IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

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THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.27887 of 2011

1.N.Dinakar Kumar (Deceased)
2.D.Parameshwari ... Petitioner

[P2 – Substitute as LRs of deceased P1 N.Dinakar Kumar, as per Order dated 27.10.2017 by VPNJ in WMP.No.24306/2017 in WP.No.27887/2011]

Vs.

The Management Director,
Tamil Nadu Tourism Development Corporation Ltd.,
No.2, Wallaja Road,
Chennai – 2. ... Respondent

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned orders passed by the respondent in proceeding No.55/A1/97 dated 25.10.2007 and the consequential Appeal orders issued in proceeding No.55/A1/97 dated 16.03.2011 and Letter No.3479/A1/11 dated 05.08.2011 and quash all these orders and consequently direct the respondent to repay the entire gratuity amount of Rs.3.50 lakh at the rate of 12% per annum.

For Petitioner : Ms.Swathi Subramaniam

For Respondent : Mr.R.Bala Ramesh

ORDER

For an occurrence that took place in the year 1987-1988, set of 7 charges came to be framed against the petitioner on 04.11.1997. After the enquiry, four of the charges against the petitioner were held to be proved and these charges pertain to alleged pecuniary advantage from M/s. Balaji Textiles, Madurai, for purchase of linen items, thereby, causing a loss of Rs.1,48,427.65/- to the respondent/Corporation.

2. The petitioner herein, on reaching the age of superannuation on 31.07.2002, was permitted to retire without prejudice to the disciplinary action. Subsequently, by an order dated 25.10.2007, the Disciplinary Authority had imposed the punishment of forfeiture of the entire gratuity amount of the petitioner amounting to Rs.3.5 Lakhs. The appeal and review filed against the order of punishment were rejected on 16.03.2011 and 05.08.2011 respectively. Aggrieved against the punishment, the present writ petition has been filed.

3. Ms.Swathi Subramaniam, learned counsel appearing for the petitioner drew attention of this Court to the findings of the Enquiry Officer in his report and submitted that insofar as the proven charges are concerned, the Enquiry Officer had found that when the petitioner herein, requested for sanction to issue supply order after receiving the indent from the Manager concerned, the office note was 'approved' by the General Manager on 06.11.1987 and by the Managing Director on 24.11.1987. Likewise, the Enquiry Officer also found that the entire process of purchase of linen items from M/s. Balaji Textiles, have been routed through the General Manager (in-charge) and the Managing Director and they had 'approved' it.

4. According to the learned counsel for the petitioner, while the respondent had chosen to proceed against the petitioner and the General Manager, they had not initiated any action against the Managing Director, who had similar overt acts as that of the petitioner and the General Manager and the same amounts to discrimination. It is her further submission that Section 4(6)(a) of the Payment of Gratuity Act, relied upon by the respondent in their counter-affidavit, will not be applicable to the case of the petitioner, since he was not terminated from service. Even otherwise, when the loss amount is admittedly Rs.1,48,427.65, the respondent had chosen to proceed with the departmental action against the General Manager and the Junior Assistant and ultimately imposed the punishment of forfeiture of the full gratuity amount of the petitioner along with the gratuity of General Manager, when admittedly the alleged loss to the respondent/Corporation was much lesser than these forfeited amount.

5. The learned counsel for the respondent placed reliance on the averments of the counter-affidavit and submitted that they would be empowered to forfeit the full gratuity amount in view of Section 6 of the Payment of Gratuity Act. He further submitted that since the charges against the petitioner herein, as well as

the then General Manager were held to be proved, the full gratuity amount payable to both these employees were justified.

6. I have given a careful consideration to the submissions made by the respective counsels.

7. Under Section 4 of the Payment of Gratuity Act, the gratuity shall be payable to an employee on the retirement of his employment after he has rendered continuous service for not less than five years. Sub-Section 6 relates to the cases of those employees, who have been terminated for any misconduct causing damage or loss and the extent of the damage or loss could be recovered from the gratuity payable to the terminated employee.

8. As rightly pointed by the learned counsel for the petitioner, the respondent cannot invoke Section 4(6)(a) for the purpose of forfeiting the gratuity amount towards the alleged loss caused to their Corporation, since he was earlier permitted to retire on 31.07.2002 and his case is not one of termination. Thus, the very foundation on which the respondent had imposed the punishment of forfeiture, is unsustainable.

9. The enquiry report implicates the Managing Director along with the General Manager and the petitioner herein of having caused the loss to the Corporation. While dealing with charge No.5, which was held to be proved later, the Enquiry Officer has observed that the request for issuing supply order was approved by both the General Manager and the Managing Director. Likewise, the entire process of purchase of linen items from M/s. Balaji Textiles was also approved by the General Manager and the Managing Director.

10. While the liability has been equally fixed on both the General Manager and the Managing Director herein, the respondent had chosen to initiate departmental action only against the petitioner and the General Manager but had somehow neglected to implicate the Managing Director. I do not find any difference in the imputations against the General Manager and the Managing Director in the present delinquency. Thus, the decision of the respondent to proceed against the petitioner and the General Manager, without initiating the action against the Managing Director is a clear case of hostile discrimination. If that be so, the consequential punishment against the petitioner herein, cannot be sustained.

11. Though the alleged loss was quantified at Rs.1,48,427.65, the respondents had forfeited the entire gratuity

amounts of both the petitioner amounting to Rs.3.5 Lakhs and the entire gratuity amount of the General Manager, which is much higher than the actual loss. Such an action of forfeitures would amount to unjust enrichment and hence, cannot be sustained.

12. Thus, in view of the action of the respondent in imposing punishment on the General Manager, as well as the petitioner by forfeiting their entire gratuity amount for making good alleged loss of Rs.1,48,427.65/- as well as their discriminatory approach in failing to proceed against the Managing Director, the petitioner is entitled to succeed.

13. In the result, this Writ Petition stands allowed and the impugned order passed in the proceedings No.55/A1/97 dated 25.10.2007 is quashed. Consequently, there shall be a direction to the respondent herein, to disburse the entire gratuity amount payable to the petitioner herein, together with interest at the rate of 10% per annum from the date of superannuation, till the date of actual disbursement. The respondent shall endeavor to pass such order and dispose the order atleast within a period of six (6) weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

The Management Director,
Tamil Nadu Tourism Development Corporation Ltd.,
No.2, Wallaja Road,
Chennai - 2.

+1cc to Mr.R.Prem Narayanan, Advocate SR.No.13658
+1cc to Mr.R.Bala Ramesh, Advocate SR.No.13655

W.P.No.27887 of 2011

AJB(CO)
CB(23/03/2022)