BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.11.2021**

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.20969 of 2014 and
M.P(MD).No.1 of 2014

M. Rajendran :Petitioner

.vs.

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Keelpauk,
Chennai – 10.

2.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Trichy Region,
Thanjavur. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of certiorai calling for the records records relating to the impugned order passed by the 1st respondent in his proceeding Se.Mu.Aa.No.At.2/7076/2012, dated 03.07.2014 and quash the same.

For Petitioner : Mr. B. Saravanan

For respondents : Mr.R. Saravanan

O R D E R

This Writ Petition has been filed to call for the records records relating to the impugned order passed by the 1st respondent in his proceeding Se.Mu.Aa.No.At.2/7076/2012, dated 03.07.2014 and quash the same.

2. The petitioner was initially appointed as Helper in the Tamil Nadu Civil Supplies Corporation in the year 1985, then promoted as Bill Clerk in the year 1987, then as Junior Assistant and then as Assistant. Now the petitioner is working as Assistant under the 2nd respondent.

3. The petitioner was assigned to carry out physical verification of stock at the field points at the close of 31.03.2009 vide proceedings dated 24.03.2009. In the meanwhile the 2nd respondent issued a charge memo vide proceedings dated 07.07.2009, thereby three charges were leveled. The petitioner submitted explanation stating that the mistake was committed by the Bill Clerk and the petitioner has nothing to do with the charges. However, an enquiry was conducted and based on the report, the punishment of cut in the increment for one year without cumulative effect was imposed vide order dated 03.11.2010.

4. The petitioner received the copy on 21.03.2011 and preferred an appeal on 17.05.2011 and the respondent received on 19.05.2011, but the 1st respondent dismissed the appeal on the ground of delay of 250 days and no reasons was assigned for the delay. The petitioner preferred writ petition in W.P. (MD) No. 20556 of 2013 and this Court allowed the petition directing the 1st respondent to consider the appeal on merits. The 1st respondent considered the appeal and rejected stating that if the petitioner had cross checked whether the sale amount was deposited with the bank, the loss to the tune of Rs.65,610/- would have been identified and thereby confirmed the punishment.

5. The claim of the petitioner is that the petitioner was directed to conduct physical verification for the "quarter ending 31.03.2009" and the petitioner has conducted the verification for the quarter only. But the charge memo states that the petitioner has not verified from 01.04.2008 to 31.03.2009. Moreover, the petitioner was not directed to verify the banking challans and cross check whether the sale amount was deposited in the bank, but the charge memo states that the petitioner has not verified the banking challans.

6. The respondents have filed counter and in that the respondents have stated that the petitioner had submitted a physical verification report, but later on noticed that the petitioner failed to report the misappropriation committed by the Bill Clerk who has misappropirated the sale proceeds. The petitioner has miserably failed to check the accounts for the period from 01.04.2008 to 31.03.2009 while conducting 100% thorough physical verification.

7. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent and perused the typed set of papers.

8. On perusing the charge memo it is seen that the Charge No. I has been framed to include the period "between 01.04.2008 and 31.03.2009", but the proceedings, dated 24.03.2009 directed the petitioner to do "physical verification of stocks at the field points noted against each of them for the quarter 31.03.2009".

Admittedly the word "quarter" means three months period which would be from 01.01.2009 to 31.03.2009.

9. As rightly pointed out by the learned Counsel for the petitioner, there is no instructions to verify the accounts connected to the remittance of the sale proceeds with the Bank scrolls or Register maintained for the said period.

10. There is no charge, that the petitioner is directly involved but he had failed to report the misappropriation by a Bill Collector, while carry out the physical verification. This would be evident from the paragraph 11 of the counter affidavit and the relevant paragraph is culled out hereunder:

> *"I submit that with regard to grounds B and C of the affidavit, it is the duty of P.V Officer to check thoroughly the accounts and remittance details of sale proceeds into the Bank on the day to day basis. If he had checked the accounts and remittance, the malpractice done by the Bill Clerk could have been detected much earlier."*

Therefore this Hon'ble Court is of the view that on this count the petitioner ought to succeed.

11. The petitioner has also stated that the instructions, dated 24.03.2009 states to carry out physical verification, but the charge memo states that the petitioner was directed to carry out audit. Therefore on this count also the petitioner succeed.

12. However, as rightly pointed out by the respondents the tabulation stated in the charge memo, from the serial number 2 to 12 would indicate that the quantity of the stock is less. This would be evident if the proper physical verification is carryout. In the instructions, dated 24.03.2009 in paragraph no. 9 and 16 it has been stated that if any abnormal shortage or excess is noticed the same should be reported. It is also stated that the previous report "opening balance" ought to be taken into account while doing physical verification. If the petitioner had taken the previous report opening balance then the petitioner would have noticed the missing quantity. It is pertinent to state that the missing quantity is not in tones but on lesser quantity. Even though the missing quantity is less, this Court is of the view that the petitioner ought to have reported the same.

13. For the reasons and discussions stated above, this Court is of the view that the punishment ought to be reduced. Hence the punishment of "one year cut in the increment without cumulative effect is reduced to "three months cut in the increment without cumulative effect".

14. The writ petition is allowed partly and no order to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

trp

To

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
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Chennai - 10.

2.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Trichy Region,
Thanjavur.

+1 CC to M/s.R.SARAVANAN, Advocate (SR-34365[F] dated 12/11/2021)

+1 CC to M/s.B. SARAVANAN, Advocate (SR-34517[F] dated 15/11/2021)

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MGJ(03.12.2021) 4P 5C