order of major penalty issued in No.CMD/Vig./058/2020, dated 17.06.2020 passed by the Chairman and Managing Director cum Disciplinary Authority, Madras Fertilizers Limited, Manali, Chennai-600 068, the second respondent herein and quash the same as arbitrary, unreasonable, improper, illegal, against the rules and regulations of the respondents and thereby directing the respondents to notionally grant all the promotional/elevation benefits which are all entitled to the petitioner consequently, to sanction and disburse all the monetary, service, terminal and pensionary benefits of the petitioner namely Provident Fund Pension, Gratuity, Leave Encashment and Superannuation Fund and Pension payable to the petitioner along with the interest at the rate of 12% per annum from the date of superannuation till the date of disbursement to the petitioner."

2. The case of the petitioner is as follows:

2.1 The petitioner was appointed on 19.03.2013 as General Manager (P&A) in the second respondent company, which is a Government of India undertaking. After rendering more than 7 years of service, he had retired from service with effect from 30.06.2020. In regard to discharge of his duties, certain irregularities were noticed by the Management in relation to certain procurements for the company. A charge memorandum was issued for certain acts of misconduct in regard to the above, on 12.02.2019. A detailed enquiry was conducted into the charges in pursuance of the charge memorandum and on conclusion of the enquiry, a report was submitted on 16.05.2019, holding that certain charges were proved and certain other charges were not proved out of the total seven charges. A copy of the enquiry report was furnished to the petitioner on 30.01.2020. The

petitioner submitted his explanation to the enquiry findings on 20.02.2020. Since there was a delay in initiation of disciplinary proceedings against him, the petitioner had also requested to conclude the disciplinary proceedings expeditiously by his letter dated 17.06.2020. On the same day, final orders were passed in disciplinary proceedings i.e., on 17.06.2020 itself imposing a penalty of reduction of pay by four years from Rs.65,030/- in the time scale of pay till his superannuation with effect from the date of this order.

2.2 As against the imposing of major penalty, the petitioner submitted a detailed appeal on 24.06.2020 to the appellate authority i.e. Apex body of the company namely the Board. In the appeal, the petitioner appears to have taken elaborate grounds in assailing the initiation of the disciplinary proceedings and also the imposition of penalty. After submission of the appeal, the petitioner has also requested that the Chairman-cum-Managing Director ought not to decide the appeal submitted by him since he was the disciplinary authority who imposed the major penalty under appeal by his letter dated 25.06.2020.

2.3 The substance of the grievance of the petitioner in this writ petition is that there was a vacancy which is sought to be filled in the post of Director (Technical), Fertilizers & Chemicals Travancore Limited for which, the petitioner was eligible to be considered. According to him, a call letter was issued on 23.07.2020 to him. However, in view of pendency of the appeal before the Board against the major penalty, his chances of being considered for eventual appointment as Director if selected may not fructify.

3. Mr.K.Venkataramani, learned Senior Counsel, who appeared for the petitioner, reiterated the above facts in a nut-shell. Though the present Writ Petition has been filed seeking to quash the major penalty dated 17.06.2020 imposed on the petitioner, when the matter came up for admission, the learned Senior counsel for the petitioner restricted his submission only to the effect that a direction may be issued to the second respondent company to dispose of the appeal at an early date and since the Chairman/Managing Director has acted as disciplinary authority in respect of the petitioner herein, in all fairness, he may not participate in the Board proceedings of the company while dealing with the petitioner's appeal.

4. On consideration of submission of the learned Senior counsel, a notice was issued to the second respondent company, who is the contesting respondent in this case. In response to the notice, Mr.Jayesh Dolia, learned counsel entered appearance and a detailed counter affidavit has also been filed on behalf of the second and fourth respondents. Although, the counter affidavit refuted the allegations made by the petitioner in his

writ petition, however, in paragraph no.11, it is averred that the appeal preferred by the petitioner before the appellate authority will be considered on merits and in accordance with law keeping in line the principles of natural justice.

5. Since the learned Senior Counsel appearing for the petitioner has restricted his prayer for disposal of the appeal at an early date with a request that the Chairman-cum-Managing Director ought not to participate in the Board proceedings, which in the opinion of this Court is fair and reasonable in the circumstances of the case. In regard to the request of the learned Senior counsel for the petitioner for early disposal of the appeal without dealing with the merits and demerits of the appeal by this Court, the learned counsel appearing for the company would submit that some time may be fixed for disposal of the appeal and according to the averments contained in paragraph no.11, the Board is likely to meet shortly and take a decision on the appeal.

6. In the above circumstances, in fitness of things, without considering the merits and demerits of the rival contentions of the contesting parties, the Writ Petition is disposed of at the admission stage itself, with a direction to the second and fourth respondents as under:

(a) The appellate authority, namely, the Board of the company shall consider the appeal submitted by the petitioner on 24.06.2020 and pass a reasoned order on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. While considering the appeal, the disciplinary authority namely the Chairman-cum-Managing Director ought not to take part in the proceedings of the Board, as being the disciplinary authority, he cannot sit in the appeal over his own order.

(b) The appellate authority, the Board of the Company, is directed to take into consideration the detailed appeal and all other issues raised by the petitioner herein both on the legal as well as the factual aspects of the matter and dispose of the appeal within the time stipulated above.

(c) No costs. Consequently, connected WMPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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Department of Fertilizers,
Ministry of Chemicals and Fertilizers,
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The Chairman and Managing Director,
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Manali, Chennai-600 068

+1CC to Mr.S.Srinivasan, Advocate in Sr no.26591

W.P.No.10378 of 2020

SKS(SO)
RV(01.09.2020)



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