



W.P.No.3804 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2025

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.3804 of 2022
and WMP.No.3928 of 2022

A.Balakrishnan

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Secretariat,
Chennai – 600 009.

2.The Registrar of Co-op. Societies,
Kilpauk, Chennai – 600 010.

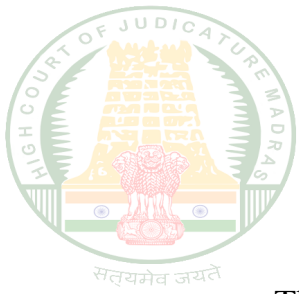
... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the order passed by the first respondent made in G.O.(D).No.200, Food and Consumer Protection Department, dated 14.12.2021 and quash the same.

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents : Mrs.M.Geetha Thamaraiselvan
Special Government Pleader

* * * * *



W.P.No.3804 of 2022

ORDER

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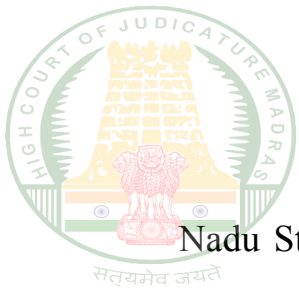
This Writ Petition is filed to call for the records relating to the order passed by the first respondent made in G.O.(D).No.200, Food and Consumer Protection Department, dated 14.12.2021 and to quash the same.

2.The petitioner was working as an Administrator from 18.03.2013 to 16.07.2013, and as Managing Director from 17.07.2013 to 14.08.2014, in Kancheepuram District Consumers' Cooperative Wholesale Stores Ltd. Whiles, an unfortunate fire accident occurred on 10.07.2013, at its Tondiarpet Godown, for which an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, was ordered. Thereafter a charge memo was issued to the petitioner invoking the Tamil Nadu State and Subordinate Service Rules and the same reads as follows:

“1.For not producing the records required for enquiry and not taking action to reconstruct the record which was destroyed by the fire accident.

2.for not insuring the building and furniture and fittings in the Tondiarpet godown of the Kancheepuram whole sale stores for the year 2012-13.”

Upon the explanation to the charges submitted by the petitioner, the Disciplinary Authorities converted the charges from Rule 17(b) of the Tamil



W.P.No.3804 of 2022

Nadu State and Subordinate Service Rules to 17(a) of the above said Rule.

Based on the enquiry report, the second respondent imposed punishment of stoppage of increment for a period of one year (excluding the leave period) without cumulative effect vide order dated 24.08.2018. The petitioner challenged the same before the first respondent and the first respondent confirmed the order passed by the second respondent vide order dated 12.02.2020. The petitioner thereafter filed a review petition before the first respondent, but the same was rejected vide the impugned order dated 14.12.2021. Aggrieved by the impugned order the petitioner filed the above writ petition for the aforesaid relief.

3.The respondents failed to file a counter but the learned Special Government Pleader for the respondents opposed the writ petition on the basis of the written instructions.

4.The learned counsel for the petitioner submitted that the impugned order deserved to be set aside on the short ground of violation of principles of natural justice. The learned counsel submitted that the appellate authority viz., the first respondent consulted the TNPSC and relying on the views of the TNPSC, passed the order confirming the punishment imposed by the second



W.P.No.3804 of 2022

respondent. The learned counsel submitted that even without furnishing a copy of the TNPSC report to the petitioner, the first respondent straight away passed the impugned order, in total violation of the principles of natural justice and hence on this ground alone the impugned order was liable to be quashed. The learned counsel for the petitioner further submitted that the respondents discriminated against the petitioner, by targeting him alone, while exonerating three officials who were also equally responsible for the lapses. The learned counsel therefore prayed that the impugned order be set aside and the writ petition allowed.

5.The learned Special Government Pleader appearing for the respondents on the basis of the instructions, submitted that as the petitioner did not submit any justifiable reasons in support of the revision petition, the respondent in consultation with the TNPSC dismissed the Revision Petition filed by the petitioner. According to the learned counsel there were no explicit rules stating that the suggestions of the TNPSC were binding on the Government. The learned counsel submitted that only if the Government took a different view from that proposed by the TNPSC, it was bound to place the deviated views before the Assembly and seek approval for the same. In this case, as the Government took a similar view, the above procedure was not



W.P.No.3804 of 2022

attracted. The learned counsel therefore submitted there were no merits in the writ petition and the same deserved to be dismissed.

6.I heard both the learned counsels and I have perused the materials placed on record.

7.I find force in the first submission of the learned counsel for the petitioner, regarding the violation of the principles of natural justice. Admittedly the views of the TNPSC were not furnished to the petitioner before confirming the impugned order. When the 1st respondent relied on the TNPSC's view, in all fairness, the 1st respondent ought to have supplied a copy of the same to the petitioner and sought for his objections. Reliance placed on materials obtained behind the back of the petitioner, in my view, violates the principles of natural justice, moreso, when such material is against the petitioner. The Hon'ble Supreme Court of India in the case of State Bank of India Vs. D.C.Aggarwal reported in A.I.R. 1993 S.C. 1997 held as follows:

“4. ... Law on natural justice is so well settled from series of decisions of this Court that it leaves one bewildered, at times, that such bodies like State Bank of



W.P.No.3804 of 2022

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India, who are assisted by hierarchy of law officers, commit such basic and fundamental procedural errors that Courts are left with no option except to set aside such orders. Imposition of punishment to an employee. On material which is not only not supplied but not disclosed to him, has not been countenanced by this Court. Procedural fairness is as much essence of right and liberty as the substantive law itself.”

8.The said Judgment of the Hon'ble Supreme Court of India was followed by the Division Bench of this Court in the case of Union of India Vs. The Registrar, Central Administrative Tribunal, Chennai reported in (2005) 2 M.L.J. 154. This Court while considering the issue whether it was sufficient for the disciplinary authority to communicate the commissions report along with the order made by him, held that, in as much as the disciplinary authority relied on the advice of the UPSC, before imposing the punishment, it was but proper to supply a copy of the report to the delinquent employee, before passing the order of punishment. The court accordingly held that the delinquent employee was entitled to a copy of UPSC advice before imposition of punishment. So also in order dated 28.11.2016 in



W.P.No.3804 of 2022

W.P.No.28664 of 2013, while considering similar issue of non-supply of

WEB COPY TNPSC recommendations, learned Judge of this court held as follows:

“6.Learned counsel for the petitioner would also submit that while passing the impugned order of punishment, the respondent had relied upon the views of Tamil Nadu Public Service Commission and without annexing a copy of the TNPSC recommendations, the impugned order was passed and hence, the order is liable to be set aside. It is true that whenever the respondent imposes of punishment based on the recommendation of TNPSC views, it is bounden duty that the copy of such recommendations be served on the petitioner to enable him to redress his grievance in a higher forum, since the punishment was imposed based on the TNPSC's recommendation, which decision was taken behind the petitioner's back.”

9.Hence, the law is very clear that if punishment is based on the recommendations of the TNPSC, the delinquent employee is entitled to a copy of the same before the imposition of the punishment. The learned



W.P.No.3804 of 2022

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counsel for the respondent tried to distinguish the Division Bench Judgment

of this court by contending that the copy of the recommendations of the

TNPSC were required to be furnished to the delinquent employee only at the time of imposing punishment and it was not necessary at the appellate stage.

In my view, the said submission is baseless, since it is not the stage of proceedings that matters, but the opportunity to defend one self which is material. In the present case, the Appellate Authority while confirming the order of the second respondent relied on the recommendations of the TNPSC, which recommendations were not furnished to the petitioner. It is settled beyond doubt that the principles of natural justice cannot be confined to a rigid formula and the same must be applied to the facts and circumstances of each case. As already stated, the Appellate Authority relied on the views of the TNPSC and therefore, fairness demanded that a copy of the recommendation be furnished to the petitioner and as this was not done, I am of the view that there is gross violation of principles of natural justice. On this ground the impugned order deserves to be set aside. The learned counsel for the petitioner further submitted that the impugned order also deserved to be set aside on the ground of discrimination. The learned counsel submitted that under similar circumstances, three other officials who were equally responsible for the lapses cited in the charge memo were exonerated, while



the petitioner alone was targeted. The respondents are unable to give any

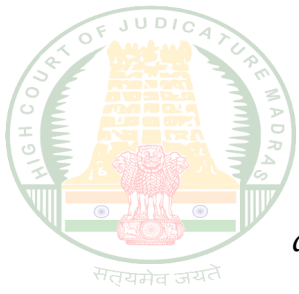
plausible reason for discriminating the petitioner alone. In this regard

reference is made to the judgment of the Hon'ble Supreme Court in the case

of *Man Singh Versus State of Haryana and others*, reported in (2008) 12 SCC

331. The Hon'ble Supreme Court held as follows:

“21. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the excise staff of Andhra Pradesh for violating the excise prohibition orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the excise offence by him in the State of Andhra Pradesh. The order of the



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W.P.No.3804 of 2022

disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service.

22. In the backdrop of the abovementioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the second appeal by an unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-`a-vis HC Vijay Pal, the driver of the vehicle.”

Therefore, even on the ground of discrimination, I find force in the submissions of the learned counsel for the petitioner. Hence, the impugned



W.P.No.3804 of 2022

order deserves to be set aside on this ground also.

WEB COPY In view of the above discussions, I find merit in the writ petition and

hence, the same is allowed. However, there shall be no order as to costs.

Consequently, the connected miscellaneous petition is closed.

20.03.2025

Index : Yes / No

Internet : Yes / No

Speaking order/Non-speaking order
ah/dsn

To

1.The Additional Chief Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Secretariat,
Chennai – 600 009.

2.The Registrar of Co-op. Societies,
Kilpauk, Chennai – 600 010.



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W.P.No.3804 of 2022

N.MALA, J.
ah

W.P.No.3804 of 2022

20.03.2025