



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM:

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THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.15951 of 2009

- 1.P.Alagirisamy (deceased)
- 2.Tmt.Krishnaveni
- 3.Thiru.A.Raja
- 4.Thiru.A.Balaji
- 5.Tmt.Valliathal

..Petitioners

(P2 to P5 substituted as Legal Heirs of the deceased P1 as per order dated 01.03.2019 made in M.P.No.1 of 2013)

vs.

- 1.Government of Tamil Nadu,
Rep. By Secretary to Government,
Handlooms, Handicrafts Textiles
and Khadi Department,
Chennai-600 009.
- 2.The Chief Executive Officer,
Tamil Nadu Khadi and Village Industries Board,
Kuralagam, Chennai-600 108.
- 3.The Regional Deputy Director,
Khadi & Village Industries Board,
Tiruppur-3.
- 4.The Assistant Director,
Khadi & Village Industries Board,
Tiruppur-3.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent herein relating to pro Na.ka.No.76405/E3(2)/94 dated 05.06.1995, as confirmed by the first respondent in Pro.Na.Ka.No.53395/E3(3)95 dated 06.06.1996, quash the same and issue consequential directions to the respondents herein to reinstate the petitioner in service with all consequential service and monetary benefits.



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For Petitioner : Mr.S.Balakrishnan
for M/s.M.Ravi

For Respondents : Mr.T.Arunkumar,
Additional Government Pleader for R1

O R D E R

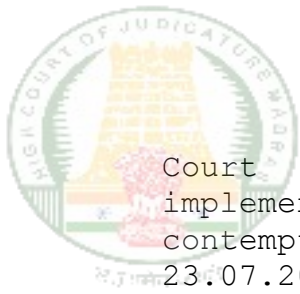
The petitioner, challenging the impugned order of dismissal passed by the second respondent dated 05.06.1995 as well as the rejection of his appeal by the first respondent dated 06.06.1996, has filed the present writ petition.

2. The facts of the case, briefly narrated, are as follows:

2.1. The case of the petitioner is that he joined service in the Tamil Nadu Khadi and Village Industries Board as Peon on 10.12.1984 and later on promoted as Junior Assistant. While he was serving as Junior Assistant at Amaravathipalayam Sub Centre of the Board, disciplinary proceedings were initiated against him by the first respondent, vide proceedings dated 14.07.1994, which ultimately culminated into an order of dismissal from service dated 05.06.1995 passed by the second respondent. Aggrieved by the said order, the petitioner preferred an appeal before the first respondent and the same was rejected by the first respondent, vide order dated 06.06.1996.

2.2. Challenging the aforesaid orders of dismissal from service as well as the rejection of appeal, the petitioner had earlier filed a writ petition in W.P.No.13977/1996 and this Court, vide order dated 30.01.2004, has allowed the writ petition by quashing the order of removal from service and held that the disciplinary proceedings conducted by the respondents are contrary to the procedure laid down and also in violation of the principles of natural justice and further ordered that the petitioner is entitled to reinstatement and also eligible for backwages, if he demonstrates that he has been gainfully employed elsewhere.

2.3. It is further averred by the petitioner that due to inadvertence, the disciplinary authority which passed the order of dismissal from service i.e., The Chief Executive Officer, Tamil Nadu Khadi & Village Industries Board, Chennai / second respondent herein and the first respondent herein/appellate authority were not impleaded as parties / respondents in W.P.No.13977 of 1996 and therefore, the aforesaid order of this



Court dated 30.01.2004 in W.P.No.13977 / 1996 was not implemented by the respondents and therefore, he preferred a contempt petition in Cont.P.No.832 / 2006 and vide order dated 23.07.2007, this Court has closed the contempt petition on the ground that the petitioner has not impleaded the necessary parties in the writ petition.

2.4. The petitioner has also submitted representations dated 10.09.2007 and 28.04.2008 to the second respondent bring to his notice the order dated 30.01.2004 in W.P.No.13977 of 1996 and requesting him to implement the said order by reinstating him in service and to disburse backwages and since there was no response from the respondents for a long time, the petitioner, once again made a challenge to the very same impugned orders by filing the present writ petition.

3. The first respondent has filed a detailed counter affidavit, wherein it has been stated as under:

3.1. The petitioner while serving in the Khadi Sub-Centre, Amaravathipalayam, he stayed away from duty w.e.f. 21.4.1994 without submitting any leave application or prior information to his superior officers and also failed to hand over the key of the building in which the above unit functioned and failed to turn back to duty inspite of several notices and therefore, the production of the unit was adversely affected. On verification of stocks held during April, 1994 by the State Trading Scheme Unit, huge shortage of stock to the tune of Rs.1,18,357.55 was noticed, for which the petitioner was responsible.

3.2. Since the Unit could not function for want of key and the petitioner failed to handover the key despite several reminders, the Unit was opened in the presence of important persons in that locality and the Khadi Inspector. At the time of stock verification, shortage to the tune of Rs.37,925.85 was noticed and totally, shortage of stock to the tune of Rs.1,56,283.40 was noticed in the Unit in which the petitioner served. Therefore, for the above lapses, heavy shortages and consequent loss to the Board, disciplinary proceedings were initiated against the petitioner and after following all formalities, he was removed from service, vide order dated 05.06.1995 by the second respondent, against which he preferred an appeal before the first respondent, which was also got rejected, vide order dated 06.06.1996.

3.3. Though the petitioner had obtained favourable orders dated 30.01.2004 in W.P.No.13977 of 2006 in the challenge made



to the aforesaid impugned orders, the authority who has to comply with the orders passed in the judgment was not at all cited as respondent in the above writ petition. As regards disciplinary proceedings, seven charges were framed under Regulation 34(b) of the Tamil Nadu Khadi and Village Industries Board's Service Regulations on 14.07.1994 and the petitioner received the charges on 17.07.1994. A questionnaire form was furnished along with the charge memo to the petitioner and he was requested to fill in the questionnaire form, by indicating the witnesses to be enquired by him before the Enquiry Officer. The petitioner furnished his explanation on 22.11.1994. In the questionnaire form enclosed by the petitioner along with the explanation, he had not indicated any persons to be enquired by him and he had not even insisted for any oral enquiry. In the explanation to the charges, the petitioner has accepted his fault and stated that he is responsible for the charges.

3.4. The petitioner had also furnished a written statement agreeing to recover the shortage amount caused due to his act from his salary at the rate of Rs.1,000/- per month and stated that he will settle the entire loss amount to the Board within ten years.

4. The learned counsel for the petitioner would submit that the impugned orders have been passed in flagrant violation of the principles of natural justice by not furnishing legal questionnaire form so as to give opportunity to adduce oral and documentary evidence and also not given opportunity to show cause as to why extreme penalty should not be imposed on the petitioner, when the service regulations of the Board specifically provides for the same and therefore, on that ground, the impugned orders are liable to be set aside. It is further submitted by the learned counsel for the petitioner that pending the writ petition, the writ petitioner died and therefore, his legal heirs were brought on record as petitioners 2 to 5 and at this stage, the petitioners 2 to 5, who are the legal heirs of the deceased writ petitioner, are entitled for backwages, notional promotion as well as other terminal benefits of the deceased/writ petitioner.

5. Mr.T.Arunkumar, learned Additional Government Pleader for the first respondent has drawn the attention of this Court to the various portions of the counter affidavit and would submit that the statement of the petitioner before the disciplinary proceedings clearly proves that he had misappropriated the stocks held in his control and having repeatedly informed the disciplinary authority that he needs no



enquiry or witnesses to be cross examined, the present statement of the petitioner that fair opportunity was not given to defend his case is totally contrary and without impleaded the respondents as necessary parties in the writ petition filed earlier, the petitioner has no right to question the respondent/Board regarding non-implementation of the earlier order passed by this Court and therefore, prays for dismissal of this writ petition.

6. This Court has considered the rival submissions and also perused the materials placed before it.

7. It is not in dispute that the orders impugned herein was already challenged by the petitioner in W.P.No.13977 of 1996 and this Court, vide order dated 30.01.2004, has allowed the said writ petition by setting aside the impugned orders and also directed that the petitioner is entitled to get reinstatement with backwages and the said order has become final. However, the said order could not be implemented by the respondents on account of the fact that the petitioner has not arrayed the Disciplinary Authority / second respondent herein, namely Chief Executive Officer, Tamil Nadu Khadi and Village Industries Board, Chennai as well as the first respondent /appellate authority as necessary parties in the said writ petition. It is needless to point out that it is the duty of the petitioner to array the necessary parties in the writ petition and unless the necessary parties are arrayed as respondents, this Court cannot come to the aid of the petitioner. There is also fault on the part of the respondents 3 and 4 for having contested the matter in the earlier writ petition and they have not disclosed of the said fact before the learned Judge at the time of passing the order and only at the time of hearing the contempt petition for non-compliance, it was brought to the notice of the learned Judge that the petitioner has not arrayed the necessary parties in the writ petition. In view of the mistake committed by both the parties, now the second round of litigation has arisen before this Court.

8. In the earlier order passed by this Court dated 30.01.2004 in W.P.No.13977 of 1996, the learned Judge has rightly observed that in the disciplinary proceedings, the Disciplinary Authority has not followed the procedures contemplated under the Tamil Nadu Khadi and Village Industries Board Service Regulations and further observed that it was clear that even if the petitioner had not desired an oral enquiry, he shall be heard before passing final orders and the report of the enquiry or opportunity of personal hearing has not been provided



and it was also clear from the original order dated 05.06.1995 that the petitioners statement was recorded and without further enquiry, charges were held to be proved and when the petitioner's request for questionnaire form was not acceded to, the petitioner could not be said to have had a fair opportunity to defend his case and the disciplinary proceedings conducted by the respondents are contrary to the procedure laid down and there is a violation of principles of natural justice and therefore, on that ground, the learned Judge has allowed the said writ petition. This Court is also in respectful agreement with the aforesaid views of the learned Single Judge.

9. A perusal of the impugned order passed by the second respondent would disclose that no notice has been served, no opportunity of personal hearing was afforded, enquiry report has not been furnished and the procedures contemplated under the Khadi Board Service Regulations were not followed before passing the impugned order and there is a clear violation of the principles of natural justice and therefore, the impugned orders are liable to be set aside.

10. Accordingly, this Court is inclined to pass the following order:

(i) The impugned order of the second respondent in Pro. Na.Ka.No.76405/E3(2)/94 dated 05.06.1995, as confirmed by the first respondent in Pro.Na.Ka.No.53395/E3(3)95 dated 06.06.1996 are set side.

(ii) Pending the writ petition, the writ petitioner died and the petitioners 2 to 5, being his legal heirs, are brought on record and in view of the demise of the writ petitioner, reinstatement cannot be given as per the earlier orders of this Court.

(iii) As regards backwages, due to long passage of time, this Court is not inclined to grant backwages and however, the petitioner is entitled to get notional promotion, which he might be eligible, by taking into consideration the period from the date of dismissal from service till the date of his superannuation as duty period and based on the same, the respondents shall calculate and disburse the terminal benefits to the petitioners 2 to 5 / legal heirs, after deducting the loss accrued to the respondent Board, as the writ petitioner has already agreed before the disciplinary authority that the



shortage amount can be recovered from him. The learned counsel for the petitioner has also agreed for the same.

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(iv) The petitioners 2 to 5 shall file an appropriate application, within two weeks from the date of receipt of a copy of this order, before the second respondent for disbursement of the aforesaid terminal benefits of the deceased / writ petitioner and on such application being filed, the second respondent is directed to settle the entire terminal benefits as stated above within a period of twelve weeks thereafter.

11. The Writ Petition stands allowed with the above directions. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

Jvm

To

1.The Secretary to Government,
Government of Tamil Nadu,
Handlooms, Handicrafts Textiles and Khadi Department,
Chennai-600 009.

2.The Chief Executive Officer,
Tamil Nadu Khadi and Village Industries Board,
Kuralagam, Chennai-600 108.

3.The Regional Deputy Director,
Khadi & Village Industries Board,
Tiruppur-3.

4.The Assistant Director,
Khadi & Village Industries Board,
Tiruppur-3

+1 CC to The Government Pleader sr 63480.

W.P.No.15951 of 2009

KSM(CO)
SP(15/12/2021)