



W.P.(MD)No.6856 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2025

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THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)No.6856 of 2019

and

W.M.P.(MD)Nos.2187 & 5466 of 2019

K.Shanmugam

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Civil Supplies,
12, Thabusamy Road,
Kilpauk, Chennai.

2.The Regional Manager,
Tamil Nadu Civil Supplies,
Madurai Region,
Maurai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records of the impugned order passed by the first respondent in his Se.Mu.Aa.No.Aad2/34335/2018 dated 20.02.2019 and quash the same as illegal and consequently direct the respondents to promote the petitioner for the post of Junior Assistant based on the seniority list dated 01.10.2015 with effect from 22.07.2016, within the time stipulated by this Court.



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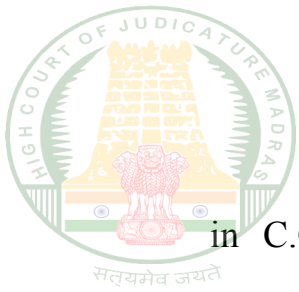
For Petitioner : Mr.

For R1 : Mr.

ORDER

Under assail is the order dated 20.02.2019 imposing punishment of stoppage of increment for two years with cumulative effect.

2.The case of the petitioner is that he is working as Bill Clerk in CRS Shop No.29, Koodal Nagar, Madurai District. He joined Civil Supply Corporation as a Seasonal Helper as early as on 22.04.2010 and thereafter, he was confirmed as a Bill Clerk from 05.03.2019. While he was working as a Bill Clerk along with Backer, viz, Ramaiah, the then Regional Manager viz., Rehobagyam issued a proceedings directing a two members committee to conduct inspection in CRS shop No.30. Accordingly, on 01.05.2016 between 12.00 noon to 05.00 pm, inspection was conducted. At the time of inspection, they did not find any default or mistake against the petitioner and therefore, they have taken the original records of “C” Register from the shop, which itself against the Rules. In the meantime, in the criminal proceedings came to be initiated



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in C.C.No.2 of 2017 on the Judicial Magistrate No.III (C.C.I.W),

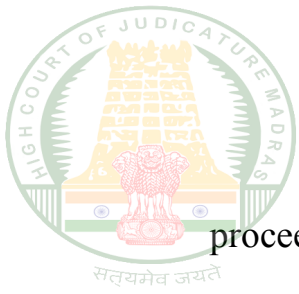
Madurai. The petitioner had been acquitted vide judgment dated 11.01.2019. The petitioner made a representation before the first respondent by furnishing copy of the judgement and also requested to consider in the light of the above said judgment. However, the first respondent in total non application of mind, without even referring to the grounds raised in the appeal, mechanically rejected the same vide order dated 20.02.2019. Hence, the petitioner has come forward with the present writ petition to challenge the impugned order on the ground of selective punishment.

3.The learned counsel appearing for the petitioner would submit that the order impugned came to be passed only to harass the petitioner, who is active participant in the Employees Union, like CITU, that too when no evidence is proved against the petitioner. He would submit that for the very same incident, the second respondent initiated criminal proceedings and the petitioner was acquitted on 11.01.2019. He would submit that all the charges levelled against the petitioner is itself stand fall vide their own proceedings to conduct reinvestigation on their alleged inspection held in CRS shop No.30. The same is evident from



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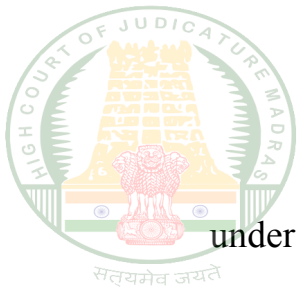
the very admission of P.W.2 in criminal case in C.C.No.2 of 2017. He would submit that the entire allegations in the charge memo based on the complaint given by one hard holder, who himself was not investigated by the Department as well as by the Police. There is no deficiency stock or deficiency of cash between the period of inspection and there is no loss to the corporation and the order impugned is liable to be set aside. The petitioner was paid the alleged amount on protest. The respondents have failed to consider the crucial facts that the entire inspection conducted by Mr.Ramaguru and Mr.Mayapandi based on C-Register and they themselves ignored to refer stock register and cash book. The Vigilance Cell of the respondent Corporation itself issued a charge memo and awarded punishment to the inspecting committee members, who inspected CRS shop No.30 and the same is not considered by the respondents while passing the impugned order. He would submit that entire batch of employees of the year 2010 and 2011 were promoted to the post of Junior Assistant and the said promotion was not granted to the petitioner, though he is eligible as per seniority. To strengthen his contention, he has relied upon the judgment of the Hon'ble Supreme Court reported in (2006) 5 SCC 446 in a case of G.M.Tank Vs. State of Gujarat and Ors to show that the departmental enquiry and criminal



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proceedings based on the same set of facts of charges, evidence and witnesses and no evidence against employee to hold him guilty and finding to contrary recorded in departmental proceedings in such a case, held unjust, unfair and dismissal order not sustainable.

4.Per contra, the learned counsel for the respondent would submit that based on the complaint received from one Raman, it was ordered to form a inspection team and conducted 100% inspection and submit their report. Accordingly, the said inspection team conducted inspection of Shop No.30 on 11.05.2016. During the said inspection availability of excess commodities was noticed and the petitioner had acknowledged the said inspection particulars. The documents called “C-Register” which contains the daily sales records, bill book and other records were seized for verification of the accounts. The inspection team filed its report dated 30.05.2016 stating that irregularities were noticed to the tune of Rs.14,050/- and excess stock was available to the tune of Rs.1400/-. He would submit that the modus operandi adopted by the petitioner is to create double entry, ie., for the same card multiple bills were issued and bills were issued against the ration card, but no record was made in the C-Register. Based on the inspection report, the petitioner was placed



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under suspension on 07.06.2016. He would submit that charge memo was issued to the petitioner dated 06.09.2016 consisting 5 charges. The petitioner gave representation dated 14.09.2016 seeking documents and the second respondent permitted him to peruse the files. Though he was permitted to peruse the records as early as on 16.09.2016, the petitioner on his own proceeded to submit his explanation to the charge memo on 26.09.2016 and thereafter, the petitioner perused the files on 28.09.2016. He would submit that the explanation submitted by the petitioner was not satisfactory, an enquiry officer was appointed by the second respondent. After conducting due enquiry, the enquiry officer submitted his enquiry report dated 03.11.2016 holding that all the charges were proved. A copy of the enquiry report was issued to him and call for further explanation. The petitioner submitted his representation and after considering all the records, the second respondent passed the final order dated 15.05.2018 imposing punishment of stoppage of increment for two years with cumulative effect. The petitioner preferred an appeal before the first respondent with delay and the same was not filed within 60 days as contemplated under Regulation 8 of Chapter V. However, the appeal was considered and rejected by the appellate authority on 20.02.2019. He would submit that there is no violation of principles of natural justice



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and enquiry was conducted as per the service regulation and proper opportunity was provided to the petitioner to defend his case and there is no ground to interfere with the impugned order.

5.This Court considered the submissions made on either side and perused the available records.

6.It is seen from the records that while the petitioner was working as Bill Clerk in CRS.Shop No.30, a complaint dated 19.03.2016 was received from one Raman alleging that the petitioner has not supplied rice to the public, instead he was smuggling rice in two wheeler. Thereafter, an inspection team was formed and called upon them to conduct 100% inspection and submit their report. Inspection team had conducted inspection of the shop on 11.05.2016. Inspection report dated 30.05.2016 filed stating that irregularities were noticed to the tune of Rs.14,050/- and excess stock was available to tune of Rs.1400/-, totally Rs.15,450/- As irregularities were noticed during 100% verification of the stock and records, the second respondent after considering the inspection report, placed the petitioner under suspension on 07.06.2016. Further, charge memo was issued dated 06.09.2016 with the following five charges:-



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1.The delinquent has prepared false Bills for 261 kg of Boiled rice, 10 kg of raw rice, 12 kg sugar, 12 Lit of Pam oil, 12 kg Toor dal, 1 kg Urad dal and caused loss to the corporation to the tune of Rs.8,725/-

2.The delinquent while selling the essential commodities under the public distribution system, without making entries in C register has sold 139 kg of Boiled rice, 15 kg of raw rice, 4 kg of sugar, 10 kg of wheat, 5 Lit of pam oil, 4 kg Toor Dal, 2 kg of Urad Dal, 4 tea pocket, 4 pockets of salt and caused loss to the corporation to the tune of Rs.5,325/-.

3.The delinquent while inspection in shop No.30 had excess stock of 29 kg of boiled rice, 4.5 kg of sugar, and 6 kg of Toor dal valued at Rs.1,400/- to be sold in open market.

4.The delinquent has caused disrepute to the Government and Corporation.

5.The delinquent has committed dereliction of duty and responsibilites.

7.The petitioner gave representation dated 14.09.2016 seeking documents. The second respondent vide his proceedings dated 16.09.2016 permitted him to peruse the files. The petitioner submitted his explanation to the charge memo on 26.09.2016 and thereafter, the petitioner perused the files on 28.09.2016 and gave statement to that effect that he had perused the files.



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8.It is seen from the records that explanation filed by the petitioner was not satisfactory and hence, an enquiry officer was appointed by the second respondent on 29.09.2016. After conducting due enquiry, the enquiry officer submitted his findings dated 03.11.2016 holding that all the charges were proved. Thereafter, show cause notice dated 29.12.2016 was issued to the petitioner along with copy of the enquiry officer's report. The petitioner submitted his explanation. After considering all the records, the second respondent passed an order dated 15.05.2018 imposing punishment of stoppage of increment for two years with cumulative effect. The petitioner preferred an appeal before the first respondent and the same was also rejected vide order dated 20.02.2019. The enquiry was conducted by providing opportunity to the petitioner, based on the service regulations and records were made available to the petitioner.

9.The contention of the learned counsel for the petitioner is that there is no deficiency of the stock and there is no loss to the corporation. The above said submission is not acceptable one since records would go to show that the petitioner had created bogus entries and had manipulated



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records which were evident through records. Another contention of the learned counsel for the petitioner would submit that the respondents have failed to consider the fact that the petitioner was acquitted from the criminal case and therefore, the order impugned is un-sustainable in law. The above said submission is not acceptable one. It is settled proposition that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, the standard of proof required is beyond reasonable doubt while in a domestic enquiry, it is the preponderance of probabilities.

10.It is pertinent to mention that the Hon'ble Supreme Court of India, in a judgment reported in *Aironline 2020 SC 795* in a case of *State Of Rajasthan vs Heem Singh* wherein it has been held that “the verdict of the criminal trial did not conclude the disciplinary enquiry. The disciplinary enquiry was not governed by proof beyond reasonable doubt or by the rules of evidence which governed the criminal trial”. It is relevant to refer the judgment of the Hon'ble Supreme Court of India in a case of *Union of India & Ors Vs. P.Gunasekaran* wherein laid down preponderance of probabilities for exercising of judicial review. The Hon'ble Supreme Court held as follows:-



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12.Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*



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h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

11. It is also pertinent to refer the judgement of the Hon'ble Supreme Court in **2022 Livelaw (SC) 304** in a case of ***State of Karnataka & Anr. Vs. Umesh*** wherein it has been stated as follows:-

17. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry.



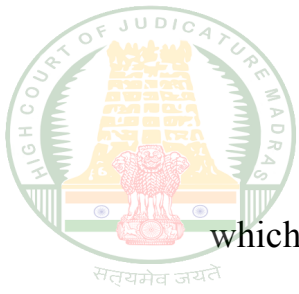
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The Court in the exercise of judicial review must restrict its review to determine whether: (i) the rules of natural justice have been complied with; (ii) the finding of misconduct is based on some evidence; (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and (iv) whether the findings of the disciplinary authority suffer from perversity; and (vi) the penalty is disproportionate to the proven misconduct.

12.By keeping in mind on the above tests, in the instant case on hand, none of the above tests for attracting to interference of order impugned. The enquiry was conducted in accordance with the principles of natural justice. The findings of the enquiry officer and the disciplinary authority are substantiate with reference to the evidence which was adduced during the enquiry. It is settled law that the acquittal by a criminal Court does not preclude a departmental enquiry against the delinquent officer. The object of a Departmental enquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. It is seen from the records that an enquiry was conducted in adherence to the statutory provisions and principles of natural justice. The charges are specific, definite and giving details of the incident,



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which formed the basis of charges. The punishment imposed is proportionate to the gravity of the misconduct. This Court is of the view that there is no reasons to interfere with the order impugned. There is no merit in this writ petition and the same is liable to be dismissed.

13.In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

NCC : Yes / No
Index : Yes / No
gns

08.04.2025

To

1.The Managing Director,
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12, Thabusamy Road,
Kilpauk, Chennai.

2.The Regional Manager,
Tamil Nadu Civil Supplies,
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M.JOTHIRAMAN, J.

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