



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P. (MD) No.18677 of 2018

K.Kamaraj

Petitioner

Vs

1.The Secretary to Government,
Micro, Small and Medium Enterprises [(EII(2)] Department,
Secretariat,
Chennai - 600 009.

2.The Industries Commissioner and Director of Industries
Commerce,
Thiru.Vi.Ka Industrial Estate,
Guindy,
Chennai - 600 032.

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent i.e, the Secretary to Government, Micro, Small and Medium Enterprises [EII(2)] Department, Chennai relating to its G.O.(2D) No.8, Micro, Small and Medium Enterprises [EII(2)] Department, dated 07.06.2017 and G.O.(D) No.55 Micro, Small and Medium Enterprises [EII (2)] Department dated 03.05.2018 and quash the same and consequently direct the respondents to repay the recovered stoppage of increment for a period of ten months within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.S.Dhayalan
Government Advocate

O R D E R

The petitioner herein, who is serving as Assistant Director, Industries and Commerce, District Industries Centre, Nagercoil, Kanyakumari, retired from his service on 31.05.2018. While in service, the petitioner was served with a charge memo dated 05.11.2014, alleging that the petitioner, while serving as a Secretary of Sivakasi Industrial Co-operative Offset Printers Limited, had failed to obtain prior permission from the Registrar of Industrial Cooperatives / Industries Commissioner and Director of Industries and Commerce, for leasing/renting out the land and building of the Sivakasi Industrial Co-operative Offset Printers Limited. Pursuant to the charge memo, an enquiry was conducted and



the Disciplinary authority had imposed the punishment of stoppage of increment for a period of 10 months without cumulative effect. As against the punishment, a review petition was filed before the first respondent herein, which was also rejected through G.O.(D) No.55 Micro, Small and Medium Enterprises [EII (2)] Department dated 03.05.2018. The aforesaid orders are put under challenge in the present Writ Petition.

2.Certain relevant facts pertaining to the case in hand is that the land and the commercial building belonging to the Sivakasi Industrial Co-operative Offset Printers Limited was leased out in favour of one Kudalingam. The Society run into financial difficulty and an official liquidator was appointed for the purpose of winding up of the Society on 04.03.2014. The second respondent herein had directed the Society to vacate the lessee, failing which, departmental action would be initiated against the officials. When the lessee had challenged the same before this Court, in W.P.(MD) No.15009 of 2014, the learned single judge of this Court, through his order dated 10.09.2014, had observed that it is the duty of the official liquidator to take action for termination of the lease and that on account of failure to evict the officers cannot be threatened with disciplinary action. However, the respondents had chosen to proceed with the disciplinary action and ultimately punishment was imposed.

3.It is not in dispute that the lands belonging to the Society was leased out way back in 1996, initially for a period of three years, thereafter it was periodically extended and during one of those extension, the petitioner herein happened to be the Secretary of the Society. It is stated that apart from the petitioner herein, no other former Secretaries were proceeded against with the departmental action for their failure to obtain prior permission from the Registrar of Industrial Cooperatives / Industries Commissioner and Director of Industries and Commerce, for the purpose of leasing/ renting out the land and building. The statement of the charges is to the effect that the petitioner had failed to obtain prior permission from the Registrar of Industrial Cooperatives / Industries Commissioner and Director of Industries and Commerce. As a matter of fact, it was not the petitioner herein, while serving as a Secretary that the land and building of the Society was leased. As stated above, such a lease was executed way back in the year 1996 and the petitioner herein happened to be one of the Secretaries, who was instrumental in reviewing the lease. Moreover, the charge memo imputes misconduct on the part of the petitioner of having failed to obtain the permission way back in the year 2011. Apparently, the lessee had been created problems to the second respondent Department in vacating the premises. After a lapse of more than three years, the second respondent had chosen to frame charges against the petitioner. There is absolutely no explanation as to why the respondents had to wait for these period of three



years and in the absence of any such explanation, the delay also can be said to be inordinate.

4. When the authorities had originally chosen to lease out the land in the year 1996 itself, and the same was periodically being extended, I am unable to appreciate as to what could be the misconduct or irregularity on the part of the petitioner herein of having alleged to have failed to obtain prior permission for renewal of the lease. Even otherwise, the charges imputed against the petitioner does not pertain to renewal of the lease, but states as if the petitioner had failed to obtain prior permission for leasing out the land and building. This Court in its earlier order dated 10.09.2014, had made it clear that the inaction on the part of the authorities cannot be put against the officials and no disciplinary action can also be initiated against such officials, for their inability to vacate the lessee from the premises. In spite of such observation made, the disciplinary action has been proceeded with and consequently punishment has also been imposed. Even in the Review Application, the first respondent herein had not taken into account these aspects, but had mechanically affirmed the original punishment.

5. In the light of all these observations, it can be said that the alleged irregularity does not warrant punishment of stoppage of increment for a period of 10 months. The petitioner herein was one among the various officers, who was responsible for allegedly renewing the lease. By taking into account the gravity of the charges, stoppage of increment for a period of 10 months seems to be disproportionate to the charges. Therefore, the above impugned orders quashed. The Writ Petition is allowed. No costs. Consequently, the petitioner would be entitled to any amount that would have been recovered from him, in view of the punishment imposed pursuant to the impugned punishment.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



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+1 CC to M/s.SPL GP (SR-8195[F] dated 02/03/2021)

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-8338[F] dated 03/03/2021)

Order made in
W.P. (MD) No.18677 of 2018
01.03.2021

GS(21.04.2021) 4P 5C