IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.35842 of 2004

S.Muthukumar ...Petitioner

-Vs-

1.Senior Regional Manager
Tamil Nadu Civil Supplies Corporation Ltd.,
Madras-86.

2.The General Manager (Admn)
Tamil Nadu Civil Supplies Corporation Ltd.,
Madras-10.

3.The Chairman & Managing Director
Tamil Nadu Civil Supplies Corporation Ltd.,
Kilpauk, Madras-10. ...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the 3rd respondent made in his proceedings No.G1/91267/03 dated 23.01.2004 and quash the same.

For Petitioner : Mr.C.Prabhagaran
For Respondents : Mr.S.Ramachandran
Standing Counsel

O R D E R

The prayer sought for herein is to call for the records of the 3rd respondent made in his proceedings No.G1/91267/03 dated 23.01.2004 and quash the same.

2. That the petitioner was working as Point Clerk at the respondent organization ie., Tamil Nadu Civil Supplies Corporation. While so, disciplinary proceedings were initiated against him. In the said disciplinary proceedings, a charge memo was issued on 14.10.1991, where a charge has been levelled against the petitioner stating that, during the surprise inspection at Anna Nagar-II Godown on 26.08.1991 by the Manager (S&M), it was found that there was under-weighment of the

standardized bags of RRSF of 75 Kgs capacity kept in Stock ready for loading. He made the test weighment in the same platform scale which was earlier used for standardisation of these bags. Out of these 50 standardized bags test check, the Manager (S&M) has noticed an abnormal shortage of 53 kgs as follows:-

Stock to be available for 50 bags	-	3750.00 Kgs.
Stock verified on weighment	-	3697.00 Kgs
Shortage	-	53.00 Kgs

3. Based on the said charge, enquiry was conducted and after having completed the enquiry by adopting the procedure as contemplated under the relevant Service Rules, the Enquiry Officer found that, the charges were proved, based on which punishment was awarded. It seems that an issue was raised by the petitioner that, the original order inflicting punishment against the petitioner was passed by an authority without jurisdiction and based on which subsequently an order has been passed by the Chairman and Managing Director of the respondent Corporation by an order dated 23.01.2004, where the respondent Corporation / disciplinary authority, in view of the proven charge against the petitioner, has decided to inflict the punishment of stoppage of increment for three years with cumulative effect. The said order passed by the authority, confirming the punishment already awarded by the disciplinary authority dated 21.09.1992, is under challenge in this writ petition.

4. Mr.Prabhagaran, learned counsel for the petitioner would submit that, the petitioner was only working as a Point Clerk and all the 50 bags which were subjected to the test check, were closed bags and it is not the allegation made against the petitioner that he has taken the rice from those bags for his personal gain and if at all any minor variation is found in the weighment, it depends upon the quality of the rice bag as well as the error that would be possible in the weighing machine. Therefore, for that reason the petitioner, who is only a Point Clerk in the Godown cannot be blamed for any shortage of rice. Therefore, the said reason or charge could not have triggered the disciplinary authority as well as the appellate authority to inflict the punishment of stoppage of increment for three years with cumulative effect, as the same had huge impact on the services and monetary benefits including the pensionary benefits of the petitioner. Therefore, the learned counsel for the petitioner seeks the indulgence of this Court.

5. However, Mr.S.Ramachandran, learned Standing Counsel appearing for the respondents, by relying upon the Charge Memo issued against the petitioner as well as the impugned order and also relying upon the averments in the counter affidavit has stated that, the petitioner himself, at the time of the check measure by the Manager concerned, had admitted the lapses in his statement, which was recorded by the inspecting officials and therefore, the question of any further proof to prove the charge against the petitioner would not arise. Therefore, as per the proven charge, the punishment was given against the petitioner which itself is a very minimum punishment and even on the theory of proportionality, the same need not be disturbed or modified.

6. I have considered the rival contentions of the learned counsel for the petitioner as well as the learned counsel for the respondents, and have perused the materials placed on record.

7. As has been rightly pointed out by the learned counsel for the respondents, the charge had been proved, as the petitioner himself had admitted the shortage of rice.

8. The first defence taken by the counsel for the petitioner is that, it was not the charge against the petitioner that he has been instrumental for the shortage of rice for his personal gain. He also took the defence that, due to various reasons the rice already packed in gunny bags, there may be small variation and even due to some variation in the scale where these bags were weighed, this kind of small variation may occur. Therefore, he also pointed out that, out of 50 bags at least one bag was having more weightage of rice more than the expected weight of 50 Kgs and this kind of small variation could be possible, for which the petitioner cannot be blamed and therefore, the said shortage cannot be treated as a lapse on the part of the petitioner. Hence, the question of admitting the fact or proving the charge for which the punishment inflicted against the petitioner as claimed by the respondents cannot be countenanced.

9. Though the said submissions of the learned counsel for the petitioner appears to be appreciable, this Court feels that, if at all any variation is found in one or two gunny bags that can be taken as a routine mistake or routine lapse or for reasons of variation in weightment or variation in the scale, that could have occurred.

10. However, majority number of bags out of the 50 bags, that were checked on that day, were under weight and more particularly, the lapse was admitted by the petitioner in his statement.

11. Therefore, this Court feels that, the charge framed against the petitioner has been proved, for which the petitioner is liable to be punished. However, the petitioner after having rendered long years of service, has also retired from service during the pendency of the writ petition during the year 2011.

12. The present punishment of stoppage of increment for three years with cumulative effect certainly will have a huge bearing on the financial benefits including the pensionary benefits. Therefore, this Court feels that, for the said proven charge, though the petitioner is liable to be punished, the punishment awarded against the petitioner ie., withholding of increment for three years can be slightly modified by reducing the same into two years with cumulative effect or it can be confirmed with three years without cumulative effect, either of which may be more beneficial to the petitioner, can be imposed.

13. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

14. That the impugned order of punishment is to be sustained. Accordingly, it is sustained with the following modification. That the punishment awarded against the petitioner imposing withholding of increment of three years with cumulative effect shall either be modified as three years without cumulative effect or two years with cumulative effect, whichever is more beneficial to the petitioner in the calculation of pensionary benefits and shall be imposed. Accordingly, the said benefits shall be calculated and paid to the petitioner.

15. With the aforesaid directions, the impugned order is sustained and the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KST

To

1.Senior Regional Manager
Tamil Nadu Civil Supplies Corporation Ltd.,
Madras-86.

2.The General Manager (Admn)
Tamil Nadu Civil Supplies Corporation Ltd.,
Madras-10.

3.The Chairman & Managing Director
Tamil Nadu Civil Supplies Corporation Ltd.,
Kilpauk, Madras-10.

+1cc to Mr.S.Ramachandran, Advocate, S.R.No.7963
+1cc to Mr.C.Prabakaran, Advocate, S.R.No.7791

W.P.No.35842 of 2004

RSV(CO)
KKV/26/02/2021