



W.P.(MD)No.19072 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2024

CORAM

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.(MD)No.19072 of 2022

and

W.M.P(MD)No.13928 of 2022

M.Allimalar

... Petitioner

Vs.

The Managing Director,
Tamil Nadu Small Industries Development Corporation Limited,
SIDCO Corporate Office,
Thiru.Vi.Ka.Indi Estate,
Guindy,
Chennai – 600 032.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Proc.No. 6767/A1/2018-1, dated 27.05.2022 on the file of the respondent and quash the same as illegal and consequently directing the respondent to conduct denovo enquiry after furnishing the list of witnesses enabling the Petitioner to examine and cross examine the witnesses within the time period stipulated by this Court.



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For Petitioner : Mr.T.Aswin Rajasimman
For M/s.T.Lajapathi Roy Associates

For Respondent : Mr.T.Sakthi Kumaran

ORDER

The writ petition has been filed challenging the impugned order in Proc.No.6767/A1/2018-1, dated 27.05.2022 and consequently directing the respondent to conduct denovo enquiry after furnishing the list of witnesses enabling the petitioner to examine and cross examine the witnesses.

2. The case of the petitioner is that the petitioner was appointed in the post of Assistant Development Officer at the respondent Corporation on 24.12.2008 and was promoted as Deputy Manager in the year 2015. A charge memo, dated 05.12.2018 was issued to the petitioner for alleged irregularities. The petitioner submitted her explanation vide reply, dated 28.01.2019. But, without considering the petitioner's explanation, the respondent has appointed Enquiry Officer and the Enquiry Officer has conducted an oral enquiry in which petitioner's explanation to the charges was not at all considered. Without even furnishing the list of witnesses, the Enquiry Officer, has filed enquiry report



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dated 29.11.2019 stating that all the charges are proved against the petitioner and the petitioner was asked for further explanation upon the enquiry report. On 09.01.2020, the petitioner submitted further explanation stating that the enquiry officer has conducted enquiry in a biased manner and requested for fresh enquiry. However, the respondent has issued the impugned order, dated 27.05.2022 imposing the punishment stoppage of increment for a period of three years with cumulative effect.

3. Aggrieved by the same, the petitioner has come forward with the present writ petition.

4. The learned counsel for the petitioner would submit that the enquiry conducted against the petitioner was not in fair and proper manner and not in accordance with the Rule 6.16(c) of Tamil Nadu Small Industries Development Corporation Limited Service Rules and the same is extracted hereunder:

6.16(c) Major Penalties:

In the cases of lapses or irregularities warranting major punishments the competent authority shall frame specific charge or charges which shall be communicated to the person charged together with a statement of the allegation on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He/She shall be required, to put in a written statement of his/her defence within a reasonable time and to state whether he/she



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desires an oral inquiry or to be heard in person or both. An oral inquiry shall be held if such an inquiry is desired by the Employee charged or is directed by the authority concerned. Even if an Employee charged has waived an oral inquiry, such inquiry shall be held by the authority concerned in respect of charges which are not admitted by the Employee charged and which can be proved only through the evidence of witnesses. At that enquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the Employee charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he / she may wish, provided that the officer conducting the enquiry may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. Whether or not the Employee charged, desired an oral enquiry he/she shall be heard in person at any stage if he/she so desires before passing final orders. A report of the enquiry or personal hearing (as the case may be) shall be prepared by the authority holding enquiry or personal hearing and such report shall contain a sufficient record of the evidence, if any and a statement of the findings and the ground thereof.

Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction thereon, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor; or partly recorded by its predecessor and partly recorded by itself.

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witness whose evidence has already been recorded is necessary in the interest of justice, it may recall examine, cross-examine and re-examine any such witnesses as herein before, provided.

Provided further that the Employee of the Corporation may take the assistance of any retired



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Government / Corporation Servant to present the case on his/her behalf but may not engage a legal practitioner for the purpose unless the enquiring authority is a legal practitioner or the inquiring authority, having regard to the circumstances of the case, so permits.

Explanation:

The Employee of the Corporation shall not take the assistance of any retired Government / Corporation Servant who has two pending disciplinary cases on hand, in which he/she has to give assistance.

After the enquiry or personal hearing has been completed, the authority competent to impose the major penalty is of the opinion, on the basis of the evidence adduced during the inquiry, that any of the major penalties should be imposed on the Employee charged, it shall, before making an order Imposing such penalty, furnish to him/her a copy of the report of the enquiry or personal hearing or both, as the case may be, and call upon him to submit his/her further representation, if any, within a reasonable time, not exceeding fifteen days. Any representation received in this behalf within the period shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidence adduced during the Inquiry only. It shall not be necessary to give the person charged any opportunity of making representation on the penalty proposed to be imposed.

The requirements of this sub-rule shall not apply where it is proposed to impose on an Employee of the Corporation any such penalty on the basis of facts which have led to his conviction in a criminal court (whether or not he has been sentenced at once by such court to any punishment) but he/she shall be given a reasonable opportunity of making any representation that he/she may desire to make and such representation, if any, shall be



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taken into consideration before the order imposing the penalty is passed.

The requirements of this sub-rule shall not apply where it is proposed to impose on a member of a service any of the major penalties on the basis of facts which have led to his conviction by a court martial or where the officer concerned has absconded or where it is for other reasons impracticable to communicate with him/her.

All or any of the provisions of sub-rules may, in exceptional cases, for special and sufficient reasons to be recorded in writing, be waived where there is difficulty in observing exactly the requirements of the sub-rules and those requirements can be waived without injustice to charged.) the Employee charged.

5. The learned counsel for the petitioner would further submit that the petitioner has submitted an explanation to the charge memo. The enquiry officer without even furnishing the details of witnesses, documents and absence of cross examination, has conducted enquiry, which is in violation of the above said Rule. Hence, he prayed for remanding the matter back to the respondent to conduct denovo enquiry.

7. The learned counsel for the respondent submitted that the enquiry was conducted in fair and proper manner and in accordance with Rule 6.16 (c) of Tamil Nadu Small Industries Development Corporation Limited Service Rules and only after the enquiry report was submitted by the enquiry officer, the



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petitioner has come forward with an objection which enables the petitioner to examine that no witnesses were examined, no cross examination, no documents were marked during the enquiry and the same is in violation of Rule 6.16(c) of Tamil Nadu Small Industries Development Corporation Limited Service Rules.

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

9. In the enquiry report, only the charges and explanation given by the petitioner were mentioned and it does not contain the details of the witnesses examined, cross-examination and the documents marked during the time of enquiry. Hence, it is crystal clear evident that the enquiry was not conducted in fair and proper manner and also not in accordance to Rule 6.16(c) of Tamil Nadu Small Industries Development Corporation Limited Service Rules and as well as the same is in violation of principles of natural justice.

10. In view of the above factual aspects of the case, the order passed by the respondent, dated 27.05.2022 is liable to be quashed and the same is hereby quashed. The matter is remanded back to the respondent to conduct denovo enquiry after furnishing the list of witnesses, enabling the petitioner to examine, cross-examine the witnesses and for submitting relevant documents. Therefore,



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the respondent shall conduct denovo enquiry and pass orders within a period of

3 months from the date of receipt of a copy of this order.

11. In the result, the writ petition stands allowed. No costs. Consequently,
the connected miscellaneous petition is closed.

23.10.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
SN

To:

The Managing Director,
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