BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD)No.16681 of 2012

T.Rathinam ... Petitioner

vs.

1.The Board of Directors,
Tamilnadu Adi Dravidar Housing
and Development Corporation Limited,
TAHDCO Head Office,
TNHB Shopping Complex,
Thirumangalam, Chennai.

2.The Managing Director,
Tamilnadu Adi Dravidar Housing
and Development Corporation Limited,
TAHDCO Head Office,
TNHB Shopping Complex,
Thirumangalam, Chennai. ... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order, dated 06.06.2011 passed by the second respondent bearing Number A4/3318/2009 along with the order passed by the first respondent (the appellate authority) in his order, dated 26.08.2012 vide Lr.No.A4/3318/2009, and quash the same as illegal and thereby directing the second respondent to settle the retirement benefits of Rs.4,05,000/- (Rupees Four Lakhs Five Thousand only).

For Petitioner : Ms.Chamundi Bose
for M/s.Kara Associates

For Respondents : No Appearance

ORDER

This Writ Petition is filed for issuing a Writ of Ceritioarified Mandamus to quash the impugned order passed by the second respondent, dated 06.06.2011 as well as the order passed by the first respondent, dated 26.08.2012 and to direct the second respondent to settle the retirement benefits of Rs.4,05,000/- (Rupees Four Lakhs Five Thousand only) to the petitioner.

2.Heard Ms.Chamundi Bose, learned Counsel for the petitioner.

3.The petitioner was serving as District Manager in Tamilnadu

Adi Dravidar Housing and Development Corporation Limited (hereinafter referred to as “THADCO”), at Madurai. He attained the age of superannuation on 30.06.2011. While he was working as District Manager, THADCO, a charge memo was issued to the petitioner on 19.03.2010 for his misconduct and irregularities while sanctioning the loan to the tune of Rs.5,00,000/- to one Women Self Help Group and for releasing excess subsidy.

4.Though the petitioner submitted an explanation vide letter, dated 29.04.2010, the petitioner was called for an enquiry and appeared before the Enquiry Officer. Thereafter, the Enquiry Officer submitted a report, dated 31.03.2011 finding the petitioner guilty of releasing excess subsidy and thereby causing loss of Rs.1,33,000/- to the Bank. Though the charge of receiving bribe was not proved, it was found that the petitioner has not followed the Rules before releasing the excess subsidy to a particular self help group. It is admitted that personal enquiry was conducted by the second respondent on 25.05.2011 and an order was passed on 06.06.2011 imposing a punishment of stoppage of increment for a period of one year with cumulative effect. The petitioner was directed to pay a sum of Rs.39,100/-. Challenging the same, the petitioner preferred an appeal before the first respondent. The first respondent, by the impugned order, dated 26.08.2012, confirmed that the charges framed by the Disciplinary Authority, namely, the second respondent, are proved and the petitioner was directed to pay a sum of Rs.93,100/- from his retirement benefits. The punishment of stoppage of increment for a period of one year with cumulative effect was also confirmed. Challenging the order of the Disciplinary Authority and the Appellate Authority, the petitioner has preferred the above Writ Petition.

5.The learned Counsel for the petitioner submitted that as per the Rules and regulations of THADCO, the District Manager, is supposed to collect proposals for schemes announced by the Government in the locality and forward the applications submitted by the eligible self help groups to the Bank. It is only the Bank which should peruse the documents and the project proposal before sanctioning the loan. It is only on the basis of the confirmation letter issued by the Bank, the eligible subsidy of 50% of the project cost will be released to the self help group. The Manager of THADCO has to get the approval of the District Collector to sanction the subsidy and on the Collector's approval, the District Manager will release the subsidy to the respective Bank. Since the procedure has been completely followed by the petitioner, the learned Counsel for the petitioner submitted that the charge against the petitioner that he was responsible for the release of excess subsidy is without any basis.

6.As per the Government policy, the subsidy is granted to self help groups belonging to SC and ST community. It is admitted that 50% of the project cost is released by M/s.THADCO to eligible self help groups. The Banks is concerned about the eligibility of persons availing financial assistance from the Bank for any project. The grant of subsidy or the eligibility of a person to get subsidy is not for the Bank to decide. When 50% of the project cost is released to any self help group, the policy of the Government will be achieved, only if the subsidy is disbursed to the eligible self help groups.

7.Though the charge against the petitioner is also for accepting the bribe to release the excess subsidy, the Enquiry Officer and the Disciplinary Authority held that the said charge against the petitioner for accepting bribe is not proved. However, with regard to the second charge relating to violation of procedure and norms, the project of the self help group indicate that the estimated project cost was only Rs.2,50,000/-. However, the project cost was manipulated and it was shown as Rs.5,00,000/-. It was proved before the Enquiry Officer that the correction had been made by the petitioner. Though the petitioner refuted the charge, he could not explain how the corrections were made to alter the project report and how the subsidy was released by taking into account the project cost as Rs.5,00,000/-. Therefore, release of excess subsidy to the tune of Rs.2,50,000/- is fraudulent and the petitioner is part of such fraud.

8.The petitioner has repeatedly submitted that he has strictly followed the procedure. A specific charge has been made against the petitioner for violating the procedure for grant of excess subsidy. A fraud has been committed in this case by releasing excess subsidy, which is equivalent to the total cost of project. Even assuming that the petitioner is not part of fraud, he is still responsible for release of excess subsidy, as the subsidy component is dealt with by the District Manager after considering the genuineness of the documents. During enquiry, it was also found that the self help group was not in possession of the land, which is essential for implementing the project. Therefore, huge money has been disbursed to a self help group, which is not eligible to get subsidy.

9.The petitioner has also alleged *mala fide*. First of all, it is be noted that the charge against the petitioner is serious. There is no irregularity in the process of enquiry. In cases relating to departmental proceedings, the doctrine of "*proof beyond doubt*", has no application and the respondents in this case have to adjudicate the issues based on the materials available. The conclusions reached by the second respondent are based on materials and records, which are sufficient to reach a conclusion.

10.Having regard to the nature of charge proved against the petitioner, the petitioner ought to have explained corrections, as this Court does not find any other reason for grant of excess subsidy to a self help group. The Disciplinary Authority and the Appellate Authority have applied their minds and it is not for this Court to re-appreciate the entire evidence, unless there is non application of mind or the evidence collected are not sufficient for establishing the charges against the petitioner. When there are sufficient evidence and materials available before the second respondent, this Court will not consider the adequacy of evidence to sustain the charges.

11.The scope of judicial review in dealing with the departmental enquiry has been considered in various decisions of Honourable Supreme Court. It has been held that the High Court sitting in Article 226 of Constitution of India is not a Court of appeal over the decision of authorities holding departmental enquiry against a public servant. In this case, no irregularity in the enquiry proceedings is highlighted or focussed by the petitioner. This Court does not find any lacuna or violation of principles of natural justice. The authorities have taken a fair decision and hence, this Court is not inclined to entertain this Writ Petition.

12.Accordingly, this Writ Petition is dismissed as devoid of any merits. No costs.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

cmr

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16.08.2021

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