



W.P(MD)No.17597 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Orders reserved on
29.07.2022

Orders pronounced on
12.08.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.17597 of 2014
and
M.P(MD)No.1 of 2014

M.Dharmaraj

... Petitioner

Vs

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

2.The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Ramanathapuram Region,
Ramanathapuram.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent vide Na.Ka.No.E3/4439/2012, dated 22.09.2014 and quash the same and consequently, directing the first respondent to accept the adjustment made by the then Regional Manager vide his proceedings in Na.Ka.No.A3/6649/2010, dated 10.11.2010 and Na.Ka.No.B5/5353/2010, dated 28.03.2011.



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For Petitioner : Mr.D.Shanmuga Rajasethupathi

For Respondents : Mr.G.Mohan Kumar

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the second respondent vide Na.Ka.No.E3/4439/2012, dated 22.09.2014 and consequently, directing the first respondent to accept the adjustment made by the then Regional Manager vide his proceedings in Na.Ka.No.A3/6649/2010, dated 10.11.2010 and Na.Ka.No.B5/5353/2010, dated 28.03.2011.

2. Learned counsel appearing for the petitioner submitted that the petitioner was appointed as Assistant Quality Inspector in the Tamil Nadu Civil Supplies Corporation on 05.08.1996 and he was promoted as Quality Inspector in the year 2012. He had been working as a Quality Inspector in Ilayangudi Godown, Sivagangai Region, from February, 2012. The first respondent issued a periodic circular to purchase empty gunnies from the Co-operative Societies of the respective Region for the purpose of procurement of paddy in the Delta Region and for other purposes of the concerned Region. In a circular dated 12.10.2009, the first respondent directed all the



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Regional Managers to lift the empty gunnies from the Co-operative Societies concerned on "as is where is" basis at the rate fixed by the Committee. The first respondent issued another circular, dated 27.02.2010 to all the Regional Managers through E-mail and informed that the Registrar of Co-operative Societies agreed to give instructions to the Regional Joint Registrar to release S.S empty gunnies with due segregation to the Tamil Nadu Civil Supplies Corporation at the rate of Rs.16/- per gunny. Through another circular, dated 30.04.2020, a direction was issued to purchase 50 kg capacity of S.S gunnies with due segregation at Rs.16/- plus Value Added Tax at 4% per gunny. Through circulars, dated 03.05.2010 and 03.09.2010, target was fixed for the purchase of S.S gunnies immediately. The petitioner was entrusted with the work of purchasing the empty gunnies by the Regional Manager and he was paid advance amount. The petitioner procured 6,67,750 gunnies at the rate of Rs.16/- over a period of time from the Co-operative Society, namely Gajanan Nayak Palm Fibre Manufactures Co-operative Society, Kilakarai, Ramanathapuram District. He settled the amount and that was approved by the statutory audit. However, he was issued with a charge memo, dated 03.07.2012, after two years from the date of transaction alleging some irregularities in purchasing of gunnies. He submitted his explanation dated



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05.10.2012. However, the petitioner was imposed with a punishment of stoppage of increment for a period of three years with cumulative effect. Against the order of punishment, the petitioner filed an appeal before the first respondent and it is pending. In the meanwhile, the impugned order of recovery was issued without any notice and without giving opportunity to the petitioner. Therefore, the petitioner filed this Writ Petition.

3. Learned counsel appearing for the petitioner further submitted that as per the procedure for imposing penalties, once punishment of withholding increment with cumulative effect was ordered, recovery of the alleged loss cannot be ordered. In support of his proposition, he relied on the following Judgments:-

(i) In ***W.P.No.39610 of 2002, dated 02.11.2012 (V.Varadharajan Vs. The Board of Directors and others)***, this Court held as follows:-

"5..... Article 20(2) of the Constitution of India also clearly ensures that no person shall be prosecuted and punished for the same offence more than once. Therefore, as stated earlier, when the petitioner was already punished for the same charges, in spite of the fact that he was acquitted by



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criminal Court on the same set of charges. Once again issuing another show cause notice with a delay of 17 years for the alleged lapse committed in the year 1985, clearly shows the non-application of mind on the part of the respondent. Therefore, the impugned show cause notice dated 10.06.2002, for the reasons stated above, is liable to be set aside and accordingly, the same is set aside."

(ii) In ***W.P(MD)No.15806 of 2014, dated 29.01.2015 (M.Navshath Vs. The Secretary to Government, Agriculture Department, Secretariat, Chennai and others)***, this Court held as follows:-

"11. At this juncture, it is useful to refer the decision of the Honourable Supreme Court reported in 2004(13) SCC 342 (cited 9 supra), wherein it was held that penalty based on the same cause of action would amount to double jeopardy. The facts of the said case would show that the respondent therein was imposed with the punishment of reduction of pay by one stage without cumulative effect and thereafter, the appointing authority issued a second show-cause notice proposing to remove his name from the promotional list. The Honourable Apex Court found that reading of the show-cause notice suggested as if it is in continuation of the departmental proceedings.



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Therefore, it was found that the second proposed action based on the same cause of action proposing to deny promotion would amount to double jeopardy."

(iii) In **W.P(MD)No.4930 of 2009, dated 10.02.2017**
(S.Selvaraj Vs. The Superintendent of Police, Theni District),
this Court held as follows:-

"10. It is an admitted case that the petitioner had caused an accident while driving the Government vehicle. He is governed by the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. As per Rule 3(6) 8 disciplinary action has been taken against the delinquent officer namely, the writ petitioner herein. It has to be seen whether the respondent is empowered to take action against the delinquent officer for the same incident by way of the executive instructions issued in G.O.(Ms) No. 393, Home (Transport. IV) Department, dated 01.03.1998. The said Government Order has been passed with an object that the negligent drivers should not go scot free and they should also feel the pinch of the delinquency of the rash and negligent driving. Therefore, considering the provisions of Rule 8(v)(a) of the Tamil Nadu Civil Services (Classification Control and Appeal) Rules, recovery from the pay of the whole or part



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of such pecuniary loss may be made by way of penalty in these circumstances, Government, consider that there is no need for making separate rules for efforting token recovery from the Drivers in case Government vehicles got involved in accidents. The said Government Order is an administrative instruction given by the Special Commissioner & Secretary to Government, Home Department."

(iv) In ***W.P(MD)No.8007 of 2018, dated 19.04.2018 (N.Muthukrishnan Vs. The Revenue Department, Government of Tamil Nadu, Fort St. George, Chennai and others)***, this Court held as follows:-

"14.Once a punishment has already been imposed by issuing Government Order, wherein, the amount has been recovered from the petitioner by way of punishment, against the very same petitioner for the very same misdeed or violation of the code of conduct or proven charges, further, punishment by way of reduction in rank cannot be given. It is a fundamental law that no one can be put in double jeopardy. Since the petitioner had already been inflicted with the punishment of recovery of money, the very same petitioner for the very same set of proven charge



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cannot be put under the punishment of reduction in rank and therefore, such punishment now has been imposed by the Government Order cannot stand in the legal scrutiny. Therefore, the same is liable to be interfered with and accordingly, it is quashed."

4. In reply, learned counsel appearing for the respondents submitted that the Circular, dated 21.06.2008 was issued by the Tamil Nadu Civil Supplies Corporation Limited as to the procedures to be followed for purchasing gunnies. A Committee comprising Accounts Head, Quality Control Manager (Admn.) / Deputy Regional Manager has to be formed for purchasing of gunnies. The gunnies should be purchased from the Co-operative Societies. However without following these guidelines, the petitioner had purchased gunnies from Gajanan Nayak Palm Fibre Manufactures Co-operative Society, Kilakarai, Ramanathapuram District, which had, in turn, purchased gunnies from traders from open market. Poor quality gunnies were purchased. Petitioner claimed to have purchased 7,78,150 empty gunnies at the rate of Rs.16/- per gunny and has caused a huge loss to the Government. T.S.P.V.Rajendran, Clerk of Gajanan Nayak Palm Fibre Manufactures Co-operative Society gave a statement that he purchased gunnies from open market and supplied it to the petitioner. This statement was supported by the



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Se.Mu.Aa.No.AD/3/73771/2014. The impugned order passed by the second respondent, dated 22.09.2014 was issued for recovery of Rs.53,08,536/- from six staff members, which included the order of recovery of Rs.10,36,604/- from the petitioner. The sum of Rs. 53,08,536/-, according to the learned counsel for the respondents, relates to the loss suffered by the respondents on account of illegal purchase of gunnies from the open market. Learned counsel appearing for the petitioner submitted that due to the pressure given by the respondents to purchase a large number of gunnies, the petitioner had approached Gajanan Nayak Palm Fibre Manufactures Co-operative Society for purchasing of gunnies. The said Society supplied the gunnies, as required. The petitioner had no knowledge that the gunnies were procured by Gajanan Nayak Palm Fibre Manufacturer Co-operative Society from the open market. There is no loss caused to the Government on account of purchase of gunnies. The gunnies purchased were SS quality gunnies and they were all distributed to various other Regions for procurement of paddy. So far no complaint had been received with regard to the quality of the gunny or on any other ground. Before fixing the amount for the recovery from the petitioner, no notice was given and no opportunity was given to the petitioner to explain. Then again imposition of punishment and order to recover the



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amount for the same charge would be a double jeopardy and that are impermissible in law.

7. The reading of the Judgments relied on by the learned counsel for the petitioner shows that when a punishment was already imposed, ordering recovery of the amount for the alleged loss caused to the Department, amounts to double jeopardy. However, in the Judgment of the Supreme Court reported in **(1999) 2 SCC 313 (Commissioner of Rural Development and others Vs. A.S.Jagannathan)** in appropriate cases, order of recovery for the loss caused to the Department can be made apart from imposition of punishment, if there are provisions available. It is relevant to extract the portion of the order and it reads thus:

"5. The Tribunal clearly had no jurisdiction to interfere with the punishment imposed by the disciplinary authority under the Order of 4-6-91. The Tribunal has purported to pass the order on the ground that three punishments cannot be imposed for the same charge. Now, the Tamil Nadu Civil Services (Classification, Control & Appeal) Rules prescribe various penalties that may be imposed under Rule 8. One of the penalties under Rule 8 is a withholding of increments. Another penalty which can be imposed under Rule 8(v)(a) is recovery from



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pay of the whole or part of any pecuniary loss caused to the State Government by negligence or breach of Orders. Under Tamil Nadu Pension Rules, Rule 9(1)(b), such pecuniary loss can also be recovered from the pension of the employee if the pecuniary loss is caused by negligence of grave misconduct while in service and the employee has been found guilty of such misconduct or negligence. In the present case, the disciplinary authority has clearly found that there were serious charges against the respondent which were established against him in a disciplinary enquiry which was properly conducted. The disciplinary authority has rightly observed that looking to the serious nature of the charge proved, a minor punishment of only stoppage of two increments without cumulative effect has been imposed on the respondent by taking a lenient view since he is about to retire. The Order for recovery of the loss caused on account of the respondent's negligence and misconduct is also permissible under the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules as also under the Tamil Nadu Pension Rules, the former permitting recovery from pay and the latter permitting recovery from pensionary benefits after retirement. The Tribunal is wrong in holding that if an Order is passed for recovery of the amount lost from the employee, no punishment can be imposed on him. The disciplinary authority, in the present case, was entitled to impose the punishment of



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stoppage of two increments without cumulative effect. At the time of passing the final Order, the disciplinary authority was also entitled to pass Order relating to the suspension period pending enquiry. It has directed that the period during which the respondent was under suspension be treated as service period, but without pay. The Order must be read as a whole. In the present case, the disciplinary authority has awarded punishment and given directions looking to the nature of the charges proved. The Tribunal was not entitled to interfere with the punishment so accorded."

7. In the case before hand, while imposing the order of punishment of stoppage of increment against the petitioner, the Regional Manager, Ramanathapuram was directed to take steps to recover the money for the loss caused to the Department from the concerned staff members. Tamil Nadu Civil Supplies Corporation is a Government of Tamil Nadu undertaking. It has its own regulations called Employees' Service Regulations, 1989, to regulate the service conditions of its employees. Chapter V deals with disciplinary proceedings, penalties and appeals. It has similar provisions for imposing multiple penalties as found in Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. Therefore, in the facts and circumstances of the case, this Court is of the considered view



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that the respondents are entitled to recover the loss caused to the Department from the petitioner and other staff members, who are responsible for the loss, as a punishment or as a recovery towards the loss caused.

8. However, this Court finds that before the recovery order was issued to the petitioner, there was no show-cause notice given to him calling for his explanation. He was not given any opportunity to respond to the recovery claim. A sum of Rs.53,08,536/- is sought to be recovered from six persons. Four persons, including the petitioner were ordered to pay a sum of Rs.10,36,604/- and two persons were ordered to pay different sums ie., K.Subramanian, Deputy Manager was directed to pay Rs.4,46,331/- and R.Ramachandran, Regional Manager was directed to pay Rs. 7,15,789/-.

9. It is not known how this Rs.53,08,536/- was divided among six persons with unequal amounts to two persons. There is no explanation found in the impugned order. For this reason and for the reason that no prior notice was given to the petitioner and no opportunity was given to the petitioner to explain to the claim of



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recovery, this Court sets aside the impugned order passed by the second respondent vide Na.Ka.No.E3/4439/2012, dated 22.09.2014. It is open to the first respondent to issue fresh notice of demand to the petitioner, after following the procedures established by law, give an opportunity of hearing to the petitioner and pass appropriate orders in the manner known to law.

10. In the result,

This Writ Petition is disposed of by setting aside the impugned order passed by the second respondent, dated 22.09.2014. It is open to the first respondent to issue fresh notice of demand to the petitioner, after following the procedures established by law, give an opportunity of hearing to the petitioner and pass appropriate orders in the manner known to law.

There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Internet :Yes
Index :Yes / No
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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.



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G.CHANDRASEKHARAN, J.

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To

- 1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk,
Chennai - 10.
- 2.The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Ramanathapuram Region,
Ramanathapuram.

Order made in
W.P(MD)No.17597 of 2014

12.08.2022