IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.12.2023

Pronounced On : 26.03.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.18222 of 2015
and
M.P.No.1 of 2015

P.Manimaran .. Petitioner

Vs.

1. The Managing Director,
Tamil Nadu Civil Supplies Corporation,
12,Tambusamy Road,
Kilpauk, Chennai - 600 010.

2. The Senior Regional Manager/
District Revenue Officer,
Tamil Nadu Civil Supplies Corporation,
Nagapattinam Region,
Nagapattinam, Nagapattinam District. ..Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, calling for the records pertaining to the impugned order made in Na.Ka.No.P2/2091/2014 dated 06.05.2015 passed by the second respondent, quash the same and consequently direct the respondents to act in compliance with the undertaking recorded in the order dated 12.12.2012 made in W.P.No.13387 of 2005.

For petitioner	:	Mr.N.Manokaran
For respondents	:	No appearance

ORDER

This writ petition is filed seeking for a direction to quash the proceedings dated 06.05.2015 in Na.Ka.No.P2/2091/2014 and to direct the respondents to act in compliance with the undertaking recorded in the order dated 12.12.2012 made in W.P.No.13387 of 2005.

2. The facts in brief as submitted by the learned counsel for the petitioner is that:

2.1. The petitioner was appointed on 19.09.1984 as seasonal Bill Clerk in the respondent's Corporation to work in Direct Purchase Centers (DPCs) . The Tamil Nadu Civil Supplies Corporation had established a number of DPCs to procure paddy from the agriculturists. Each of the DPCs are managed by a Bill Clerk, a helper and a watchman under the control of a Purchase Officer who is appointed for five DPCs. All the staff members working in the DPCs are engaged to meet the requirements during the Samba and Kuruvai seasons. The petitioner was accommodated on seasonal basis for kuruvai covering the period from 1st September to 15th December and for samba period covering 16th December to 31st August of every year.

2.2. After procurement of paddy from the agriculturists it will be transported to the storage point through the contractors appointed by the respondent corporation, as paddy has to be taken either to the godown or to the rice mills, within 48 hours from the time of procurement. Sometimes, movement of paddy from DPCs to storage point will get delayed due to transportation issues.

2.3. On account of not having a permanent place for storage, the paddy procured was being kept in open places. The staff of the DPCs were not provided with any facilities to approach the place of storage including transportation. The moisture level of the paddy procured from the farmers may vary from 12% to 25%. After procurement of the paddy, the moisture level will get reduced which results in loss of weight of paddy. The Corporation has issued circulars permitting the moisture level upto 18% and if it exceeds 18%, the respondent corporation is at liberty to compensate the loss from the agriculturalists.

2.4. On account of delay in transportation of the paddy from the DPCs to storage points also causes further loss in weight. Therefore, norms were fixed on 24.02.2004 in the 361st Board meeting as under:

> *(i) As a special case, a storage loss of 0.25% may be allowed for DPCs., in respect of paddy purchased by the DPCs., prior to kuruvai 2003 paddy procurement season and that the balance shortage in the DPCs., after allowing the said 0.25% towards shortage loss to be recovered from the persons responsible and that.,*
>
> *(ii) The said norm of 0.25% shall not be allowed for the paddy procurement in or after (kuruvai 2003 season), the introduction of the Centralized Procurement.*

2.5. The first respondent had issued a circular dated 10.03.2014, which are read as:

> *(i) A storage loss norm of not exceeding 0.25% be allowed for DPCs, in respect of paddy purchased by the DPCs., prior to kuruvai 2003 paddy procurement session.*
>
> *(ii) For the shortages in the DPCs., after allowing the above norms of not exceeding 0.25% towards storage loss be recovered from the persons responsible .*
>
> *(iii) Consequent on the introduction of*

the decentralized procurement, the norm of not exceeding 0.25% will not be allowed for the paddy procured in and after kuruvai 2003 season.

2.6. The above referred circular dated 10.03.2014 was challenged by the Tamil Nadu Civil Supplies Corporation Employees Union in W.P.No.13387 of 2005 alleging that imposing a limit of 0.25% as the allowance for the purpose of storage loss and ordering recovery for the seasons before the Kuruvai 2003 as arbitrary. The said writ petition was dismissed by an order dated 12.12.2012, the relevant portion of which is extracted hereunder:

> "*5.On the other hand, according to the learned Additional Advocate General, as far as the Civil Supplies Corporation is concerned, in the Direct Purchase Center, they are retaining the paddy normally for a period of two days and in extra ordinary circumstances for the period of four days. The learned Additional Advocate General had also given an undertaking that so far they have removed the paddy within a maximum period of four days and hereafter also, the paddy will be removed from these Direct Purchase Centers within a maximum period of four days.*
>
> *6. Further, according to the learned Additional Advocate General, the circular in question will be applicable only if the goofs were stored in the Direct Purchase Centers for a*

maximum period of four days and if the storage is more than four days, the same will not be applicable.

7. In view of this, recording the above undertaking of the learned Additional Advocate General, this writ petition is closed. However, it is made clear that, based on this circular, no penalty or no recovery can be made on the employees for the storage loss, if the storage exceeds more than four days in the Direct Purchase Centers and in case, for any reason, the Civil Supplies Corporation, is of the opinion, that the storage in the Direct Purchase Centers should be more than four days, they are at liberty to introduce a different scheme prescribing the rate of allowance and if the petitioner association is having any grievance with regard to the same, they are at liberty to challenge the same."

2.7. The respondent Corporation issued show cause notice in Na.Ka.No.P2/2091/2014 dated 19.05.2014 to all the seasonal employees of the DPCs to reply within a period for seven days, as to why action should not be taken for recovery of shortage to the tune of Rs.3,11,879/- for a period between the years 1992 - 2002, during which period the petitioner was employed as a seasonal Bill Clerk in the following places:

Season	***Place of Direct Procurement Centre***	***Net movement Loss Rs.***
Kuruvai 1992	Kollidam	4,244.00

Season	***Place of Direct Procurement Centre***	***Net movement Loss Rs.***
Kuruvai 1994	Madanam	30,667.00
Kuruvai 1997	Madanam	87,041.00
Kuruvai 1999	Kuthalam	2,235.00
Kuruvai 2001	Madanam	1,797.00
Samba 1994	Thirumailadi	19,370.00
Samba 1995	Thirumailadi	1,470.00
Samba 1996	P.P.Nallur	2,594.00
Samba 1997	Kollidam	4,849.00
Samba 1997	Sirkali	9,492.00
Samba 1997	Thirumailadi	7,997.00
Samba 1998	Madanam	17,023.00
Samba 2000	Achalpuram	21,089.00
Samba 2001	Karaimedu	74,488.00
Samba 2002	Madanam	11,890.00
	Total	**2,96,246**

It is to be pointed out that the total figure of Rs.3,11,879.00/- given in the petitioner's affidavit is wrong and hence the correct total of Rs.2,96,246.00/- has been given in the aforesaid tabular column.

2.8. The petitioner had submitted a representation dated 28.08.2014 to the second respondent to permit him to peruse the records for the period between 1992 to 2003 and also requested the second respondent to give a break up figure for the amount as the petitioner was not employed at P.P.Nallur and hence, requested to grant one month time to submit his explanations after perusing the documents. He met the Deputy manager on 04.09.2014 and requested him to permit the petitioner to peruse the documents but the same was denied by the Deputy Manager stating that the records were not available with him. The petitioner further submitted a representation dated 22.09.2014 to the second respondent to furnish him a copy of the Master ledger for the period between 1992 to 2003 to prove that the movement of shortage was not his fault but there was no response.

2.9. Since there was no response from the respondents, the petitioner ultimately filed this writ petition.

3. When this matter was taken up for hearing, there is no representation from the respondent. The second respondent has filed counter affidavit in W.P.No.19012 of 2015 and filed a memo dated 18.12.2023 to adopt the counter affidavit filed by them in W.P.No.19012 of 2015 for the three writ petitions, *viz.,* 1822,18401 and 24027 of 2015, including this writ petition.

4. The contentions raised by the respondent as per the counter affidavit are as follows:

4.1. As per the direction of the District Collector, Nagapattinam, DPCs are being open during the harvest period and also there are nearly 500 DPCs and due to the non-feasibility, only some DPCs are located in permanent buildings. Further, the relaxation of moisture content was allowed for procurement of paddy only during the kuruvai season. A circular 10.03.2014 issued was challenged by the Tamil Nadu Civil Supplies Corporation Employees Union in W.P.No.13387 of 2005 and the same was dispose of granting liberty to the Corporation to introduce certain schemes for recovery losses if the storage exceeds four days. But the Corporation had not initiated any action against the petitioner since the storage period was more than four days. The net movement loss was computed to Rs.2,49,062/- in various seasons from kuruvai 1993 to samba 2002 in various DPCs by the petitioner.

4.2. A show cause notice was issued to the petitioner as to why action should not be taken for recovery of movement shortage and were directed to given written explanation but the petitioner failed to furnish the same. Rather insisted to peruse certain records, *viz.,* master ledger etc.

4.3. Further, by this Courts order two superintendents were deputed for arriving of net movement shortages, after allowing the norms of 0.25% exceeding four days and the total loss was computed to a sum of Rs.2,49,062/-. As this costs was not a major amount, enquiry against the petitioner was not initiated.

5. Heard both sides and perused the materials available on record.

6. The petitioner was working in the DPCs on seasonal basis during the two harvest seasons for the procurement of paddy, directly from the agriculturists. The petitioner used to work there on a continuous basis only for the two harvest seasons at the DPCs and his job was to see that the procured paddy is being transported to the godowns or to the mills. On account of moisture and delay in transportation, there used to be a reduction in weight of the paddy which was procured. Circulars were issued that the loss can be up to 18%, on account of reduction of moisture and delay in

transportation and if at all the loss was beyond 18% staff members of the DPCs were made responsible.

7. The same was challenged by the High Court in W.P.No.13387 of 2005, wherein it was held that basing on the circular no costs or no recovery can be made from the employees for storage losses. These orders were passed basing on the undertaking by the learned Additional Advocate General. However, contrary to the said undertaking the impugned show cause notice was issued to the petitioner for recovery of money in respect of the loss sustained on account of transportation and other reasons. Therefore, on these grounds the show cause notice shall not sustain.

8. Further, show cause notice has been given seeking explanation from the petitioner within seven days as to why the money as mentioned in the show cause notice shall not be recovered from the petitioner.

9. The respondent Corporation has not followed the principles of natural justice. After the petitioner was issued show cause notice seeking for explanations. The petitioner had sent a number of representations requesting

the respondents to give the break up details as to in which center in which period how much loss was caused by the petitioner. Similarly, they requested permission to peruse the records which made the basis for issuance of the show cause notice.

10. It is the case of the petitioner that if that records were made available, the petitioner will prove his innocence. Several attempts were made directly or through Right to Information Act (RTI) to go through the records. Further, show cause notice was issued in the year 2014 in respect of the loss that has been committed during the years 1992 to 2001. Unless records are available to the petitioner to peruse, unless break up figures are given, it is very difficult for the petitioner to reply to the show cause notices. The petitioner was employed temporarily during the procurement season. If at all, there is a loss in the procurement of paddy during the years 1992 to 2002 the respondents were expected to immediately seek for an explanation, after completion of the season so that the petitioner could have been in a position to answer properly as to the reasons for the loss occurred. If at all, the petitioner is responsible for any loss during the year 1992 or subsequent years, the respondents should not have employed him for the work for the subsequent years also. No notices were issued to the petitioner from the year

1992 until 2014. Without considering any records notice was issued. Further, there is record to show that the petitioner is responsible for the losses occurred.

11. In view of the above, this writ petition is allowed and the impugned order dated 06.05.2015 is hereby quashed and the respondents are at liberty to act in compliance with the undertaking recorded in the order dated 12.12.2012 made in W.P.No.13387 of 2005. No costs. Connected M.P.is closed.

26.03.2024

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Index : Yes/No

Citation : Yes/No

Internet : Yes/No

To:

1. The Managing Director,
   Tamil Nadu Civil Supplies Corporation,
   12,Tambusamy Road,
   Kilpauk, Chennai - 600 010.

2. The Senior Regional Manager/
   District Revenue Officer,
   Tamil Nadu Civil Supplies Corporation,
   Nagapattinam Region,
   Nagapattinam, Nagapattinam District.

DR. D.NAGARJUN,J.

Vca

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