IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 10.03.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.38509, 38513, 38514, 38515, 38516
& 38517 of 2005 and WP.MP. No.41241 to 41245 of 2005

W.P.No.38509 of 2005, 38513 to 31517 of 2005

R. RADHAKRISHNAN (in all WP's) ..Petitioners (in all WP's)

Vs.

1.Chairman and Managing Director,
Tamil Nadu Civil Supplies Corporation Ltd.,
Thambusamy Street,
Kilpauk, Chennai - 600 010. ..1st Respondent (in all WP's)

2.Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation Ltd.,
Nagapattinam. ..2nd Respondents in W.P.No.385091,
38514 to 38517/2005

3. The Sub Regional Manager,
Tamil Nadu Civil Supplies Corporation Ltd,
Mayladuthurai. ..2nd Respondent in WP No.38513/2005

Common Prayer in WP No.38509,38513 to 38517 of 2005 : Petition filed under Article 226 of Constitution of India praying for issuance of a writ of certiorari calling for the records of the second respondent relating to his orders in Na.Ka.Nos. 20752/03/S2 dated 25.06.2004, RC.No.41/94/136 dated 09.08.1995, S1/1400/04 dated 30.07.2004, 20734/2003/S2 dated 04.06.2014, S6/1539/04 dated 01.09.2004 and S1/1401/04 dated 30.07.2004 respectively and quash the same.

For Petitioner : Mr.S.Venkataraman (in all cases)

For 1st Respondent in: Mr.C.Munusamy
W.P.No.38509 of 2005 Special Government Pleader

For 2nd Respondent in
W.P.No.38509 of 2005 : Mr.C.Selvaraj

For Respondents : Mr.C.Munusamy
in all other WPs Special Government Pleader

COMMON ORDER

Since the issue raised in all these writ petitions is common or the same and all the these writ petitions were filed by the same petitioner against the same respondents, with the consent of the learned counsel appearing for both sides, all these writ petitions were heard together and are being disposed of by this common order.

2.The petitioner was an employee of the respondent i.e., Tamil Nadu Civil Supplies Corporation and in this regard, in or about 1992-1993 or subsequently, with regard to the alleged loss sustained by the respondent Corporation due to the shortage in the stock of paddy in the godown, there had been separate disciplinary proceedings initiated against the petitioner and each of such disciplinary proceedings was initiated by issuance of show cause notice.

3.On receipt of the show cause notice, the petitioner sought for inspection of some records, however, those records, according to the petitioner, had not been shown for inspection to the petitioner and therefore, subsequently, based on the show cause notice only, the respondents proceeded to conclude the disciplinary proceedings and ultimately inflicted the punishment of recovery of the alleged loss sustained by the Corporation in each of the case from the salary of the petitioner.

4.In order to appreciate the said factor, the facts which are pertaining to W.P.No.38509 of 2005 is hereby recorded as follows:

(i) In this case, show cause notice was given on 07.02.2004, an interim reply was given by the petitioner on 12.06.2004, where, he sought for the following records:

"பார்வை முதுநிலை மண்டல மெலாளர். நாகப்பட்டினம்.∴.

ந.க.எண். 2.20752.03 நாள் 07.02.04.

பார்வையில் கானும் காரணம் கேட்கும் தாக்கத்திற்கு என்னுடைய விளக்கங்களை சமர்ப்பிக்க கீழ்காணும் சம்பந்தப்பட்ட ஆவணங்களை நான் பார்ப்பதற்கு அனுமதி வேண்டுகிறேன்.

1.அட்டி அட்டை ரிஜிஸ்டர்.
2.ஸ்டாக் லெட்ஜர்.
3.வரத்து மற்றும் அனுப்பதல் ஈரப்பத ரிஜிஸ்டர்.
4.ஸ்டாக் பார்மேசன் ரிஜிஸ்டர்,
5.வருகைப் பதிவேடு."

(ii) However, according to the petitioner, nothing was permitted to the petitioner to verify the records and straight away the impugned order of recovery was passed on 25.06.2004, where, a sum of Rs.16,055/- was found to be the loss and accordingly, the loss was calculated and directed to be recovered from the petitioner. Like that, in all the cases, similar orders were passed imposing a major penalty of recovery of the loss allegedly sustained by the Corporation against the petitioner and challenging these orders, this batch of writ petitions were filed by the petitioner.

5.Heard Mr.S.Venkataraman, learned counsel appearing for the petitioner, who would submit that, since the recovery from pay of the whole or part of the peculiar loss caused to the Corporation is a major penalty and when major penalty is imposed, the procedure to be adopted in completing the disciplinary proceedings has been contemplated in the circular issued by the respondent Corporation through its Chairman-cum-Managing Director in RC.LC1/96958/88 dated 04.04.1989 which reads thus:

"a) Show Cause notices should be issued duly highlighting the facts of each case individually the notices should act be issued in a routine manner.

b) Before passing final order sufficient opportunities should be given to the employees concerned while passing final orders, the explanation offered by the individual should not be rejected by the Senior Regional Managers / Regional Managers without any valid reasons. In the case of Paddy, the variety and season to which the Paddy found short should be specified in the Show Cause Notices issued to the employees concerned wherever shortages over and above the norms have been noticed.

c)Final orders should be passed for Recovery of the loss from an employee only after conducting due enquiry after giving full opportunity to the employees. In other words, the recovery for the storage losses noticed over and above the norm fixed should be ordered only when the culpability of the employee concerned for the loss is proved."

6.He would also rely upon Chapter V of Disciplinary Proceedings, Penalties and Appeal Regulations of the Corporation where under the heading 'Major Penalties', the following has been given.

"(iv)Recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of regulation or failure to follow instructions."

7.By relying upon these circular as well as the regulation, the learned counsel would submit that, since the recovery from pay has been ordered through the impugned order which is a major penalty, for which, as per the circular referred to above, an enquiry should have been conducted, without giving full opportunity by conducting a due enquiry since the orders impugned are passed, where the recovery has been sought for, certainly those orders shall not stand in the legal scrutiny, as absolutely the principle of natural justice has not been followed in these cases, hence on that ground also, all these impugned orders are liable to be interfered with, he contended.

8.I have heard Mr.C.Munusamy, learned Standing Counsel appearing for the respondent Corporation, who would submit that, there has been a huge loss sustained by the Corporation and therefore, those loss have to be recovered only from the erring employees like the petitioner and that is why show cause notice was issued, having receipt of the same, the petitioner has not chosen to give any reply and therefore, based on the records available with the respondent Corporation, after considering all these aspects only, the impugned orders have been passed by the respondent Corporation and as against the impugned orders, the petitioner already filed appeals before the Appellate Authority which are pending. Therefore, at this juncture, the veracity of the orders cannot be further gone into by this Court in this batch of writ petitions, he contended.

9.I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10.As has been rightly pointed out by the learned counsel appearing for the petitioner, in all these cases, since in the impugned orders in every case, recovery has been sought for, which is a major penalty, for which, the procedure as contemplated under the circular dated 04.04.1989 is to conduct due enquiry and after giving full opportunity by conducting the due enquiry alone, final orders should be passed for recovery of the loss from an employee.

11.This has been specifically stated at Clause (c) of the said circular dated 04.04.1989, as has been quoted herein above, therefore, this Court feels that, without conducting an enquiry, the major penalty of recovery ought not to have been inflicted against the petitioner, as has been done by the respondents through the impugned orders in all these writ petitions. Therefore, on that sole ground itself, the impugned orders cannot be sustained, hence, they are liable to be quashed.

12.In view of the above, the impugned orders in respect of all the cases are quashed and consequently, the matters are remitted back to the respondents for conducting a fresh enquiry, if they desire to do so.

13.In this context, though it was canvassed by the learned counsel appearing for the petitioner that, the petitioner retired from service on 31.01.2012, therefore, after 9 years of his retirement, the matters cannot be once again re-heard by way of conducting an enquiry.

14.Be that as it may, in view of the pendency of the writ petitions from 2005 till date and in the meanwhile, the petitioner has retired from service, it cannot be contended that, the employer has lost its opportunity to conduct an enquiry for imposing the major penalty of recovery.

15.Since the impugned orders are quashed only on the ground of violation of principle of natural justice or violation of the procedure, as has been contemplated under the regulation as well as the circular, this Court feels that, on merits of the case, as to whether the alleged loss sustained by the respondent Corporation has really been sustained because of the inaction or action on the part of the petitioner, is to be unearthed only by conducting an enquiry. Therefore, the said plea raised by the petitioner is rejected and the matter is remitted back to the respondents for conducting a fresh enquiry.

16.Once the respondent Corporation decided to conduct an enquiry, notice shall be given immediately to the petitioner and notice, if anything received by the petitioner, he shall cooperate with the respondents to complete the disciplinary proceeding including participating in the enquiry and such enquiry shall be completed within a period of three months from the date of receipt of a copy of this order. It is made clear that, the entire procedure as contemplated under the circular and regulation shall be scrupulously followed without fail.

17.With these directions, these Writ Petitions are disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

Sgl

To

1.Chairman and Managing Director,
Tamil Nadu Civil Supplies Corporation Ltd.,
Thambusamy Street,
Kilpauk, Chennai - 600 010.

2.Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation Ltd.,
Nagapattinam.

3.The Sub Regional Manager,
Tamil Nadu Civil Supplies Corporation Ltd,
Mayladuthurai.

+6cc to Mr.S.Venkataraman, Advocate SR.No.15698 to 15703

+1cc to Mr.C.Selvaraj, Advocate SR.No.15135

+1cc to Government Pleader SR.No.16105

W.P.Nos.38509, 38513, 38514, 38515, 38516 & 38517 of 2005

AJS(CO)
GMY(15/04/2021)