IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P.No.8390 of 2017
and W.M.P.No. 9170 of 2017

S.Shanmugam ... Petitioner

Vs.

1. The Managing Director,
   Tamil Nadu Tea Plantation Corporation,
   Coonoor – 643 101

2. The General Manager,
   Tamil Nadu Tea Plantation Corporation,
   Coonoor – 643 101

3. The Divisional Manager (i/c)
   Tamil Nadu Tea Plntation Corporation,
   Coonoor – 643 101 ... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records and quash the letter of the 3rd respondent in his proceedings 902/2016/E dated 24.05.2016 and E2/920/2016 dated 28.05.2016 and direct the 3rd respondent to settle all the terminal benefits including medical leave salary for the period 10.04.2015 – 11.05.2015 and 26.10.2015 – 09.03.2016 (5 months and 15 days), Gratuity and earned leave salary for 8 months and

EPF pension.

For Petitioner : Mr.J.Franklin

For Respondents : Dr.T.Seenivasan
Special Government Pleader

O R D E R

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records and quash the letter of the 3rd respondent in his proceedings 902/2016/E dated 24.05.2016 and E2/920/2016 dated 28.05.2016 and direct the 3rd respondent to settle all the terminal benefits including medical leave salary for the period 10.04.2015 – 11.05.2015 and 26.10.2015 – 09.03.2016 (5 months and 15 days), Gratuity and earned leave salary for 8 months and EPF pension.

2. The brief facts of the case are as follows:-

(i) The petitioner joined in the respondents / Corporation as Junior Assistant on 02.12.1982 at Coonoor Tea Division, subsequently, he was promoted as Assistant in the year 1988 and he was further promoted as Superintendent on 07.10.2005 and he was allowed to retire on 31.05.2016 on superannuation without prejudice to the final orders to be passed on the Charge sheets dated 24.05.2016 and 28.05.2016 issued by the 3rd respondent and also the settlement of retirement benefits were ordered subject to recovery of loss to the Corporation and other bank liabilities.

(ii) While the petitioner was working as Superintendent, the 2nd respondent issued a charge memo dated 20.10.2015 alleging that the petitioner have not handed over the records to the Audit personnel for Audit for the year 2012-2013 and 2013-2014, for which, the petitioner replied that one V.Ganeshwathy, the Superintendent of Kothagiri Tea Division has taken the records, i.e., in respect of cash and bank sheets and receipts from 2012-2014 for conducting office inspection and that she has not returned the same. However, not satisfied with such explanation, an enquiry has been conducted and final order has been passed by the 2nd respondent imposing a punishment of reduction in rank from the post of Superintendent to that of Selection grade Assistant by an order dated 30.05.2016 and as against the same, the petitioner filed an Appeal to the 1st respondent on 11.07.2016 and the appeal is still pending on the file of the 1st respondent.

(iii) Further, with respect to the very same period, two charge memos dated 24.05.2016 and 28.05.2016 were issued to the petitioner and final order has been passed for the said allegation by an order dated 30.05.2016, therefore, there cannot be a series of charge memos for one remedy. Challenging the same, this petition has been filed.

3. The learned counsel for the petitioner would submit that in respect of the charge memo dated 20.10.2015, an enquiry has been conducted and in that proceedings, it is the stand of Tmt.V.Ganeswathy, Superintendent, Kotagiri Tea Divisiond before the enquiry officer that she has received the records from the petitioner during 2012-2014 for conducting annual inspection and thereafter, she kept the records in the Draftsman's seat since according to her, the petitioner was not available in the office at that time and she did not inform to anyone. While that being so, having received the records from the petitioner and in the absence of returning the same to the petitioner by the said officer, the petitioner cannot be held responsible, therefore, there is no cause of action for initiating charge memos and that there is no dereliction of duty on the part of the petitioner, thereby seeks to quash the same and allow the present Revision.

4. On the other hand, the learned Special Government Pleader appearing for the respondents 1 to 3 would submit as follows:-

(i) The petitioner was promoted as Superintendent on 07.10.2005 from the Assistant cadre. Since the petitioner has involved in major misconducts, while working at the Office of the 3rd Respondent Corporation viz., Coonoor Tea Division, he was issued with two charge sheets by the 3rd respondent for major misconducts. Since the petitioner was due for retirement on 31.05.2016, he was permitted to retire service on superannuation without prejudice to the final orders to be passed on the two charge sheets issued by the 3rd Respondent. The petitioner being working as a Superintendent in Coonoor Tea Division from 16.05.2011 to 09.03.2016, was given the charge for handling the accounts of the 3 Respondent's Office viz., Coonoor Tea Division and therefore, he was responsible for maintaining accounts, the preservation of records such as cash receipts, cash vouchers, bank statements, cheque vouchers, cheque receipts and all financial transactions and connected issues of the 3 Respondent's Office. As such, he has worked under the control of the 3 Respondent viz., Divisional Manager, Coonoor Tea Division. As per the order passed by the 1st respondent in Ref. No.1704/2015/A4 dated 11.04.2015, Tmt.V.Ganeshwathy, Superintendent and Tmt. K. Seethalakshmi, Superintendent of the 1st Respondent-Corporation have been instructed to take up the Special Audit of the 3rd Respondent's Office viz., Coonoor Tea Division for the years 2011-12, 2012-13 and 2013-14. But the said Audit personnel complained that the petitioner who was incharge of the Accounts neglected to handover the relevant accounts documents including the cash receipts book for the year 2012-13 and 2013-14 to the Audit personnel for Audit. Therefore, the 3rd respondent, viz., the Divisional Manager, Coonoor Tea Division issued suitable instructions to the petitioner to co-operate with the Audit Staff, but the petitioner had not done so.

(ii) Whileso, the petitioner informed that he has handed over the cash and bank sheets and receipts from 2012-2014 to said Tmt. Ganeshwathy, Superintendent of Kotagiri Tea Division during December 2014, i.e., at the time of office inspection and she had not returned the same to the petitioner. If it was true, he would have reported the same before itself, which clearly shows that the petitioner had destroyed the cash receipts and records of the year 2012- 2013 and 2013-2014 pertaining to the 3rd Respondent and the cash receipt had not been brought into accounts with the intention to misappropriate the fund received at the 3rd Respondent's Office. Hence with the available evidences, a charge sheet was issued to the petitioner vide ref.No.A4/3539/2015, dated 20.10.2015 of the 1st Respondent Corporation. On the said charge sheet a domestic inquiry was conducted. In the domestic inquiry the petitioner had not produced any acknowledgement for having handed over the records such as cash, receipts, cash bank sheets/UDP Register to the said V. Ganeshwathy, Superintendent, which is clear that the petitioner willfully prevented and avoided for taking special audit by the said Audit Personnel, besides refused to produce the connected records, which was hidden by him.

(iii) The petitioner was proved in the domestic inquiry and the Inquiry

Officer in his findings had concluded that the charges framed against the petitioner were proved on non production of very important/ valid records. Hence, the proposed Special Audit could not be conducted. A copy of the inquiry proceedings and the findings of the Inquiry report was communicated to the petitioner to offer his final explanation. After examining the connected records/ files, final orders was issued based on merit and the petitioner was reverted back to the lower post, i.e., Selection Grade Assistant from the post of Superintendent with salary fixed at the level which he was drawing prior to his promotion as Superintendent viz., Selection Grade Assistant effecting that his retirement benefit will be settled based on the salary to be fixed as Selection Grade Assistant, as he was due to retire from service on superannuation on 31.05.2016.

(iv) The above said charge sheet was issued to the petitioner for having hidden the valuable records of the 3rd Respondent's Office and also for having prevented the Special Audit party to take up the Special Audit. On verification of other records pertaining to the financial year 2014-2015, one Tmt. K. Seethalakshmi, Superintendent from the Regd. Office had taken up the Corporate Audit for the period from 01.04.2014 to 31.12.2014 at the Office of the 3rd Respondent viz., Coonoor Tea Division during March 2015 and submitted her report on 23.03.2015. As per the said report, the petitioner, viz., S.Shanmugam, Superintendent, had misappropriated the fund to the tune of Rs.1,88,523/- of the 3rd respondent. The respondent-Corporation fund received in Coonoor Tea Division works out to Rs.1,88,523/- and therefore, another charge sheet was issued to the Petitioner by the 3rd Respondent vide ref.No.E/383/2015, dated 26.08.2015. During the enquiry, against the above said charge sheet, the petitioner himself admitted for non accounting of the monetary receipt in time and he remitted the said amount of Rs.1,88,023/-. This clearly shows that he has involved in the irregularities/ unlawful activities and caused damages to the 1st Respondent Corporation. Against the said lapses, the petitioner was Issued with the said charge sheet and based on the inquiry report and findings his next increment was postponed without cumulative effect.

(vi) The amount of Rs 1,88,253/-, which was not brought into the accounts in TANTEA cash receipts took place as early as in the year 2014, but the petitioner developed stories that Thiru J. Ignatious, then Divisional Manager, the 3rd Respondent informed to the petitioner that in order to increase the retail sale, some money was paid and the amount was obtained from the petitioner of the Accounts. In this connection, it is informed that he is a senior ministerial staff and whatever the amount was given to him, he could have booked the amount in the Advance head relevant accounting records. Moreover, he could have informed the amount given to the then Divisional Manager, viz., Thiru. J. Ignatious atleast one month from the date of payment of advance, but he failed to do so. The petitioner brought the above facts after taking the audit in Coonoor Tea Division during March 2015 only.

(iii) Further, in one incident, the petitioner purposely not brought certain cash/bank receipt for accounting to Rs.3,88,735/- in to the accounts between the year from the year 2011 to 2014. Another incident, the petitioner was purposely not handed over the cash receipt book/ bank receipt book cheque vouchers etc., to the successor which clearly shows that he has misappropriated the 1st Respondent Corporation funds. Accordingly, the charges framed against the Petitioner by 3rd Respondent vide Ref.No.E/920/2016, dated 23.05.2016 and Charge Memo No.920/2016/E dated 28.05.2016 issued to the petitioner due to the following:-

The following records were not handed over to Coonoor Tea Division before entering on Medical leave.

1) Cash receipt book from 2011-12 to 2013-14

2). Cash balance amount

3). Cheque receipt book

4). Files pertaining to Accounts and audit for the period from 01.04.2011 to 31.03.2015.

5). Cash voucher from October 2013 to March 2014.

Further, the Charge Memo No. E/902/16 dated 24.05.2016 was issued to the petitioner due to the following:-

1. Discrepancies and misappropriation of amount

2. On verification of Special audit personnel, the variation was found between the receipt of cash/cheque for retail sale / despatches and cash/bank book and dispatch invoices during the months of July, August and September 2012. An amount of Rs. 338235.80 received from the sale of packet have not been brought into cash/bank book.

(i) The invoices were not found in the cash / bank receipts towards the sale of amount of Rs 50,500/-. The amount involved is Rs. 38735/- (338235+50560).

(ii) The opening balance in the Head of Control Account for the year 2013-14 ledger was not matched with Coonior Tea Division account.

(iii) The subsidy amount of Rs 38,31,860/-was not found consecutive financial years 2012-13.

(iv) The prior period adjustment closing balance amount Rs. 3,46,287.70 was not carried years forward to next consecutive years

(v) The following records were not produced to the Special Audit personnel.

a). Cash receipt book from 02.05.2012 to 21.02.2014.

b). Cash vouchers: April 2011 and October 2013 to march 2016.

c). Cheque / bank receipt books: From June 2011 to march 2014 and from April 2013 to March 2014.

d). Cheque vouchers: January 2013, February 2013 and from April 2013 to March 2014.

e). Packing Section Register. 2011-12 and 2012-13

f). Sale Invoice 2013-14.

(iv) Against the above said lapses the two charge sheets were issued to the petitioner by the 3rd Respondent vide ref.No.902/2016/E, dated 24.05.2016 and 920/2016/E, dated 28.05.2016. Considering the above tabular column the charges framed in Divisional Manager, Coonoor Tea Division Ref.No.E/920/2016 dated 28.05.2016 and Ref. No.902/2016/E dated 24.05.2016 is different from each other, thereby pleaded to dismiss the petition.

5. Heard the learned counsels on either side and perused the documents placed on record carefully.

6. Though the petitioner states that he had handed over the cash and bank sheets and receips 2012-2014 to the said Ganeswathy and that she has not returned the same, thereby the petitioner failed to produce the

relevant records to the Audit Personnel, it is not known as to why the petitioner has not reported the same before itself. Further, a detailed counter affidavit has filed by the respondents by duly serving on the petitioner's counsel stating the allegations levelled against the petitioner, for which charge sheets have been issued. Only after enquiry being conducted and the same being communicted to the petitioner seeking for his final explanation and after receiving his explanation, the petitioner was reverted back to the post of Selection Grade Assistant from the post of Superintendent, [i.e., with salary fixed at the level which he was drawing prior to his promotion] and the petitioner was allowed to retire on superannuation on 31.05.2016.

7. It is pertinent to point out that as per the report dated 23.03.2015 submitted by K.Seethalakshmi, Superintendent, [who had taken up the corporate audit for the period from 01.04.2014 to 31.12.2014 at the office of the 3rd respondent,] it is seen that the petitioner had misappropriated the amount to the tune of Rs.1,88,523/-, which is the fund received in Coonoor Tea Division Works. That apart, not only the said amount, a counter affidavit, tabulating various misappropriation have been filed and hence another charge sheet was issued to the petitioner by the 3rd respondent vide Ref.No.E/383/201 dated 26.08.2015. During the enquiry against the said

charge sheet, the petitioner himself admitted for non-accounting the monetary receipt in time and he remitted the said amount of Rs.1,88,023/-, which clearly shows that he has involved in the irregularities / unlawful activities and caused damages to the 1st respondent / corporation, therefore, the contention of the petitioner that he has not made any loss to the respondents, cannot be accepted. Further, based on the enquiry report and the findings, the next increment of the petitioner was postponed without cumulative effect. Therefore, it is clear that two charge sheets framed and issued to the petitioner are not identical one.

8. In fact, as against the order dated 30.05.2016 passed by the 2nd respondent imposing a punishment of reduction in the rank from the post of Superintendent to that of Selection Grade Assistant, the petitioner had preferred an appeal before the 1st respondent on 11.07.2016 and said appeal is pending as on date.

9. Taking note of the above said facts and circumstances of the case, the Charge Sheets issued against the petitioner cannot be quashed at this juncture and as far as disbursement of terminal benefits of the petitioner is concerned, it is brought to the notice of this Court that gratuity amount to the tune of Rs.5,16,016/- and terminal leave salary to the tune of Rs.2,37,976/-

were paid to the petitioner. Therefore, this Court is of the view that the petitioner cannot seek for disbursal of full terminal benefits at this juncture. Taking note of the fact that the appeal, which was filed by the petitioner as early as on 11.07.2016 is pending with the 1st respondent, this Court hereby directs the 1st respondent to conduct and pass appropriate orders in the said appeal within a period of 16 weeks from the date of receipt of a copy of this order after affording an opportunity of hearing to petitioner.

With the above direction, the present Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

28.11.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order

To

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   Tamil Nadu Tea Plantation Corporation,
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V.BHAVANI SUBBAROYAN J.

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