



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.4969 of 2017

WEB COPY

P.Muraleetharan

... Petitioner

Vs.

1.The Chairman,

Tamil Nadu Cements Corporation Limited,
No.735, LLA Buildings 2nd Floor,
Anna Salai,
Chennai - 600 002.

2.The Managing Director,

Tamil Nadu Cements Corporation Limited,
No.735, LLA Buildings 2nd Floor,
Anna Salai,
Chennai - 600002.

3. The Unit Head,

Tamil Nadu Cements Corporation Limited,
Alangulam Cement Works,
Tamil Nadu Cement Post - 626 127,
Virudhunagar District.

4.Mr.S.Nagarajan

The Enquiry Officer,
No.71/24, Jawahar Nagar,7th Street,
Thirumangalam,
Madurai District - 625 706.

... Respondents

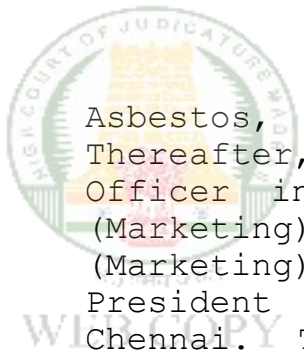
Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records from the 3rd respondent in his proceedings in REF:No.713/PL.7/2016 dated 15.03.2017 and Quash the same

For Petitioner	:	Mr.N.Sathish Babu
For R1 and R-4	:	No Appearance
For R-2 and R-3	:	Mr.A.Sivaji

ORDER

This Writ Petition has been filed to quash the impugned order, dated 15.03.2017.

2. The brief facts of the case are that the petitioner was appointed as a Junior Assistant in the year 1981 in Tamil Nadu



Asbestos, a Unit of Tamil Nadu Cements Corporation Limited. Thereafter, the petitioner was selected as Assistant Marketing Officer in the year 1987. Then promoted as Assistant Manager (Marketing) in the year 1994. Then again promoted as Deputy Manager (Marketing) in the year 1998. The petitioner was holding the post of President of Tamil Nadu Cements Marketing Officer's Association, Chennai. The contention of the petitioner is that since he was the President of the said Association, he used to deal with the problems arising amongst the members of the association with the management, which has resulted in undue vengeance upon the petitioner. When the petitioner was holding the post of Deputy Manager Marketing, Madurai Region the petitioner was placed under suspension vide order dated 16.03.2015. On 19.06.2015, the third respondent issued a charge memo containing four charges and the petitioner after getting the basic complaint report on 08.07.2015 has submitted his reply to the above said charges on the same date rebutting the entire charges on the facts and against the provisions of TANCEM service rules and also on the ground of jurisdiction as well. The contention of the petitioner is that one Radhakrishnan was holding the position of Unit Head, the third respondent herein. During the time of the petitioner's suspension he was 10 years junior to the petitioner and he has waited for his turn to take action against the petitioner in order to be promoted as Manager Instrumentation. The petitioner has filed a Writ Petition in W.P. (MD). No.22585 of 2014, wherein, it was prayed to grant Injunction restraining the Corporation from promoting the petitioner's juniors to the post of Manager cadre without considering the case of the petitioner. Hence the fourth respondent with a malafide intention passed the present suspension order, though he has no jurisdiction, with a view to wreck revenge against the petitioner. As per TANCEM service rules, Rule 5.12(d) the second respondent is the competent authority to take any disciplinary action against all the officers of the Corporation. However, in the present case, the third respondent without any jurisdiction and competency, has passed the suspension order. However one Ramachandran has submitted the basic complaint report against the petitioner wherein, the petitioner has preferred the complaint to the Directorate of Vigilance and Anticorruption against the said Ramachandran. In order to victimize the petitioner, the above said Ramachandran has preferred the basic complaint against the petitioner. According to the petitioner, the said Ramachandran does not have any jurisdiction and authority. Therefore, the petitioner has approached the Hon'ble Court in W.P. (MD).No.11431 of 2016 challenging the suspension order. In such circumstances, the fourth respondent was appointed as an enquiry officer and a domestic enquiry was conducted against the petitioner. The petitioner attended the enquiry on 10.05.2016 and requested to defer the enquiry till the disposal of the appeal submitted to the first respondent and subsequently, the enquiry was adjourned to several times and finally on 05.11.2016, the petitioner appeared before the fourth respondent and denied the charges leveled against him and on 05.11.2016, the Management side witnesses were also enquired. The



petitioner submitted a letter, dated 11.06.2016 raising a doubt in respect of appointment of the enquiry officer, as he was appointed by one Radhakrishnan who was working on contract basis as unit head. However, the enquiry was closed without considering the petitioner's objection and the fourth respondent filed his enquiry report on 20.12.2016 by giving finding that charge no.1, 2 and 3 are proved and the charge no.4 is not proved. The third respondent vide letter dated 03.03.2017 directed the petitioner to submit his reply on the enquiry report. The contention of the petitioner is that the enquiry report submitted by the fourth respondent specifically states that though the enquiry was conducted on 30.03.2016, 10.05.2016, 12.10.2016, 05.11.2016, 19.11.2016 and 03.12.2016, the petitioner did not attend or participate in the domestic enquiry and the same was completed ex-parte. Without referring to these facts, a second show cause notice was issued stating that the petitioner has not participated in the enquiry. The petitioner submitted his reply, dated 09.03.2017 about the participation in the enquiry and the gross violation committed by the third respondent and other officials. Without considering the reply, the third respondent imposed a punishment of stoppage of one increment without cumulative effect vide order, dated 15.03.2017 and further, the period of suspension is treated as Earned Leave at petitioner's credit and the balance period of suspension is treated as leave on loss of pay. Aggrieved over the said punishment, the petitioner preferred this Writ Petition.

3. The respondents have filed a counter stating that the plea of vengeance is denied as false and the same is an imagination. The disciplinary proceedings were initiated against the petitioner for his insubordination, disobedience, negligence in his duties. The petitioner did not achieve the sales of TANCEM cements target for the months of February 2015 and March 2015 that is upto 11.03.2015 and the same is detailed as under:

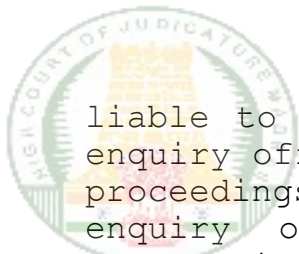
Region	District	February 2015		March 2015			
Madurai		Target	Achieve ment	Target	Proportionate Target upto 13.03.2015	Achieve ment	% of Achieve ment
	Madurai	600	356	2000	928	202	22%
	Theni	600	16	1500	696	16	2%
	Dindigul	400	48	400	185	48	26%
	Rammanad	400	91	1500	696	91	13%
	Sivagangai	400	32	1500	696	91	13%
		2400	543	6900	2574	389	15%

Cement orders canvassed was only very meagre. During the marketing review meeting held on 02.03.2015, the writ petitioner has

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



suggested some steps to improve the sales in this region, while stressing the need to increase the sales value in South Tamil Nadu to maintain sales equivalent with production. Even after the actions taken by the Management based on the suggestions of the writ petitioner to increase the sales, there was no improvement in the sales in this region thereby the Alangulam Cement Unit has suffered a lot for want of orders. On the other hand, the flow of orders from Ariyalur Cement Unit had gone up due to increase in the price. But there was no equivalent improvement in the orders generated in Madurai Region as assured by the writ petitioner in the meeting, which incurred revenue loss. By this, the writ petitioner has misguided the management to take a wrong decision and causing substantial loss to the Company. The Corporate Office at Chennai had instructed the petitioner to appoint more stockists network so that the volume of sales would be increased and further petitioner was directed to take steps periodically like issue advertisements but the petitioner has not taken any steps. The writ petitioner has not taken any steps to convert them into Arasu cement stockists and he could appoint 20 stockists only at 5 to 6 stockists per month. The writ petitioner acted negligently in implementation of 'Amma Cement' and due to this, the said scheme could not commence sales in time in Madurai region and the act of negligence brought great difficulties in implementing the Government scheme. The petitioner did not attend the calls made by the superiors and therefore, as per Rule 5.2 (a) and (k) of Service Rules of TANCEM the disciplinary proceedings was initiated against the petitioner. The petitioner has stated that A. Radhakrishnan is junior to him. Actually, the said Radhakrishnan belonged to Technical discipline that is Instrumentation Department and the petitioner belongs to the Marketing Department. Therefore, both the officers cannot be compared and seniority of both of them are separate. Hence the writ petitioner has misconstrued the concept of promotion and mislead the Court. The promotion given to Radhakrishnan as Manager (Instrumentation) is a routine official process. The respondent corporation is a cement manufacturing company and also an engineering industry. It is a practice being followed right from the inception that the technical official is being posted as a Unit Head. The other officials from other non-technical discipline were not considered to be posted as a Unit Head. Hence the plea of the petitioner is liable to be rejected. The third respondent is the Unit Head is the competent authority to take disciplinary action as per the resolution no.2 in 175th Board Meeting held on 07.04.1999. Hence the respondents submitted that there is jurisdiction and the competency for the third respondent to take disciplinary action. One Ramachandran, Manager (Marketing) who is senior and was working at TANCEM Corporate office watching the progress of the staff and officers at the units and field level. The said officer has right and jurisdiction to give basic complaint. The complaint reportedly given against the other individual at the Director of Vigilance and Anti-corruption is not having any connection to this case. The petitioner that the basic complaint is false and



liable to be rejected is denied by the respondents. Thereafter the enquiry officer was appointed. The petitioner in order to delay the proceedings with bad and ulterior motive, did not appear before the enquiry officer. The enquiry officer had given reasonable opportunity to cross-examine the witness. Finally, the enquiry was closed as 'ex-parte'. The respondents by taking lenient view because the petitioner is about to retire in May 2017, has imposed a minor punishment of one increment cut. Moreover, the suspension period was treated as per the decision of the disciplinary authority which shall be final, as per service rules. The petitioner has an alternative remedy and non filing of appeal before the higher authority is not justifiable. Therefore, the respondents prayed to dismiss the Writ Petition.

4. Heard Mr.N.Sathish Babu, learned counsel for the petitioner and Mr.A.Sivaji, learned counsel for the second and third respondents and perused the records.

5. It is seen from the records that the charges against the petitioner is that the petitioner has not achieved the "Sales Target" for the month of February 2015 and March 2015 thereby the Alangulam unit was suffering for want of orders but Ariyalur unit was flowing with orders. Hence, the petitioner has misguided the Management by providing / guiding wrong strategy and by taking a wrong decision and causing substantial loss. The said act amounts to negligence and neglect of work and the same is construed as a misconduct as per 5.2 (a) and (k). The second charge is that the Corporate Office has instructed the petitioner to appoint more stockists network in all 9 districts and directed him to issue periodical advertisements in daily newspapers and the petitioner has not taken any steps to convert the Arasu Cement stockists which amount to misconduct. The petitioner has not taken any steps under the Amma Cement Scheme which was launched on 05.01.2015 and subsequently extended to other Districts on 10.01.2015, wherein, under this scheme it was directed to collect the details of go-down of TNCSE and RDTR Department. Though materials were distributed in time and the reports were received from other Districts attached to Madurai region, but the petitioner could not commence the sales in time, which will amount to negligence and neglect of work. The fourth charge is that the petitioner has not responded to the calls of the General Manager at times.

6. On perusing the definition under Clause No.5.2, the word 'misconduct' is defined as "Without prejudice to the general meaning of the term misconduct, the following acts and commissions shall be treated as "misconduct". Under Sub-clause (a) of the respondent service rules states- "willful insubordination or disobedience whether alone or in combination with another or others of any lawful and reasonable order of a superior" and Sub-clause (k) - "Negligence or neglect of work".



7. The allegation against the petitioner is that he has not achieved the sales target for the month of February 2015 and March 2015. The sales target is defined as "the number of products need to sell to make a desired profit" and are fixed for achieving the target in order to promote the business. At the most it can be considered as business strategy and failure to achieve the target cannot be considered as misconduct. On perusing the definition as stated in TANCEM Service Rules, there is no provision to construe failure to achieve target as misconduct. The respondents are comparing the Ariyalur Unit with Alangulam Unit where the Alangulam Unit has not having any orders. If that is so, the respondents have every right to post any efficient person and transfer the petitioner to some other post. The initiation of disciplinary proceedings is absolutely unwarranted. Therefore, this Court is of the considered opinion that the charge 1 cannot be termed as misconduct and hence the impugned order is liable to be set aside.

8. The second and third charges are also similar in nature, wherein it states that the corporate office has instructed to appoint more stockists and issue advertisements in daily newspaper and the petitioner has not appointed more stockists and he has not issued any advertisements in daily newspapers. The respondents had directed to convert the Arasu Cement stockists as Amma Cement Stockists and the petitioner has not carried out the instructions. At the most the petitioner has shown only disobedience and taking the nature of the allegations, this Court is of the considered opinion that the punishment is not proportionate and the punishment is liable to be interfered with.

9. This Hon'ble Court while dealing with the concept of misconduct has stated that the misconduct should be a recurring one and also an ill mind and an act should have been committed. It is not the case of the respondent that the petitioner has acted with an ill mind and it only shows the less efficiency of the petitioner and the same will not amount to misconduct. Therefore, the charges 1, 2 and 3 cannot be taken as misconduct at all. As far as the charge No.4 is concerned, the enquiry officer has held that the charge as not proved.

10. Therefore, this Court is inclined to interfere with the impugned order. The Writ Petition in W.P.(MD).No.11431 of 2016 is concerned, where it has challenged the suspension order since the petitioner was subsequently reinstated after the completion of enquiry. This Writ Petition has become infructuous. As far as the Writ Petition in W.P.(MD).No.4969 of 2017 is concerned, which has challenged the punishment order, since this Court has held that the charges 1, 2 and 3 cannot be construed as a misconduct and as far as the charge no.4 is concerned, the enquiry report states it is not proved, the punishment of stoppage of increment for one year without cumulative effect and the regularization of suspension period is liable to be interfered.



11. The learned counsel for the petitioner submitted that the Unit Head has initiated action but the appropriate authority is the second respondent for which the respondents submitted that as per Resolution No.2 in 175th Board Meeting, the Unit Head is the appropriate authority. But the said resolution was not incorporated in the service rules. Until it is incorporated in the Service Rules, the same will not come into effect. Therefore, this Court is of the considered opinion that the resolution in the Board Meeting cannot be taken into consideration and only the service rules will prevail over the same. Hence the impugned order is also liable to be quashed for want of jurisdiction. Hence the impugned order is set aside. The respondents are directed to regularize the suspension order as duty period. Since the petitioner has retired from service, the respondents are directed to pay all the consequential monetary benefits that are applicable to the petitioner. The said exercise shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

12. With the above direction, this Writ Petition is allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

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.

TO

1.The Chairman,
Tamil Nadu Cements Corporation Limited,
No.735, LLA Buildings 2nd Floor,
Anna Salai,
Chennai - 600 002.



2.The Managing Director,
Tamil Nadu Cements Corporation Limited,
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