IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	**14.02.2024**
Pronounced on	**12.04.2024**

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

W.P.No.18140 of 2020

G.K.Murthy ... Petitioner

Vs.

1) The Chairman and Managing Director,
Food Corporation of India,
Head Office at 18-20
Barakhamba Lane,
New Delhi-110001.

2) The Executive Director,
Food Corporation of India,
Zonal Office, No.3 Haddows Road,
Chennai-600 006.

3) The General Manager,
Food Corporation of India,
Regional Office, No.8,
Mayor Sathyamoorthy Road,
Chetpet, Chennai-600 031.

4] The BOARD OF DIRECTORS,
PRESIDED BY Shri.E.K.MAJHI,
Addl Secretary (Policy & FCI),

Food Corporation of India,
Head Office at 18-20
Barakhamba Lane,
New Delhi-110001. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ Certiorari to call for the records of the 4th Respondent impugned Order AA.BA.RI/5(47)2019 dated 03/11/2020 Passed by Respondent. No.4 and Quash the same and pass such further or other order or orders as to costs and damages to be paid by the Respondents.

For Petitioner : Mr.B.R.Deepak

For Respondents : Mr.S.Vijayakumar, senior counsel for
Mr. G.Bhardawaj

ORDER

Heard, Mr.B.R.Deepak, learned Counsel for the petitioner and Mr.S.Vijayakumar, learned Senior counsel for the respondents and perused the materials available on records.

2. A Writ of Certiorari has been filed by the petitioner to challenge the impugned order impugned Order AA.BA.RI/5(47)2019 dated

03/11/2020 Passed by Respondent. No.4 .

3. The petitioner, who was working as an Area Manager in the Food Corporation of India, Coimbatore, has been given a charge memo on 08.05.2018. However, after 8 years, disciplinary proceedings have been initiated and the charges against the petitioner have been proven. The petitioner was given the punishment of removal from service. The petitioner filed an appeal challenging the punishment before the Board, and the Board also confirmed the order of the disciplinary authority, modifying the punishment from removal from service to forfeiture of 50% of the gratuity instead of the entire gratuity. The petitioner has challenged the above order on the grounds of (i) a delay of eight years; (ii) his past services were not taken into consideration; and (iii) the punishment is disproportionate to the charges.

4. Mr.S.Vijayakumar, learned Senior counsel for the respondents submitted that the petitioner inducted 51 excess employees on a permanent basis without getting confirmation from the Zonal Manager. The petitioner is responsible for the irregular employment and backdoor entry of many of the labourers.

5. It is further submitted that the petitioner committed irregularities in finalizing and awarding the H&T contract for Morappur Depot and FSD Salem. The petitioner has also irregularly effected the sale of wheat under OMSS(D) at Coimbatore. Several complaints have been made against the petitioner, who was referred to the Vigilance Division of FCI Headquarters, New Delhi. After getting its report, the charges were given. The delay is due to a pending CBI case and the time taken to complete the audit report. It is further submitted that the service rules of FCI do not have any time limit and the charges were serious, and it has caused loss to the exchequer.

6. The main allegation against the petitioner is that the petitioner went out of bounds and had chosen to appoint 210 contract workers as regular employees under the 'No Work, No Pay' system. It is further submitted that a Memorandum of Understanding was signed between the Food Corporation of India and the Workers Union, in which the eligibility criteria for inducting the contract workers under the 'No Work, No Pay' system were set. As per the memorandum of understanding and the eligibility criteria found there, only those contract workers who are eligible and who have been paid wages for at least 9 months during the last 12 months or 12 months preceding the operation in the concerned depot alone are eligible for regularization.

7. It is alleged that as per the said condition, only 159 workers were found to be eligible, but the petitioner had chosen to extend the benefit to 51 more workers. As per the Memorandum of Charge issued to the petitioner, the absorption appears to have been done between the periods of September 30, 2009, and December 2, 2011. However, the disciplinary proceedings have been initiated after a delay of eight years. The reasons for the delay, as alleged by the respondents, are in view of the pending vigilance investigation.

8. It is also submitted by the learned senior counsel for the respondents that the petitioner had also contributed to the delay involved in the disciplinary proceedings and that the petitioner had also not cooperated. However, the respondents have not given any specific particulars as to how the petitioner had chosen to delay the proceedings. It is the categorical submission that the delay was caused in view of the investigation handled by the Vigilance Division of the Food Corporation of India.

9. In fact, it is submitted that the alleged excess absorption resulted in unrest among the employees and also caused loss to the exchequer. If the matter had such a serious repercussions, the respondents ought to have initiated the action at the earliest.

10. As per the submission of the petitioner, the matter was kept in cold storage only because it was not genuine. The petitioner has further stated that he is not the ultimate deciding authority to regularize the workers and that cannot be done without the approval of its own officers. Even if the petitioner had taken a decision and sent the proposal for approval to the head office, it could have been turned down by the head office by citing the reasons of excess absorption than what was agreed between the management and the union.

11. Had the excess workers worked just for a few months, it could be presumed that the delay in initiating the disciplinary action was due to administrative reasons. They continued to work for years together still it took 8 long years to initiate action. The said delay was even after the matter was taken up by the vigilance department. Though it is claimed by the respondents that the service rules of Food Corporation India do not contemplate any time limit for initiating disciplinary proceedings, that cannot go against the principles of natural justice.

12. When too much water is allowed to flow under the bridge, it will not be possible for the applicant to collect materials and make a proper defense in the disciplinary proceeding. That is exactly the reason why the disciplinary proceedings are expected to be initiated as early as possible. It is unfair on the part of the respondents to claim that they don't have any time limit in their rules and hence they are at their sweet will to initiate action as and when they think or on a remote thoughts. It appears that the petitioner has not been charged with any criminal case, even though it is alleged that the investigation had been undertaken by the CBI.

13. The petitioner appears to have got good remarks from his superiors during his service with the respondents. No adverse remarks is seen to have been recorded in his annual confidential report. The superiors of the petitioner has written positive review remarks about his performance in his consecutive Annual Confidential Report. Those comments have been given in appreciation of the petitioner's handwork and sincere service. The disciplinary authority imposed the punishment of removal from service by accepting the report of the enquiry officer. However, while taking such a decision, there is no discussion about the inordinate delay in initiating the disciplinary proceedings.

14. Though the charges against the petitioner are serious, the respondent cannot sleep over and wakes up all of a sudden after 8 years to initiate disciplinary proceedings. In view of the delay, the petitioner may not be in a comfortable position to get back all those relevant documents, recall incidents or witnesses to effectively defend his side.

15.In the decision of the Hon'ble Supreme Court held in ***State Bank of India Vs. A.G.D. Reddy*** reported in ***2023 SCC OnLine SC1064*** wherein it is stated that in a disciplinary proceeding, the question of burden of proof would depend upon the nature of the charge and the nature of the explanation put forward by the respondent and in the given case, the burden may be shifted to the respondent depending upon the explanation.

16. When a delinquent takes the defense of inordinate delay of 8 years, the burden would be on the part of the respondent to prove that the delay did not cause any prejudice to the interests of the petitioner or that the delay of 8 years is inevitable and explainable from time to time. The generalized explanation given by the respondents is that the delay is due to the delayed report of the Vigilance Department of the Food Corporation of India. The said department had taken up the issue only in 2011. But the above said check and balance mechanism are all under the control of the respondents only. Hence, the petitioner cannot be blamed for the inordinate delay of 8 years in initiating the very proceedings. Further, the respondents did not come up with any acceptable explanation or justification that in every case, vigilance investigation would take nearly 10 years, and thereafter only disciplinary action can be taken. So the respondents management cannot underplay the inordinate delay of 8 years and claim that the petitioner was not been prejudiced in any manner.

17. In the hierarchy of administrative structure exists in the respondent Food Corporation of India, the petitioner, who is an Area Manager is not the ultimate decision-making authority. The respondent corporation also has a vigilance department that could have scanned the irregularities committed by any authority by misusing its power and that too at a gross level.

18. One of the consequences of the regularization of 51 more workers is said to be the dissatisfaction and dismay among a section of the workers. When such a palpable impact is perceived, it is exactly the point during which the vigilance department ought to have swung into action. But none of those things had occurred so far.

19. As rightly pointed out by the petitioner, neither the disciplinary authority nor the appellate authority had dealt the ground of delay taken out by the petitioner in detail. It is reiterated that the petitioner's past service records between the period from 2010 to 2018, (which is inclusive of the period during which the occurrence is said to have taken place), are found to be more than satisfactory or even excellent. But the disciplinary authority or the appellate authority did not give any weight to the unblemished track records of the petitioner's services.

20. Mr.B.R.Deepak, learned Counsel for the petitioner submitted that the punishment is disproportionate to the charges. There are grounds to believe that the petitioner alone cannot play the sole role in the matter of regularization of the workers. In fact, the workers have been continuing in service for more than a decade without any problem. The charge against the petitioner itself appears to be unsteady and not grounded properly. As the disciplinary authority and the appellate authority have omitted to appreciate the essential facts and circumstances as detailed above and had chosen to impose the capital punishment of removal from service, I feel the above punishment is liable to be set aside.

In the result, this Writ Petition is **allowed.** The impugned order passed by the 4th Respondent in AA.BA.RI/5(47)2019 dated 03/11/2020 is quashed and the respondents are directed to extend all the service benefits due to the petitioner and pass an appropriate order for settling the same within a period of 8 weeks from the date of receipt of a copy of this order. No costs.

12.04.2024

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking
Neutral Citation : Yes/No

jrs

To

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R.N.MANJULA, J.

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Pre-delivery order made in
W.P.No.18140 of 2020

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