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W.A.No. 2048 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.03.2023**

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI**

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N. Sivaganesan

... Appellant

Vs.

1. The Government of Tamil Nadu
Represented by the Secretary to
the Government
Handlooms, Handicrafts, Textiles and Khadi
Department, Fort St. George, Chennai – 600 009.

2. The Chief Executive Officer,
Tamil Nadu Khadi and Village Industries Board,
Chennai – 600108

...Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order passed in W.P.No. 43940 of 2022 dated 25.03.2012.

For Appellant : Mr. P. Rajendran

For Respondents : Mr. R. Neelakandan
Additional Advocate General
Assisted by Mr. S. K. Bose
Standing Counsel for
Second Respondent
Mr. P. Anandakumar
Additional Government Pleader
for first respondent



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JUDGMENT

[Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*]

The writ petitioner has preferred the present Appeal, challenging the impugned order dated 25.03.2013 passed in W.P.No. 43940 of 2002.

2. According to the appellant, he was removed from service by the second respondent by order dated 21.01.2022 in Na.Ka.No.74845/C3(2)/98, which was confirmed by the first-respondent in G.O.(D) No.43, Handlooms, Handicrafts, Textiles and Khadi(F1) Department, dated 20.08.2002, without furnishing the copy of the Report of the Enquiry Officer and without giving opportunity to submit additional explanation by him.

3. It is submitted on behalf of the appellant that the appellant was not provided with the copy of the Report of the Enquiry Officer, on the other hand what was described as an Enquiry Report dated 15.11.1999 was not at all an enquiry report, but it was only a communication sent by the Regional Deputy Director to the second-respondent informing about the submission of enquiry report dated 24.6.2019 by the Assistant Director, Tiruppur. It is



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WEB COPY further contented on behalf of the appellant that when the enquiry continued till 2000, it was impossible to submit the enquiry report on 24.06.2019, even before the conclusion of the enquiry. It is also contended that this aspect has not at all been considered by the second respondent and the final order has been passed imposing the punishment of dismissal from service.

4. It is further submitted on behalf of the appellant that other employees, against whom also similar charges had been framed, were imposed with the minor punishment like stoppage of increments with cumulative effect, but whereas on the same set of facts, the second-respondent has imposed the major punishment of removal from service against the appellant, which is highly arbitrary and discriminatory.

5. The next contention put forth on behalf of the appellant is that one Thiru S. Murugappan, Assistant Director had framed the charges against the appellant and subsequently he himself conducted the enquiry and submitted the enquiry report. Thus, the prosecutor and the Judge are one and the same person, which is violative of the principles of natural justice. This crucial ground raised by the appellant has not at all been considered by the



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learned Single Judge. It is further contended on behalf of the appellant that on the aforesaid grounds the punishment of removal from service imposed by the second-respondent on the appellant is liable to be set aside.

6. It is further contended on behalf of the appellant that the learned Single Judge has not considered the above said facts of the case in proper prospective and dismissed the Writ Petition by considering irrelevant materials and therefore the appellant seeks for setting aside the order of the learned Single Judge and consequently allow the Writ Appeal.

7. Per contra, the learned Additional Advocate General appearing for the respondents strongly objected by stating that the enquiry report has been furnished to the appellant and based on the said enquiry report show cause notice has been served along with the enquiry report to the appellant requiring him to submit his further explanation. On 11.4.2000, the appellant had received the enquiry officer's report and submitted his further explanation. Thus, after providing sufficient opportunity to the appellant, final order of removal from service has been passed against the appellant, as the charges levelled against him were grievous in nature.



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8. Further, the allegation made by the appellant that the order of dismissal passed against him was discriminatory and arbitrary on the ground that on the same set of facts one Thiru Madhavaraj, Manager and Tmt. A. Karunambal, against whom also similar charges were framed, have been imposed with minor punishments of stoppage of increment for a period of three months and two years with cumulative effect respectively, whereas the appellant was imposed with the major punishment of dismissal from service, is vehemently denied as contrary to facts and baseless by the learned Additional Government Pleader, appearing for the respondents.

9. According to the respondents, the charges framed as against the appellant were grievous in nature and based on the gravity of the said charges and the involvement of the appellant in the commission of such grave offences, the punishment of removal from service was imposed on the appellant, which is proportionate to the gravity of the charges proved against the appellant. Therefore, the order of dismissal passed against the appellant by the respondent/board is perfectly in order and does not call for interference.



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10. Heard, the parties concerned and perused the materials on record.

11. The primary contention of the appellant is that the Enquiry officer's report has not been furnished to him and without giving an opportunity, to submit his additional explanation, on the report of the enquiry officer, he was removed from service.

12. On a perusal of the materials placed before this Court and also the documents relating to the aforesaid enquiry, it is seen that the appellant has submitted his explanation on 21.4.1999 to the charge memo and appeared for the enquiry on 21.04.1999. During the enquiry, the appellant informed the Enquiry Officer that there was no need to examine any further witness, but if needed he might be permitted to examine Thiru V, Narayanasamy, the then Assistant Director and Thiru Rajagopal, Manager of Pankaja Mill. Recording this statement, the Enquiry Officer submitted his report on 24.06.1999.

13. After the submission of the report by the Enquiry Officer, the appellant gave a statement on 21.02.2000 requesting the Enquiry Officer to



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enquire only the Manager of Pankaja Mill and in view of the same, the Enquiry Officer obtained a statement from the Manager of Pankaja Mill on 23.02.2000 and forwarded the said statement to the second-respondent on the same day. The Report of the Enquiry Officer dated 24.06.1999 along with the statement of Thiru Rajagopal, Manager of Pankaja Mill has been served on the appellant on 11.04.2000 requiring him to submit his further explanation and the appellant has also submitted his further explanation. Based on the aforesaid explanation submitted by the appellant, the enquiry was completed and punishment of removal from service was imposed. Challenging the said order, the appellant preferred the appeal before the appellate authority and the appellate authority also confirmed the said order.

14. Considering the fact that the report of the enquiry officer dated 24.06.1999 along with the statement of the manager of the mill was received by the appellant on 11.04.2000 requiring him to submit his further explanation, consequent to which the appellant has also submitted his further explanation and based on the enquiry report as well as the explanation submitted by the appellant, the order imposing the punishment of removal from service has been passed by the respondent, the contention

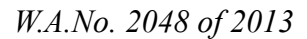


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of the appellant that there is violation of principles of natural justice due to non-furnishing of the enquiry report and not providing an opportunity to him to submit his further explanation, is unacceptable and cannot be entertained and hence the said contention is rejected.

15. The next contention of the appellant is that there is discrimination in the imposition of punishment on the appellant while compared to the other employees, against whom also similar charges have been framed. The other employees, who have also been involved in the same offences, have been imposed with the minor punishment of stoppage of increments with cumulative effect, whereas the appellant was imposed with the major punishment of removal from service. To that extent, there appears to be some force in the contention of the appellant.

16. On the issue of discrimination, the learned counsel for the appellant has referred to the judgment of the Hon'ble Supreme Court in **Man Singh Vs. State of Haryana and Others reported in (2008) 12 Supreme Court Cases 331** and drew our attention to paragraph 20 of the judgment, to gain support to his argument 'equals have to be treated equally even in the matter of executive or administrative action and the



"20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality is enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability on him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness."

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appellate authority concerned and therefore it confirmed the order of punishment imposed by the disciplinary authority.

18. We are of the view that when the appellant has submitted his explanation and the same was considered by the respondents before passing the impugned order of punishment, we do not want to interfere with the reasoning assigned by the respondents in their order. However, whether there is discrimination in the passing of order of dismissal from service against the petitioner, while other employees on the same set of facts had been imposed with the lesser punishment of stoppage of increment requires consideration. From the records it is seen that the other employees, whom the appellant refers are one S.R.Madhavaraj, Manager, and the other A. Karumambal store-keeper, whereas the appellant was in-charge of the sales. After the deepavali sales, he had to return the remaining stock to the office. However, after deepavali sale was over, the appellant did not return the exact remaining stock to the office and thus committed the offence. Subsequently, in the enquiry, at the instance of the appellant, statement was recorded only from S.R.Madhavaraj, the Manager. The duty of the Manager is to take care and manage the entire affairs of the Depot, whereas the duty of the appellant, who was in-charge of deepavali sales, had to



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return the remaining stock to the Depot, which he did not do and committed regularity. Further, subsequently, he had also accepted his offence and said to have paid a portion of the amount, against the stock, which was not returned by him to the store. Thus, it is apparent that the gravity of offence, committed by the appellant is altogether different from that of the Manager and store-keeper. As he had committed the offence with complete knowledge and intention, the punishment awarded to him was different from others. Thus, when the offence/irregularity committed by the appellant is altogether different from that of the other employees, referred to by the appellant, he cannot invoke the concept of equals have to be treated equally even in the matter of executive or administrative action. The respondents have considered the gravity of offence while imposing the punishment of dismissal against the appellant. Such action of the respondent cannot be said to be unjust and unreasonable.

19. As regards recovery order is concerned, this Court is not interfering with the same and the respondents are entitled to recover the amount as per the recovery order passed by the respondents. It is further submitted that a portion of the amount has already been paid and only the remaining amount has to be paid to the respondent corporation. Further, at



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this point of time, when it is more than 20 years from the date of dismissal order, it is not appropriate to remit the matter back to the appellate authority for re-consideration of the order.

20. Further, considering the fact that the appellant had been in service from 1992 till the punishment order, which has been passed in the year 2002, by which time the appellant had put in more than 10 years of service, now awarding the major punishment of removal from service as against the appellant, requires re-consideration.

21. This Court sitting in appeal normally will not substitute the penalty imposed. However, as the punishment imposed against the appellant is disproportionate and is shocking to our conscience, we have to necessarily interfere in the imposition of penalty, keeping in view the decision of the Hon'ble Supreme Court cited supra.

22. Considering the entire gamut of the case, namely the nature of punishment imposed on the appellant, facts of the case and distance of point of time from the date of punishment order and the concept of administrative action is to be just on the test of fair play and



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reasonableness, as held by the Hon'ble Supreme Court in the decision cited supra, we are of the view that the punishment of removal from service imposed by the respondents on the appellant is totally disproportionate and therefore requires interference. Hence, it is just and fair that the order of removal from service passed by the disciplinary authority is to be modified from that of removal from service into one of compulsory retirement from service.

23. Considering the plight of the appellant as well as the charges framed by the respondent, we are of the view that, as the punishment order of dismissal from service is modified as compulsory retirement, the appellant is entitled for the benefits alone as per rules from the respondent. Accordingly, the order passed by the second-respondent in proceedings Na.Ka.No. 74845/C3(2)/98 dated 21.01.2002 and confirmed by the first respondent in G.O.(D) No.43, Handlooms, Handicrafts, Textiles and Khadi (F1) Department, dated 20.08.2002 by imposing the punishment of dismissal from service is set aside and in its place the punishment of compulsory retirement from service is imposed on the appellant. It is for the appellant to appear before the authority concerned seeking for other benefits, if any, as per Rules.



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(mrn)

24. With the above modification of punishment, the Writ Appeal is partly allowed. Since the proceedings for recovery of the amount has already been initiated, we are also giving liberty to the respondents to proceed with the same for recovery of the loss sustained by the Board and the amount so arrived at in the proceedings towards the loss, shall be adjusted at the time of settling the dues to the appellant.

(D.K.K., J.) (K.G.T., J.)

28.03.2023

Intex : Yes/No

Internet : Yes/No

mrn

To

1. The Secretary to the Government
The Government of Tamil Nadu
Handlooms, Handicrafts, Textiles and Khadi
Department, Fort St. George, Chennai – 600 009.
2. The Chief Executive Officer,
Tamil Nadu Khadi and Village Industries Board,
Chennai – 600108.

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