



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.8152 OF 2021

AND

W.M.P.NO.8714 OF 2021

V.Rajendran

...Petitioner

Vs.

1.Tamil Nadu Civil Supplies Corporation,
Rep. by its Managing Director,
10, Thambuswamy Road, Chennai-10.

2.Tamil Nadu Civil Supplies Corporation,
Rep. by its Regional Manager,
Pudukkottai Region, Pudukkottai-622 001.

3.Tamil Nadu Civil Supplies Corporation,
Rep. by its Senior Regional Manager,
Tiruvarur Region, Tiruvarur-613 701.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the Memo NA KA E1/3314/2013, dated 24.01.2019 of the second respondent herein and quash the same.

For petitioner : Mr.S.Venkataraman

For respondents : Mr.L.P.Shanmugasundaram

ORDER

This Writ Petition is filed praying for issuance of a Writ of Certiorari to call for the records relating to the Memo NA KA E1/3314/2013, dated 24.01.2019 of the second respondent herein and quash the same.

2. The petitioner was employed as Assistant Manager (Quality Control) under the control of the second respondent and he retired from service on 31.05.2014. His retirement was subjected to recovery action pending against him for causing loss to the respondents-Corporation. The Corporation sought to recover the amount of Rs.5,97,230/- against the petitioner.



Challenging the same, the present Writ Petition has been filed for the relief stated supra.

3. The learned counsel for the petitioner submitted that, while subjecting the petitioner to recovery action, no principles of natural justice has been followed at all. According to him, unless the enquiry is conducted and the culpability is fixed, the respondents cannot straightaway recover the amount of loss accrued to the respondents/Corporation.

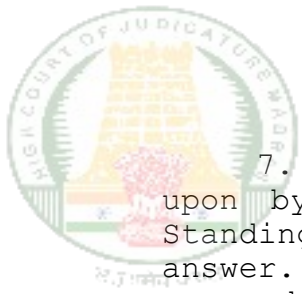
4. In this regard, the learned counsel drew the attention of this Court to the Circular in R.C.L.C.1/96958/88, dated 04.04.1989 issued by the Chairman and Managing Director of the Corporation. A detailed procedure has been delineated in the said Circular and it has been given a complete go-by. The relevant portion of the same reads as under:

"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."

5. According to the learned counsel, the above procedure has not been followed in this case, and therefore, on this short ground alone, the Writ Petition is liable to be allowed and the impugned recovery order to be set aside.

6. In response to the Writ Petition, the learned Standing Counsel appearing for the respondents/Corporation entered appearance, filed counter affidavit and also made his submissions. According to him, the petitioner was responsible for causing loss to the Corporation, and therefore, there was nothing wrong in adjusting the amount to be recovered from the retirement benefits payable to the petitioner.



7. As regards the Circular which has been heavily relied upon by the learned counsel for the petitioner, the learned Standing Counsel appearing for the respondents has no plausible answer. However, he submitted that liberty may be granted to the respondents/Corporation to proceed against the employee concerned, if they are so advised, by following due process of law.

8. At this, the learned counsel for the petitioner submitted that the issue of loss pertains to the year 2001 or so. The petitioner has also retired from service seven years before, i.e. on 31.05.2014. At this distant point of time, the respondents/Corporation may not be given any liberty to proceed against the petitioner and further, that would be an end-less exercise and the Corporation itself would not have any material to establish the case against the petitioner, namely culpability, in terms of the provisions of the said Circular, dated 04.04.1989. According to the petitioner, the respondents/Corporation, having failed to adhere to due process of law, cannot be allowed to proceed against the petitioner at this distance of time.

9. This Court heard the learned counsel appearing on either side and perused the materials available on record.

10. From the materials that are placed on record, it is an admitted fact that the procedures have not been followed as contemplated in the Circular, dated 04.04.1989. In any event, de-hors the Circular, it is imperative on the part of the Corporation to follow the rudimentary principles of natural justice before seeking to recover the huge amount from the employee concerned. In this case, the respondents/Corporation failed to follow the procedures in fulfilment of the principles of natural justice.

11. Therefore, this Court has no hesitation in allowing the Writ Petition by setting aside the impugned recovery order. But what is to be seen in this case is that there was alleged loss caused by the employee of the Corporation and whether any liberty should be given to the Corporation at all at this distant point of time, while allowing the Writ Petition on the short ground of not following the due process of law while passing the impugned order of recovery, or not ?

12. Although, there is some force in the contentions raised on behalf of the petitioner as to whether by sheer efflux of time, the respondents/Corporation would be in a position to sustain its case against the petitioner, yet, if only the Corporation has any concrete material to proceed against the petitioner, it shall proceed against the petitioner only on such consideration, by following due process of law.



13. Merely because the above liberty is given to the Corporation, it does not mean that whether they have any material or otherwise, it shall not proceed against the petitioner after lapse of several years. The Corporation shall also take into consideration the fact that the petitioner has retired from service in 2014 itself and whether it is at all fair or proper to proceed against the petitioner now.

14. The respondents/Corporation is therefore directed to weigh the pros and cons, before they choose to close the case once and for all, or to re-open the same and proceed against the petitioner afresh.

15. The respondents/Corporation is also directed to take a circumspect call in case they propose to proceed against the petitioner by following due process of law, otherwise, the respondents/Corporation can simply close the case and put an end to the recovery proceedings initiated against the petitioner.

16. For the above said reasons, the impugned order of recovery, dated 24.01.2019 is unsustainable and therefore, the same is hereby set aside. The respondents/Corporation is directed to pass appropriate orders as indicated above, within a period of eight weeks from the date of receipt of a copy of this order, or on production of a web-copy of this order, whichever is earlier.

17. With the above directions, the Writ Petition is allowed as prayed for. No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

CS

To

- 1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
10, Thambuswamy Road, Chennai-10.
- 2.The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Pudukkottai Region, Pudukkottai-622 001.



3.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Tiruvarur Region, Tiruvarur-613 701.

+1cc to Mr.S.Venkataraman, Advocate SR.No.62718

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PMK (CO)
RVM(21/12/2021)