

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.34402 of 2019
& WMP No.35077 of 2019

G.K.Murthy

... Petitioner

Vs.

1.The Chairman and Managing Director,
Food Corporation of India,
Head Office at
No.18-20, Barakhamba Lane,
New Delhi - 110001

2.The Executive Director,
Food Corporation of India, Zonal Office,
No.3, Haddows Road,
Chennai-600 006

3.The General Manager,
Food Corporation of India,
Regional Office,
No.8, Mayor Sathyamoorthy Road,
Chetpet, Chennai-600 031

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to quash the impugned order VIG 4(30)/2013/SZ/2024-2G06 dated 11.11.2019 passed by the first respondent.

For Petitioner : Mr.B.R.Deepak
For Respondents : Mr.S.Vijayakumar

O R D E R

This matter is taken up through web hearing.

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

"to issue a Writ of Certiorari to quash the impugned order VIG 4(30)/2013/SZ/2024-2G06 dated 11.11.2019 passed by the first respondent."

3. The facts and circumstances of the case which gave rise to the filing of the Writ Petition, are briefly stated hereunder:

3.1 The petitioner was appointed on 03.10.1994 as Depot Manager and was promoted to the post of Area Manager on 02.03.2007. According to him, he was transferred to several places and in one of the transfers, he was posted to Coimbatore, Tamilnadu as Area Manager in the year 2009. In Coimbatore, he worked from 2009 to 2011 and transferred to Bangalore Regional office on 26.02.2011. On 05.07.2012, he was promoted from the post of Area Manager to the post of Deputy General Manager. The petitioner is due for retirement on 31.05.2021.

3.2 The first respondent Corporation noticed certain irregularities in discharge of duties by the petitioner while he was working as Area Manager in Coimbatore during his posting earlier during 2009-2011. The Corporation issued a charge memorandum on 08.05.2018 containing one article of charge. The substance of the charge against the petitioner was that he facilitated induction of ineligible labourers under 'no work no pay system' at FSD, Salem under FC District Office, Coimbatore during his tenure. In view of inducting ineligible workers by over reaching his authority, he had caused loss to the Corporation.

3.3 The petitioner, on receipt of the charge memorandum, appeared to have submitted his explanation on 07.06.2018. In reply to the show cause notice, the petitioner had stated that he had not received any show cause notice earlier and after a lapse of several years, a charge memorandum was issued. According to the petitioner, since he had been transferred in the meanwhile to various other places, he had no knowledge or clue as to what happened during his short tenure at Coimbatore when he posted there to act as Area Manager.

3.4 The Corporation however, conducted an enquiry into the charge levelled against the petitioner and on conclusion of the enquiry, a report was submitted on 06.02.2019, holding that the charge against the petitioner was proved. On furnishing a copy of the enquiry report, a detailed written representation was also submitted by the petitioner on 20.03.2019. According to the petitioner, he had raised several points inter alia contending that inordinate delay in initiation of disciplinary action being fatal to the proceedings itself, besides improper conduct of the enquiry proceedings, lack of evidence against him and the findings being unsupported by material evidence.

3.5 However, the disciplinary authority/Managing Director of the Corporation vide his proceedings dated 11.11.2019 imposed the penalty of dismissal from service on the petitioner along with forfeiture of 50% of Gratuity payable to him,

notwithstanding various lacunae pointed out by the petitioner. The order of dismissal dated 11.11.2019 is the subject matter of challenge in this Writ Petition.

4. In support of the challenge, number of grounds have been raised including the delay in initiation of disciplinary proceedings and also proportionality of punishment of dismissal from service.

5. Notice was ordered in the Writ Petition and pursuant to the same, Mr.S.Vijay Kumar, learned counsel entered appearance on behalf of the Corporation. The Writ Petition was heard earlier on few occasions and on such occasions, the learned counsel for the petitioner submitted that the impugned punishment was not sustainable in law, since the very initiation of disciplinary action against him was invalid and arbitrary for the reason that the alleged lapses committed by the petitioner pertain to the year 2010 and the charge memorandum was issued on 08.05.2018 after a period of 8 years. Unexplained delay of 8 years has by itself caused grave prejudice to the petitioner, as the petitioner was promoted to a higher posts and transferred to several other places and the facts which formed the basis of the charge while he was acting as Area Manager at Coimbatore in 2010, could not be ascertained or verified with certainty for his effective defence to the charge. Therefore, the learned counsel submitted that ordering disciplinary proceedings against the petitioner after 8 years, was illegal. The learned counsel inter alia raised several contentions that there was absolutely no evidence and also there was no factual or legal basis for issuing the charge memorandum against him. The learned counsel further submitted that for a single act of misconduct, the imposition of harshest punishment of dismissal from service is grossly disproportionate not commensurate with the nature of the misconduct.

6. Be that as it may, when the matter is taken up for hearing today, the learned counsel appearing for the Corporation would submit that the petitioner having submitted a memorandum of appeal to the Chairman of the Corporation on 23.12.2019 in terms of Corporation Regulations and without waiting for an order in the appeal, the petitioner had rushed to this Court and invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. According to the learned counsel, the appellate authority in this case is the Board and the Board would pass appropriate orders in the appeal within reasonable time.

7. At this, the learned counsel for the petitioner expressed certain reservation as to the effective nature of appeal to the Board in this case in view of the fact that both

Managing Director and the Chairman of the Corporation is the same person and on being the Disciplinary Authority, he was the author of the impugned order. With the participation of the Chairman and the Managing Director in the Board proceedings, disposal of the appeal would be an empty formality.

8. In response to the above, the learned counsel for the Corporation has fairly submitted that there is substance in the reservation expressed on behalf of the petitioner and requested the Court to direct the Chairman-cum-Managing Director not to participate in the Board proceedings when the appeal of the petitioner is to be deliberated upon. If any direction is issued by this Court in this regard, the same would be complied with.

9. The learned counsel for the petitioner would submit, that in view of the submissions of the learned counsel for the Corporation, he is agreeable for disposal of the Writ Petition by directing the Appellate Authority/the Board, sans participation of the Chairman-cum-Managing Director to consider the appeal and dispose of the same within time frame, after affording an opportunity of personal hearing to the petitioner by the Board.

10. In view of the above narrative, there shall be a direction as under:

(i) The Appellate Authority, namely, the Board to dispose of the appeal of the petitioner dated 23.12.2019 on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. The Board is directed to afford an opportunity of personal hearing to the petitioner on a date to be fixed by them and issue advance notice to the petitioner for his appearance to enable the petitioner to appear and explain his position vis-a-vis the disciplinary proceedings initiated against him and the imposition of the penalty. In the Board deliberation to be constituted for the purpose, shall not include the participation of the Chairman and the Managing Director.

11. After personal hearing, the Board shall pass final orders, particularly taking into consideration the nature of the charge levelled against the petitioner, the delay in initiation of the disciplinary proceedings, more particularly, the quantum of penalty imposed on the petitioner, which, in the opinion of this Court, prima facie appears to be disproportionate and not commensurate with the gravity of the misconduct alleged against the petitioner. The first respondent is directed to pass appropriate orders within the time stipulated and this Court trusts that the appeal of the petitioner would be considered sympathetically and also in

deference to the prima facie opinion of the Court as indicated above in the circumstances of the case.

12. The writ petition is disposed of, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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Regional Office,
No.8, Mayor Sathyamoorthy Road,
Chetpet, Chennai-600 031

+lcc to Mr.Vijayakumar, Advocate in SR.26515

MG(CO)
RV (07/09/2020)

W.P.No.34402 of 2019

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