IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.23267 of 2024
and W.M.P.No.25434 of 2024

S.Thirumalai Srinivasan ... Petitioner

Vs.

1.Tamil Nadu Cements Corporation Limited,
Rep. by its Managing Director,
5th Aavin Illam,
3A, Pasumpon Muthuramalingam Salai,
Rathna Nagar, Nandanam,
Chennai – 600 035.

2.Deputy General Manager (Tech/Unit Head)
Tamil Nadu Cements Corporation Limited,
Ariyalur Cement Factory,
Ariyalur – 621 729. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the Impugned Charge Memo issued by the 2nd respondent in Ref.No.TANCEDM/ACW/PL-1/2024 dated 26.06.2024 and the consequential suspension order issued by the 2nd respondent in Proc.No.TANCEM/ACW/PL-1/2024 dated 29.6.2024 and the 2nd consequential order refraining the petitioner to retire upon reaching the age of superannuation issued by the 2nd respondent in Proc.No.TANCEM/ACW/PL-1/2024 dated 29.6.2024 quash the same and consequently direct the 2nd respondent to allow petitioner to retire from service with all other the consequential attendant and monetary benefits w.e.f.30.6.2024.

For Petitioner : Mr.C.Vigneswaran

For Respondents : Mr.M.Vijayan for
M/s.King & Partridge

ORDER

This writ petition has been filed challenging the impugned charge memo issued by the 2^{nd} respondent dated 26.06.2024, suspension order dated 29.06.2024 issued by the 2^{nd} respondent and the order not permitting the petitioner to retire from service issued by the 2^{nd} respondent dated 29.06.2024 and for a consequential direction to the 2^{nd} respondent to revoke the order of suspension and to permit the petitioner to retire from service with all consequential attendant and monetary benefits.

2.The case of the petitioner is that he joined the services of the respondent Corporation in the year 1987. The petitioner was promoted to the post of Assistant

Manager (Marketing) in the year 2013 and thereafter, he was further promoted to the post of Deputy Manager (Marketing) in the year 2023. The petitioner was to attain his age of superannuation on 30.06.2024. While so, the impugned Charge Memo dated 26.06.2024 came to be issued against the petitioner on the ground that the petitioner while working as the Assistant Manager (Marketing) failed to collect the outstanding amount of nearly Rs.6.35 Crores from a consignment agent towards the goods that were supplied for the period from 03.03.2016 to 02.03.2017. Thus, as per the charge memo, the petitioner is said to have violated the Service Rules 5.1(c), 5.1(d), 5.2(a) and 5.2(k). The petitioner was directed to submit his explanation within seven days.

3.Thereafter, an order of suspension came to be passed on 29.06.2024 in view of the grave charges framed against the petitioner. On the same day, the 2nd respondent also passed an order not allowing the petitioner to retire from service. It is under these circumstances, the present writ petition came to be filed before this Court.

4.The 1st and 2nd respondents have filed the counter affidavit. The relevant portions in the counter affidavit are extracted hereunder"

2. I submit that the petitioner herein was appointed as Clerk-Cum-Typist in the TANCEM and he was promoted as Assistant Manager -- Marketing on 05.05.2015 and further promoted as Deputy Manager - Marketing with effect from 06.05.2023. I submit that with a view to sell more quantity of cement manufactured by TANCEM, it was decided to appoint consignment agent in Kerala. Accordingly advertisement was made in leading newspaper and M/s. Vithayathil Cements, Edapally, Ernakulum was selected as consignment agent for Kerala Region Agreement was entered with him in which inter alia conditions were stipulated that Bank Guarantee for value of Rs. 1,50,00,000/- for operation of the credit system and that TANCEM shall not supply cement more than the value of Bank Guarantee and/or cash deposit. The petitioner being the Assistant Manager - Marketing was working at Punalur, Kerala and was in-charge of the operation and marketing of cement in Kerala. The petitioner failed to collect the outstanding dues and after invoking the Bank Guarantee for a sum of Rs. 1,50,00,000/- and balance amount payable on May 2017 was Rs.4,48,99,121/ and the total amount payable as on 31.05.2023 with interest is Rs.6,35,00,115/-. When the agreement with M/s. Vithayathil Cements was terminated a writ petition was filed by them in W.P.No. 12388 of 2017 and it was dismissed on 25.05.2017.

Similarly writ appeal filed by them in W.A.No.874 of 2017 was also dismissed by an order dated 01.08.2017 and thereafter arbitration proceedings have been initiated and the same is now pending before the Arbitral Tribunal.

3. I submit that during the period of consignment transaction with M/s. Vithayathil Cements, the petitioner was working as Assistant Manager - Marketing at Punalur Depot, Kerala. As he has seriously failed to collect the outstanding dues, the charge sheet dated 26.06.2024 was issued and he was not permitted to retire on attaining the age of superannuation on 30.06.2024 and his services are being retained pending disciplinary proceedings. He was also placed under suspension by an order dated 29.06.2024 and challenging the same the present writ petition was filed.

4. I submit that another employee of TANCEM Mr. C. Sudhakar working as Assistant Manager - Finance had also failed to monitor and take necessary steps to control the outstanding amount, the charge memo was issued to him on 26.06.2024.

5. I submit that since the domestic enquiry should proceed further to prove the charges by adducing evidence, I refrain from making any averments with regard to the merits of the allegations levelled against the petitioner in the charge memo.

6.I specifically deny the allegations that the Managing Director is the disciplinary authority for the petitioner. As per service rules of TANCEM, the Unit Head of the production Unit shall be the appointing/disciplinary authority upto the level of Deputy Manager. At the time of issuance of charge sheet, the petitioner was working as Deputy Manager and therefore Unit Head is the appointing/disciplinary authority and competent to issue the charge sheet. I further submit that the Chairman-Cum-Managing Director shall be the Appellate Authority in respect of all orders passed by disciplinary authority. It is therefore submitted that Unit Head is the aforesaid authority and charge memo is not liable to be set aside.

5.Heard Mr.C.Vigneswaran, learned counsel appearing on behalf of the petitioner and Mr.M.Vijayan, learned Standing Counsel appearing on behalf of the respondents.

6.The short issue that arises for consideration in the present writ petition is as to whether the alleged misconduct against the petitioner warrants suspension from service and not permitting the petitioner to retire from service in order to face the charges as per the Charge Memo dated 26.06.2024.

7.The main charge against the petitioner is that he was working as an Assistant Manager (Marketing). During the relevant point of time, one M/s.Vithayathil Cements had procured the consignment for Kerala region. The petitioner failed to collect the outstanding dues and did not invoke the bank guarantee and thereby, the total amount of Rs.6.35 Crores (along with interest) became due and payable by the consignment agent. That apart, the consignment agent questioned the demand that was made by the Corporation by filing writ petition before this Court. The same was dismissed and thereafter, it was also confirmed in the writ appeal. Even thereafter, the amount was not repaid and arbitration proceedings have been initiated and the same is now pending before the Arbitral Tribunal.

8.The main ground that has been raised on the side of the petitioner is that the amount that is due and payable by the consignment agent was for the period from 03.03.2016 to 02.03.2017. Whereas, the charge memo came to be issued on 26.06.2024. Thus, there was a delay of nearly seven years to initiate disciplinary proceedings.

9.On carefully considering the submission made by the learned Standing Counsel for the respondent Corporation and also the counter affidavit filed by the respondents, it is quite clear that there is absolutely no explanation for the exorbitant delay of seven years in initiating disciplinary proceedings against the petitioner.

10.It is now too well settled that delay by itself is not a ground to interfere with the charge memo where such delay has been properly explained. In other words, it is the unexplained delay in initiating disciplinary proceedings, which will become a subject matter of interference before the Court.

11.In the case in hand, a consignment agent had taken goods from the Corporation and has not repaid back the amount. As a result, an amount became due and payable. This transaction had taken place during the years 2016-2017. If really there was a misconduct on the part of the petitioner, the disciplinary proceedings ought to have been initiated immediately. However, the respondents waited till the verge of retirement and issued a charge memo after seven years on 26.06.2024. This unexplained delay of nearly seven years becomes fatal to proceed further with the disciplinary proceedings against the petitioner.

12.The respondents have taken a stand that the consignment agent was questioning the demand made by the Corporation by filing writ petition and thereafter, a writ appeal. Therefore, there was some delay. Even this explanation is unsustainable, since the writ proceedings came to an end in the year 2017 itself. Thereafter, arbitration proceedings have been initiated for recovery of the amount.

13.Even if the allegations made in the charge memo is taken as it is, this Court does not find that it makes out a charge for misconduct or acting against the interest of the Corporation. In a commercial transaction, the issue regarding non-payment of dues is a natural phenomenal and hence, the non-payment of the dues by itself cannot result in initiating disciplinary proceedings. There must be some willful negligence or mental element involved to initiate disciplinary proceedings in such cases. The same is totally absent and therefore, there is no ground to proceed further with the disciplinary proceedings against the petitioner.

14.The subsequent order of suspension and the order not permitting the petitioner to retire from service are only a consequence to the charge memo that was issued against the petitioner on 26.06.2024. This Court has repeatedly deprecated the practice of placing an employee under suspension on the verge of his retirement. The suspension in such cases can only be resorted where the misconduct involves a public interest. In the case in hand, it was purely a commercial transaction which lead to the non-settlement of dues. Now arbitration proceedings are pending for recovery of the dues. Therefore, there was absolutely no necessity to place the petitioner under suspension and to pass an order not allowing the petitioner to retire from service.

15.In the light of the above discussion, the impugned Charge Memo of the 2nd respondent dated 26.06.2024, the impugned suspension order of the 2nd respondent dated 29.06.2024 and the impugned proceedings dated 29.06.2024 not permitting the petitioner to retire from service issued by the 2nd respondent are quashed. There shall be a direction to the 2nd respondent to permit the petitioner to retire from service w.e.f., 30.06.2024 and all the consequential attendant and monetary benefits shall be settled to the petitioner. This process shall be completed, within a period of eight weeks from the date of receipt of copy of this order.

23.In the result, this writ petition stands allowed with the above directions. No Costs. Consequently, connected miscellaneous petition is closed.

21.10.2024

Internet : Yes / No
Index : Yes / No
Speaking Order / Non Speaking Order
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To

1.The Managing Director,
Tamil Nadu Cements Corporation Limited,
5th Aavin Illam,
3A, Pasumpon Muthuramalingam Salai,
Rathna Nagar, Nandanam,
Chennai – 600 035.

2.Deputy General Manager (Tech/Unit Head)
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Ariyalur Cement Factory,
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N. ANAND VENKATESH, J.

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