



W.P.No.16452 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2024

PRONOUNCED ON : 04.04.2024

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.16452 of 2011

D.Ramasamy

...

Petitioner

Vs.

1.Tamil Nadu Civil Supplies Corporation,
represented by its Managing Director,
12, Thambusamy Road,
Kilpauk, Chennai 600 010.

2.Tamil Nadu Civil Supplies Corporation,
represented by its Regional Manager,
Dindigul.

...

Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records on the file of the second respondent relating to the impugned order bearing Na.Ka.No.E4/7258/2009, dated 15.04.2010 and the first respondent relating to the impugned order bearing ref: Procs.Order No.AD2/049724/2010, dated 11/04/2011 and quash the same and consequently, direct the respondents to reinstate the petitioner into service with all service, seniority, promotion and other monetary benefits and fully backwages.



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For Petitioner : Mr.R.Saravanan
for Mr.Sai Krishnan

For Respondents : Mr.K.Thirugnanam
for Mr.L.P.Shanmugasundaram.

ORDER

This Writ Petition has been filed to call for the records on the file of the second respondent relating to the impugned order bearing Na.Ka.No.E4/7258/2009, dated 15.04.2010 and the first respondent relating to the impugned order bearing reference Procs.Order No.AD2/049724/2010, dated 11.04.2011 and quash the same and consequently, direct the respondents to reinstate the petitioner into service with all service, seniority, promotion and other monetary benefits and full backwages.

2.Petitioner was appointed as Helper on consolidated basis at the direct purchase centre at Cuddalore region in 1985. He was asked to submit as to whether any criminal case is pending against him. He submitted in the negative since there was no criminal case pending against him. During 2007, owing to panchayat elections, there was enmity between his relatives and one Mr.Kumar and others. Petitioner's name was included in the complaint given in crime No.66 of 2007 for the alleged offences under Sections 147, 148, 324, 323 and 307 IPC. The Police filed a final report showing the petitioner as



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second accused for the offences under Sections 147 and 506 (ii) IPC.

Petitioner was enlarged on bail on the same day without any arrest. Dragging his name in this criminal case was known to his superiors and the Regional Manager, Cuddalore. Petitioner never intended to suppress the pending criminal case. Petitioner's services were regularized with effect from 18.12.2008 and he was appointed as Regular Bill Clerk. On 16.07.2009, when he took part in the funeral of his relative, there was a clash and his name was included in crime No.359 of 2009. Petitioner was innocent and he has not committed any offence.

3.The charge memo bearing Ref.No.E4/7258/2009, dated 15.04.2010, was issued against him leveling four charges. Petitioner submitted his detailed explanation dated 22.10.2009. Mr.M.N.Ananthasubramanian was appointed as Enquiry Officer. Petitioner was directed to appear for enquiry on 04.12.2009. On the said date, no enquiry was conducted. The Enquiry Officer merely asked him as to whether he sticks to his explanation or he has to say something more. He replied by saying that he was sticking to his explanation and thereafter, he was directed to leave. When he was expecting the further communication, he was asked to receive the second show cause notice, dated



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08.12.2009, enclosing a short enquiry report stating that charges against him were proved. The explanation offered by the petitioner was not considered by the Enquiry Officer and that was rejected summarily. Petitioner was imposed with the gravest punishment of dismissal from service. The appeal filed by him was not considered and therefore, he filed W.P.No.6043 of 2011. This Court directed the first respondent to dispose of the appeal within a period of six weeks from the date of receipt of a copy of the order. Thereafter, first respondent passed the impugned order dated 11.04.2011 rejecting the appeal. In the said circumstances, this writ petition is filed.

4.The learned counsel for the petitioner submitted that petitioner was already working as a Helper at the time of joining. However, due to certain circumstances beyond his control, he was made an accused in crime Nos.66 of 2007 and 359 of 2009. Since he is innocent and had not committed the offence, he did not intimate about the filing of the criminal case in crime No.66 of 2007 with the authorities. He informed about the registration of crime No.359 of 2009 to his superiors. Ultimately, he was acquitted in both cases. Merely because he failed to inform about the pending criminal case, the imposition of the capital punishment of dismissal from service is



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shockingly disproportionate to the alleged misconduct committed by him.

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5.It is his further submission that the departmental enquiry was not properly conducted. No witnesses were examined and no documents were marked in support of the charges against the petitioner. The enquiry report is a non speaking report and it cannot be accepted in law. Thus, the punishment imposed on the basis of the enquiry report cannot be sustained. In support of his submissions, he relied on the following judgments of the Hon'ble Supreme Court in *State of Uttaranchal and others Vs. Kharak Singh* reported in **(2008) 8 SCC 236**, for the proposition as to the manner in which the departmental enquiry has to be conducted. The relevant portion of the judgment is extracted hereunder:

15.From the above decisions, the following principles would emerge:

(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry



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or if the enquiry was initiated on a report of an officer; then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer; during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

5.1. He relied on the judgment in ***Ravindra Kumar Vs. State of U.P. and others*** reported in **2024 SCC Online SC 180** for the proposition that merely



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because of the non-disclosure of a criminal case, punishment cannot be imposed. The relevant portion of the judgment is extracted hereunder:

21. The law on this issue is settled by a three-Judge Bench of this Court in [Avtar Singh](#) (Supra). Paras 34, 35, 36 & 38, which sets out the conclusions, are extracted herein below:-

“34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of “material” information presupposes that what is suppressed that “matters” not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more



rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision. 38.4. In case there is suppression or false information of involvement in a criminal case where conviction or



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acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the



employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.



38.10. *For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.*

38.11. *Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.” (Emphasis supplied)*

23. *Avtar Singh* (Supra) also noticed the judgment in *Commissioner of Police and Others Vs. Sandeep Kumar*, (2011) 4 SCC 644. In *Sandeep Kumar* (supra), this Court set out the story of the character “Jean Valjean” in Victor Hugo’s novel *Les Miserables*, where the character was branded as a thief for stealing a loaf of bread for his hungry family. It also discussed the classic judgment of Lord Denning in *Morris v. Crown Office*, (1970) 2 QB 114 and concluded as follows:-

“10... ... In our opinion, we should display the same wisdom as displayed by Lord Denning.



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11. As already observed above, youth often commits indiscretions, which are often condoned. 12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under [Sections 325/34 IPC](#). Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.”

24. Thereafter, in [Avtar Singh](#) (supra) dealing with [Sandeep Kumar](#) (supra), this Court observed as under:

“24... .. This Court has observed that suppression related to a case when the age of Sandeep Kumar was about 20 years. He was young and at such age people often commit indiscretions and such indiscretions may often be condoned. The modern approach should be to reform a person instead of branding him a criminal all his life. In [Morris v. Crown Office, (1970) 2 QB 114 : (1970) 2 WLR 792 (CA)] , the observations made were that young people are no ordinary criminals. There is no violence, dishonesty or vice in them. They were trying to preserve the Welsh language. Though they have done wrong but we must



show mercy on them and they were permitted to go back to their studies, to their parents and continue the good course.”

25. In *Ram Kumar vs. State of U.P. and Others*, (2011) 14 SCC 709, another case noticed and discussed in *Avtar Singh* (Supra) arising out of near identical facts and construing a similar clause in the verification form, this Court, while granting relief, held as follows:-

“9. We have carefully read the Government Order dated 28-4-1958 on the subject “Verification of the character and antecedents of government servants before their first appointment” and it is stated in the government order that the Governor has been pleased to lay down the following instructions in supersession of all the previous orders:

“The rule regarding character of candidate for appointment under the State Government shall continue to be as follows:

The character of a candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It would be the duty of the appointing authority to satisfy itself on this point.



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5.2. For the same proposition, the order of this Court, passed in **W.P.No.9545 of 2014, dated 02.03.2022, in D.Srinivasan Vs. The Commandant and two others** is also relied. The relevant portion of the order is extracted hereunder:

34. When an extreme penalty of dismissal from service is inflicted on an employee, it is all the more reason for the authority to take into consideration the legal principles laid down on the subject matter by the Courts. Though it is stated that the decision was taken to dismiss the petitioner before the acquittal was recorded in both criminal cases, yet the authorities could have waited for the result of the criminal case. Unfortunately, the administration had needlessly rushed through and expedited the disciplinary proceedings against the petitioner and imposed the penalty of dismissal order on him. The respondents appeared to have acted unfairly and unreasonably lacking in sense of equanimity and judicious composure.

35. In fact, this Court has repeatedly held that the authorities must abandon their sanctimonious and fastidious approach in dealing with such matters, while taking decision adversely and irreversibly



affecting the person concerned. The penalty of dismissal from service in the facts and the circumstances of the case in the opinion of this Court is shockingly disproportionate and cannot be sustained in law.

36.This Court in the cumulative circumstances of the case finds that the impugned orders cannot be countenanced both in law and on facts. Even assuming that the petitioner had deliberately not disclosed the information to the authorities concerned, at the risk of repetition it is to be stated that the first involvement in the criminal case was when the petitioner was a minor and therefore, the charge itself became a non est, in view of the operation of the provisions of Juvenile Justice Act. In that view of the matter, the first charge cannot give rise to any departmental proceedings at all. As regards the second criminal case, it was a private dispute among the close relatives and even the said criminal case eventually ended in acquittal. Therefore, the non-disclosure of his involvement in that case cannot be stated to be very material, inviting disproportionate reaction from the department. For all the above said reasons, this Court is convinced



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that the petitioner has made out a strong case for the grant of relief as prayed for.

6. In response to this submission, the learned counsel for the respondents submitted that when the petitioner was appointed, there was a specific condition that if the involvement of the petitioner in any criminal offence, came to notice, his service would be terminated. Petitioner pretty well knew that he is an accused in crime Nos.66 of 2007 and 359 of 2009. He is expected to inform about the registration of FIR, even if the allegations made in the FIR are false, to his immediate superiors in writing. Petitioner had deliberately omitted to inform about the pending criminal cases and thus, suppressed and withheld the material information, which amounts to gross misconduct, indiscipline and dereliction of duty. A person suppressing criminal cases is not entitled to continue in the service. In support of his submission, he relied on the judgment of the Hon'ble Supreme Court in ***State of Rajasthan and Ors. Vs. Chetan Jeff*** reported in ***MANU/SC/0624/2022***.

The relevant portion of the judgment is extracted hereunder:

6.2 The question is not whether the offences were trivial in nature or not. The question is one of suppression of material fact by the original writ petitioner in respect of his criminal antecedents and making a false statement in the



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application form. If in the beginning itself, he has suppressed the material fact in respect to his criminal antecedents and in fact made an incorrect statement, how can he be appointed as a constable. How can he be trusted thereafter in future? How it is expected that thereafter he will perform his duty honestly and with integrity?

7.Considered the rival submissions and perused the records.

8.From the submissions of the counsel appearing for the parties and the records produced, it is not in dispute that the petitioner was appointed as Helper on a consolidated basis in 1985. Then he was appointed as Bill Clerk in Dindigul Region, vide proceedings of the first respondent in AE-2/2550/09, dated 18.12.2008. It is very clearly stated in this proceedings that “any notice or knowledge of involvement of any criminal activities earlier to this appointment or at a later date will make the petitioner unfit for the appointment”. The charges against the petitioner are that (i) he suppressed the criminal case in Crime No.66 of 2007 and obtained appointment in the Corporation. (ii) He was involved in the criminal case in crime No.359 of 2009 and did not report about the same to the Corporation. (iii) He had brought disrepute to the Corporation. (iv) Thereby his conduct has become



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unbecoming of the Corporation servant.

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9.In answer to these charges, petitioner submitted his explanation dated 07.12.2009 stating that the allegations in crime No.66 of 2007 are not true, he was innocent and therefore, he did not intimate about this pending case. With regard to the registration of the case in crime No.359 of 2009, he stated that a violent gang attacked him and he was admitted in hospital as an inpatient. He intimated this along with a medical certificate. The case is a false case, hence, he has not sent any specific intimation. From these explanations, it is clear that the petitioner had admitted the registration of the criminal case in crime Nos.66 of 2007 and 359 of 2009, on the file of the Buvanagiri Police Station. The explanation given by the petitioner is that since the allegations in the FIR are false and he was innocent, he did not give proper intimation.

10.Not satisfied with the explanation offered by the petitioner, an enquiry was conducted. The copy of the enquiry report is produced. The enquiry report is just a one and half page report. It is seen from the enquiry report that no witnesses were examined and no documents were marked in support of the charges leveled against the petitioner. The enquiry report just



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narrated the charges against the petitioner in brief and then concluded that, the explanation offered by the petitioner is not acceptable and hence, it was held that the charges against the petitioner are proved. *Prima facie*, the enquiry report has not properly discussed about the charges against the petitioner, explanation offered by him. No oral or documentary evidence was produced in the aforesaid enquiry. Still, the Enquiry Officer proceeded to hold that the charges against the petitioner were proved.

11. On the basis of the enquiry report, petitioner was asked to give explanation and he obliged by submitting his explanation vide his representation dated 24.12.2009. It is a four page explanation. The disciplinary authority on considering the charges, enquiry report and the explanation offered by the petitioner found that the findings of the enquiry officer that charges are proved are acceptable and accepted the enquiry report. Thus, imposed the punishment of dismissal from service. When the enquiry was not properly conducted and enquiry report was not properly prepared, reliance placed on the enquiry report for concluding the charges against the petitioner were proved and therefore, he was liable to be punished and imposing of the punishment cannot be accepted in law. Therefore, this Court



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finds valid substance in the submissions of the learned counsel for the petitioner that no proper enquiry was conducted and the enquiry report was not properly prepared giving reasons for arriving at a conclusion of finding the petitioner guilty. There is no doubt that the enquiry report is liable to be set aside.

12.From the judgment reported in **(2008) 8 SCC 236** in ***State of Uttaranchal and others Vs. Kharak Singh***, it can be gathered that the enquiry should not be an empty formality. Evidence should be recorded with an opportunity to the delinquent to cross examine the witnesses; opportunity must be given to the delinquent to produce his witnesses. However, in this case, no oral or documentary evidence was produced in the course of enquiry. Enquiry was a farce. It is seen from the judgments extracted above reported in **2024 SCC Online SC 180** in ***Ravindra Kumar Vs. State of U.P. and others*** and in ***W.P.No.9545 of 2014, dated 02.03.2022, in D.Srinivasan Vs. The Commandant and two others***, that non disclosure of criminal cases, would not, in all cases, invite punishment.

13.That apart, this Court finds that in C.C.No.158 of 2009, on the file of



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the District Magistrate Court, Parangipettai, in Crime No.359 of 2009, on the file of the Buvanagiri Police Station and in S.C.No.200 of 2008, on the file of the Additional Sessions Court, Chidambaram, in Crime No.66 of 2007, on the file of the Buvanagiri Police Station, the petitioner was acquitted of the charges leveled against him in these cases, after full trial and on merits.

14. When the petitioner was acquitted of the charges in the criminal cases registered against him, this Court is of the view that the failure of informing about the criminal cases registered against him would not warrant the capital punishment of dismissal from service. No doubt that the petitioner was expected to intimate about the pending criminal cases against him, whether the allegations in the FIR are true or false. In the light of the acquittals in the criminal cases, this Court is of the view that failure to intimate about the criminal cases pending against the petitioner to the authorities concerned can be punished by imposing a lesser punishment than that of a capital punishment of dismissal from service.

15. Therefore, this Court sets aside the orders passed in Na.Ka.No.E4/7258/2009, dated 15.04.2010 and Procs.Order



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No.AD2/049724/2010, dated 11/04/2011 and directs the respondents to impose the punishment of compulsory retirement with terminal and pensionary benefits to the petitioner.

16.Accordingly, this Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition, if any, is also closed. No costs.

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04.04.2024

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No

To:

1.Tamil Nadu Civil Supplies Corporation,
represented by its Managing Director,
12, Thambusamy Road,
Kilpauk, Chennai 600 010.

2.Tamil Nadu Civil Supplies Corporation,
represented by its Regional Manager,
Dindigul.



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Pre-delivery Order in
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