

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.02.2021

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P. No.2828 of 2021

and

W.MP.Nos.3165 to 3167 of 2021

T.Marimuthu

... Petitioner

Vs.

1.The Managing Director /Appellate Authority,
Tamil Nadu Civil Supplies Corporation,
Chennai 600 010.

2.The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Sivagangai Region,
Sivagangai 639 562.

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the record on the file of the 1st respondent in Proceedings NO.Varth11/57135/2019 dated 05.03.2020, quash the same and consequently direct the respondents to pay the petitioner's Earned Leave Encashment and other terminal benefits.

For Petitioner : M/s. B. Poonghulali

For Respondents : No appearance

ORDER

The petitioner has come forward with the present writ petition praying to call for the record on the file of the 1st respondent in Proceedings NO.Varth11/57135/2019 dated 05.03.2020, quash the same and consequently direct the respondents to pay the petitioner's Earned Leave Encashment and other terminal benefits.

2. Heard the submission made by the learned counsel appearing on either side and perused the materials available on record.

3. The sum and substance of the issue on hand is that the petitioner is said to be responsible for replacing substandard

jaggery in respect of 11440 packets, for which the petitioner was proceed with. There was an ample evidence to show that there is a delivery challan replacing the jaggery, for which acknowledgment was obtained. The memo was with regard to return of jaggery. Pursuant to the incident, a show cause notice was issued to the petitioner on 05.03.2014 and the petitioner has submitted his explanation and there was an order of recovery at the first instance to the petitioner and the 2nd respondent. This was questioned by way of writ petition in W.P.No.13633 of 2014 and the petitioner had obtained a favourable interim order. Finally the writ petition came to be dismissed on 05.12.2019 with the following observation:

"10.Writ petitioner without exhausting the appellate remedy has approached this court and the same cannot be entertained. Thus the writ petition stands disposed of on the following terms:

(i) it is open to the petitioner to prefer an appeal before the Appellate Authority within a period of three weeks from the date of receipt of a copy of this order.

(ii) On such appeal being preferred within the aforesaid period, the respondents are directed to consider the same on merits and in accordance with law as expeditiously as possible within a period of twelve weeks.

(iii) At the time of admission, this Court has granted interim stay and the same is in force till date. Hence the impugned order shall be kept in abeyance till the disposal of the Appeal.

With the above terms, this petition stands disposed of. NO costs. Consequently, the connected miscellaneous petition is closed.

4. The order of recovery, which was imposed on the petitioner, was kept in abeyance till the disposal of the Appeal, as per the aforesaid order and the petitioner, aggrieved by the order of the 2nd respondent, preferred an appeal to the 1st respondent and the 1st respondent has confirmed the order on 05.03.2020 which is the subject matter of the present writ petition. In the interregnum, the petitioner has attained the age of superannuation on 31.03.2016 and he was permitted to retire on attaining the age of superannuation, without prejudice to the outcome of any misconduct, charges or recovery proceedings, if any, for the unaudited period. The petitioner's terminal benefit alone was not settled and after the final order in the writ petition and the Appellate order which is the subject matter of the writ petition, the recovery order for a sum of Rs.2,65,079/- passed by the original authority, was

confirmed. The only ground urged by the petitioner is that there is a violation of principle of natural justice.

5. A reading the original order and the appellate order make it very clear that a detailed enquiry was conducted and the petitioner was given an opportunity to defend the memo and based on the documentary evidence, the recovery order has been passed, which was confirmed by the Appellate Authority. Be that as it may, the Appellate Authority has given detailed reasons for finding fault with the petitioner, imposed recovery on the petitioner as stated supra, which is based on the material documents and this Court finds no substance in the submission of the petitioner.

6. On a careful scrutiny of the entire averments, I find that there is no violation of principle of natural justice and even assuming for the sake of argument, there is a discrepancy in the order of the Appellate Authority, it can be construed as minor in nature, in a case involving replacement of substandard jaggery to the tune of 11440 packets, especially when the said fact is not disputed. On mere technicalities, the petitioner cannot be allowed to go scotfree, more so, when there is a loss to the Corporation to an extent of Rs.2,65,079/- and the act of the petitioner in replacing substandard jaggery causes revenue loss not only to the Corporation, but also becomes menace to the public at large, who, without knowing its quality, would have bought it from different forum supplied by the Corporation and consumed it. This Court feels that the punishment imposed on the petitioner for the loss and supply of substandard jaggery is not proportionate to the misconduct committed by the petitioner, as there is adulteration everywhere in the State and the persons, like the petitioner are the root cause for the free movement of adulteration / substandard goods.

7. In fine, finding no merits in the argument of the petitioner, the Writ Petition is dismissed as devoid of merits. No costs. Consequently connected miscellaneous petitions are closed.

s/d-

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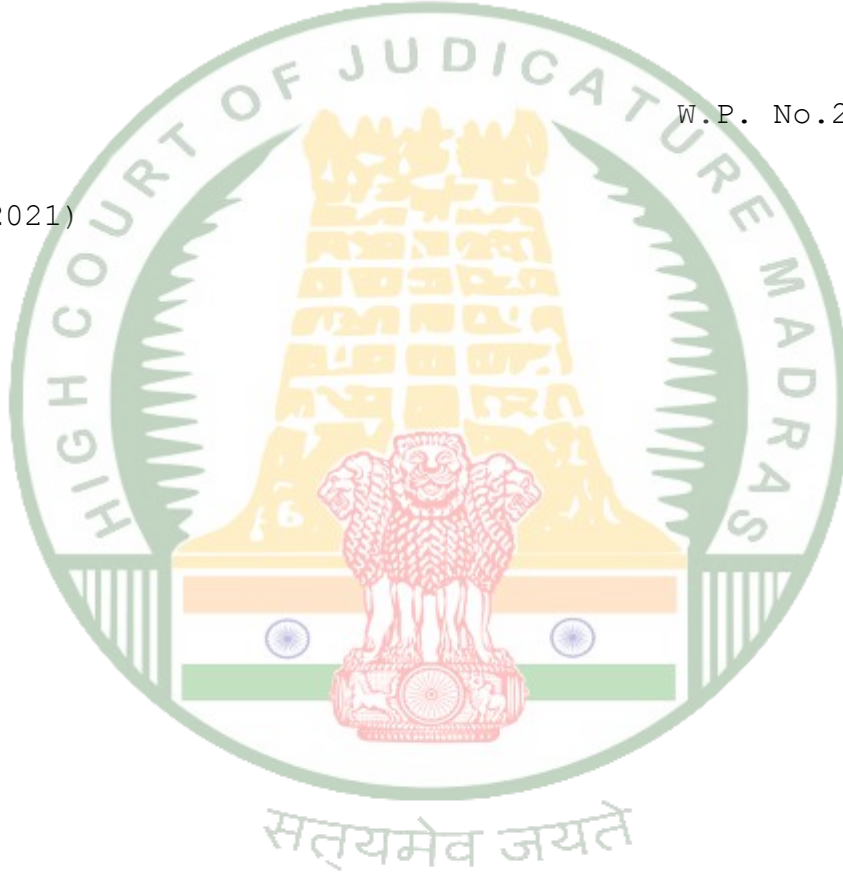
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+1 Cc to M/s.D. Geetha, Advocate sr 7754.

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KV(CO)
SP(01/04/2021)



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