



WP(MD)Nos.6908 & 16168 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.08.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)Nos.6908 & 16168 of 2018

and

W.M.P.(MD)Nos.6644, 14400 & 14401 of 2018

W.P.(MD)No.6908 of 2018:

P.Natarajan

...Petitioner

/vs./

1.The Board of Directors,
Tamil Nadu Civil Supplies Corporation,
12, Thambusamy Road,
Kilpauk, Chennai – 600 010.

2.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
12, Thambusamy Road,
Kilpauk, Chennai – 600 010.

...Respondents

W.P.(MD)No.16168 of 2018:

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
12, Thambusamy Road,
Kilpauakkam, Chennai – 600 010.



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2.Regional Manager,
Tamil Nadu Civil Supplies Corporation,
District Collector's Office Campus,
Dindigul.

...Petitioners

/vs./

1.P.Natarajan

2.The Gratuity Appellate Tribunal,
Represented by Joint Commissioner of Labour,
Trichy.

3.The Controlling Authority – Payment of Gratuity,
Assistant Commissioner of Labour,
84, Nehruji Nagar, 1st Street,
Dindigul District.

...Respondents

PRAYER in W.P.(MD)No.6908 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order of dismissal passed by the 2nd Respondent in his proceedings in Se.Mu.A.No.Ad6/87179/2012 dated 29.05.2013 confirmed by the 1st Respondent in their proceedings in Chae.Mu.Aanai No.AD2/50102/2013 dated 06.10.2017 and quash both the orders and consequently directing the Respondents herein to reinstate the petitioner into service and thereafter allow the petitioner herein to retire from service on 31.05.2013 with all attendant benefits.



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PRAYER in W.P.(MD)No.16168 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the impugned order dated 04/01/2018 passed by the 2nd respondent, in Gratuity Appeal Case.No.100 of 2017 and to quash the same as illegal.

Appearance:

Mr.D.Srinivasaragavan

(petitioner in W.P.(MD)No.6908 of 2018 &
first respondent in W.P.(MD)No.16168 of 2018)

Mr.Raja.Karthikeyan

(petitioner in W.P.(MD)No.16168 of 2018
Respondents in W.P.(MD)No.6908 of 2018)

Mr.M.Siddharthan

Additional Government Pleader

(for R2 and R3 in W.P.(MD)No.16168 of 2018)

COMMON ORDER

The punishment of dismissal from service, together with treating the suspension period as a punishment and recovery of the alleged loss to the Tamil Nadu Civil Supplies Corporation against one Mr.P.Natarajan, is under challenge in WP(MD)No.6908 of 2018. In consequence to the order of punishment, the



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orders, passed by the authority under the Payment of Gratuity Act, 1972, quantifying the gratuity amount and confirmed by the Appellate Authority, have been challenged by the Tamil Nadu Civil Supplies Corporation in WP(MD)No. 16168 of 2018. Since both the writ petitions arise out of a common transaction, they are disposed of through a common order. For the sake of convenience, parties are referred to as “Corporation” and “Employee”.

2. Through a charge memo dated 04.02.2013, the employee is alleged to have abetted of smuggling 405 bags of PDS rice. The statement of allegations in the charges is that the lorry smuggling the PDS rice, was intercepted by the CID Police on 03.11.2012 and a criminal case in Crime No.395 of 2012 was registered against the employee, as well as others.

3. In connection with the charges, an enquiry was conducted and during the course of enquiry, the Enquiry Officer had held all the charges levelled against the employee as “not proved”. The Disciplinary Authority proposed to defer from the Enquiry Officer's report and accordingly, issued a show cause notice dated 10.05.2013, calling for explanation. On the employee's further explanation dated



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15.05.2013, the second respondent herein had passed the impugned order of dismissal, dated 29.05.2013. The appeal, against the dismissal order, to the first respondent herein was also rejected on 06.10.2017.

4. When the employee herein had filed an application under the provisions of the Payment of Gratuity Act, 1972, seeking for interest on the belated payment of gratuity, the authority had passed an order on 24.01.2017 directing the Corporation to pay interest for a sum of Rs.1,29,477/-, on the belated payment of gratuity for a sum of Rs.4,43,920/-, at the rate of 10% per annum. The appellate authority, in his order dated 04.01.2018, while confirming the order of the Controlling Authority, has fixed the payment of gratuity of Rs.6,47,563/- as the total gratuity and a sum of Rs.2,03,643/- as the sum payable under the total amount of gratuity, together with interest at the rate of 10% per annum. The Corporation has challenged these two orders of the authorities passed under the Payment of Gratuity Act, 1972.

5. Insofar as the punishment imposed on the employee is concerned, the Enquiry Officer had held the charges against the employee as not proved,



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consequent to which, the Disciplinary Authority had proposed to defer with the findings and had issued a show cause notice dated 10.05.2013 in this regard. The employee had also submitted his explanation.

6.In the show cause notice dated 10.05.2013, the only ground on which the Disciplinary Authority proposed to defer from the views of the Enquiry Officer was that, the Disciplinary Authority had placed reliance on the statement of the co-accused, one Loadman, namely, S.Nagaraj, who had confessed before the Investigation Officer of CBCID that the employee was involved in the criminal offence. Only on the sole basis of this confession made before the police authorities, the Disciplinary Authority had proposed to defer from the views of the Enquiry Officer and had consequently issued the show cause notice dated 10.05.2013.

7.Likewise, when the employee had rendered his further explanation to the show cause notice, the impugned order of dismissal came to be passed on 29.05.2013, by once again placing reliance on the confession made by the Loadman, namely, S.Nagaraj, before the Investigation Officer, CBCID. No



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reliance has been placed on any of the other materials or evidences before the Enquiry Officer, when the punishment was imposed.

8.It is a settled proposition of law that the Disciplinary Authority is required to consider only the evidences available during the course of enquiry for the purpose of passing a final order. It is also a settled proposition that in cases, where criminal investigation precedes a domestic enquiry, the materials collected by the police officials, cannot be relied upon by the Disciplinary Authority, more particularly, when such materials are not that of the Enquiry Officer's findings.

9.In the instant case, the Enquiry Officer had held the charges levelled against the employee as “not proved”. The only ground, on which the disciplinary authority has now sought to defer from such views, is in view of the statement made by the co-accused in the criminal case, which is impermissible.

10.The Hon'ble Supreme Court, in the case of **Roop Singh Negi V. Punjab National Bank and Ors.** reported in **2009 (2) SCC 570**, has reiterated this proposition and held that the evidence collected by the Investigation Officer



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cannot be treated as evidence in a disciplinary proceedings. The relevant portion of the order reads as follows:

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

11. Thus, the decision of the Disciplinary Authority that the charges against the employee are proved, cannot be sustained and consequently, the punishment of dismissal from service, together with treating the period of suspension as a punishment and ordering for recovery of the alleged loss caused to the Corporation, requires to be set aside.



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12.When the employee herein had approached the Controlling Authority seeking for interest on belated payment of gratuity amount, the only objection from the Corporation was that in view of the findings of the Disciplinary Authority that there was a loss caused to the Corporation and such loss requires to be recovered from the employee, the authority ought not to have ordered for gratuity amount as well as the interest thereon. Now that, this Court has found that the order of punishment of the Disciplinary Authority itself cannot be sustained, which includes the finding that the alleged loss to the Corporation requires to be recovered from the employee, their objection in this regard cannot be sustained. Consequently, the findings of the Controlling Authority, as well as the Appellate Authority under the Payment of Gratuity Act, 1972 cannot be found fault with.

13.At this juncture, it is brought to the notice of this Court that the order of dismissal was imposed to the employee on 29.05.2013, just three days before his date of superannuation ie., on 31.05.2013.



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14.In the light of the above findings, the impugned orders, dated 29.05.2013, passed by the Managing Director of Tamil Nadu Civil Supplies Corporation, as confirmed by the Board of Directors of Tamil Nadu Civil Supplies Corporation in the order dated 06.10.2017, which are the subject matters of WP(MD)No.6908 of 2018, are quashed and the writ petition in WP(MD)No. 6908 of 2018 stands allowed.

15.Likewise, the writ petition, in WP(MD)No.16168 of 2018, challenging the order passed by the Gratuity Appellate Tribunal, stands dismissed. Consequently, there shall be a direction to the Managing Director, Tamil Nadu Civil Supplies Corporation, Chennai, to forthwith comply with the order passed by the Gratuity Appellate Tribunal, in Appeal Case No.100 of 2017, dated 04.01.2018, within a period of six (6) weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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M.S.RAMESH, J.

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Common Order made in
W.P.(MD)Nos.6908 & 16168 of 2018

Dated:
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