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W.P.No.26113 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on:07.06.2023

Delivered on: 19.06.2023

**CORAM:**

**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**W.P.No.26113 of 2017**

**&**

**W.M.P.Nos.27738 and 27739 of 2017**

V.Jotheeswari

... Petitioner

**Vs.**

1.Tamil Nadu Civil Supplies Corporation  
Rep by its General Manager (Administration)  
10, Thambuswamy Road, Chennai-10

2.The Tamil Nadu Civil Supplies Corporation  
Rep by Managing Director  
42 Thambuswamy Road, Chennai-10

3.The Tamil Nadu Civil Supplies Corporation  
Rep by its Senior Regional Manager  
Chennai North Region,  
Chennai-86

4.S.Nirmala

... Respondents

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**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings AD 5/86045/14 dated 21.01.2016 of the 1<sup>st</sup> respondent along with the proceedings No.AD1/27580/2017 dated 08.08.2017 of the 2<sup>nd</sup> respondent and the consequential recovery proceedings Na.Ka.E1/4203/2015 dated 06.03.2017 of the 3<sup>rd</sup> respondent, quash all the three orders and consequently direct respondents to release the consequential benefits with penal interest.

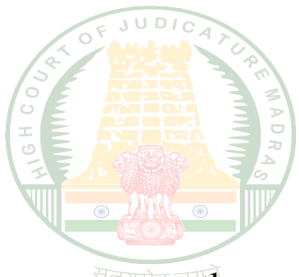
For Petitioner : Mr.S.Venkataraman

For Respondents : Mr.V.R.Thiyagarajan,  
Standing Counsel (Civil Supplies) R1 to 3

No Appearance for R4

**ORDER**

The petitioner seeks issuance of a Writ of Certiorarified Mandamus calling for records in AD 5/86045/14 dated 21.01.2016 of the 1<sup>st</sup> respondent along with the proceedings No.AD1/27580/2017 dated 08.08.2017 on the file of the 2<sup>nd</sup> respondent and the consequential recovery proceedings Na.Ka.E1/4203/2015 dated 06.03.2017 on the file of the 3<sup>rd</sup> respondent, and to quash all the three orders and consequently direct respondents to release



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the consequential benefits with penal interest.

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2. The brief facts of the case as projected by the Writ Petitioner in the affidavit in support of her Writ Petition are that she was holding the post of Deputy Manager (Movement) with the respondent Corporation and she reached the age of superannuation on 30.06.2015. A special audit was ordered into the storage and movement of rice from 11.11.2014 to 17.11.2014 and the audit report has given a finding of irregularity in Storage and Movement of rice resulting in loss of Rs.35,67,379/-. According to the Writ Petitioner, the 4<sup>th</sup> respondent was the Senior Regional Manager and Head of the Chennai North Region and one S.Manimozhi was the Manager (Storage and Movement) and that the petitioner was subordinate to these two persons. The audit report, besides suggesting action against the Writ Petitioner also suggested action to be taken various other employees responsible for the loss. However, excepting the 4<sup>th</sup> respondent, Tmt. S.Nirmala and the petitioner all others were let off and charges were framed by the 1<sup>st</sup> respondent vide proceedings dated 03.03.2015. Charges against

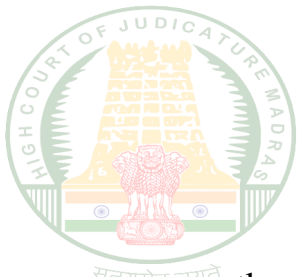


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both the two persons were identical, accusing all responsible for heavy loss to the Corporation.

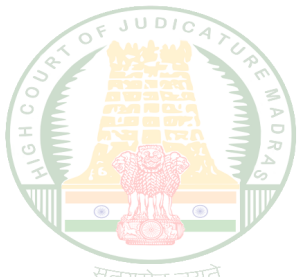
3. According to the Writ Petitioner it is only the 2<sup>nd</sup> respondent alone who could have initiated disciplinary proceedings against the petitioner and therefore the very charge memo dated 03.03.2015 was without jurisdiction and consequently all proceedings were null and void. The petitioner submitted a detailed explanation and the petitioner also appeared before the enquiry officer and gave one another explanation on 12.05.2015 denying all charges. The enquiry was adjourned to 20.05.2015 at which hearing also the petitioner gave a further detailed explanation and according to the petitioner no witnesses were examined in support of the charges and not a single document was marked. However, the petitioner was cross examined by the Management representative and none of the documents relied on by the Corporation were made available for the petitioner's perusal. The enquiry officer found charges 1 and 2 were not proved and remaining charges proved as against the petitioner. Thereafter, the 1<sup>st</sup> respondent as the disciplinary



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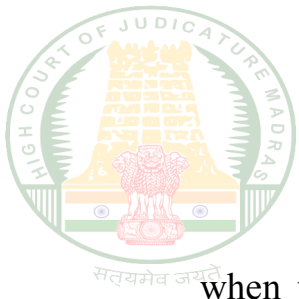
authority communicated the proceedings dated 09.06.2015 and sought for further further explanation from the petitioner, which was given by the petitioner on 18.06.2015. The petitioner objected to the findings and sought for rejection of the repost in respect of charges which were held proved. However, the 1<sup>st</sup> respondent differed from the enquiry officer even with regard to charge 1 and issued proceedings dated 02.12.2015, calling upon the petitioner to give an explanation regarding the differed opinion. The petitioner gave her further explanation on 28.12.2015 with regard to differed opinion especially the same being belated and not maintainable. According to the Writ Petitioner, the 1<sup>st</sup> respondent was predetermined and rejected the petitioner's explanation by a one line proceeding and imposed penalty of stoppage of increment for a period of two years without cumulative effect with a further direction to effect the consequential recovery. The petitioner preferred an appeal to the 2<sup>nd</sup> respondent on 07.04.2016 raising both factual and legal issues. According to the petitioner, the other person accused viz., the 4<sup>th</sup> respondent was let off with a warning though she faced same charges that were faced by the petitioner. Pending the appeal before the 2<sup>nd</sup>



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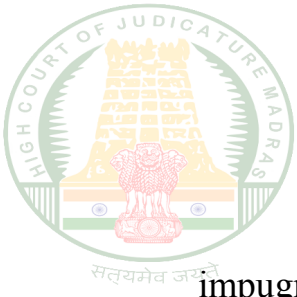
respondent, the 3<sup>rd</sup> respondent issued proceedings dated 06.03.2017 imposing consequential recovery of a sum of Rs.12,08,589/- being 50% of the total amount of alleged loss of Rs.24,17,178/-. Immediately on receipt of the said proceedings, the petitioner addressed a letter to the 3<sup>rd</sup> respondent to not precipitate the matter as the appeal was pending before the 2<sup>nd</sup> respondent. The Writ Petitioner was also constrained to approach this Court in W.P.No.6732 of 2017 seeking a direction to the 2<sup>nd</sup> respondent to dispose of the appeal expeditiously. This Court by order dated 20.03.2017 directed the 2<sup>nd</sup> respondent to dispose of the appeal within a period of three months. However, the 2<sup>nd</sup> respondent rejected the appeal in a single line order, thereby confirming the orders of the 1<sup>st</sup> respondent. Aggrieved by there cumulative and multiple proceedings, the Writ Petitioner has approached this Court raising various grounds including the very right of the 1<sup>st</sup> respondent to initiate action, the same being without jurisdiction. Delay of 6 months pursuant to the enquiry officer absolving the petitioner of the main charge of causing loss was seriously prejudicing the petitioner's right and the belated decision to differ with the enquiry report was improper and illegal. Further,



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when the disciplinary authority was differing with the enquiry report it is mandated that a fresh enquiry should be held and sufficient fair opportunity should be given to the delinquent. Without adhering to any of this settled principles enunciated by various Courts, the 2<sup>nd</sup> respondent rejected the appeal in a single line which only exposes the predetermination and bias in the matter. Further, according to the petitioner, Regulation 4 Chapter V requires that a competent authority should issue a charge memo specifying the details of the rules and instructions and the same has not been followed and the charge memo did not contain the fundamental requirements. The charge memo should be accompanied with list of documents and list of witnesses. But in the instant case, the charge memo was not enclosed with any such list of documents or list of witnesses. Further, no witnesses were examined in support of the charges and when the 4<sup>th</sup> respondent was let off with a mere warning the impugned orders are discriminatory and violative of Article 14 of the Constitution of India. The fact that the 2<sup>nd</sup> respondent acted as disciplinary authority in the case of a co-delinquent and acted as an appellate authority in the case of petitioner is perse unsustainable. The



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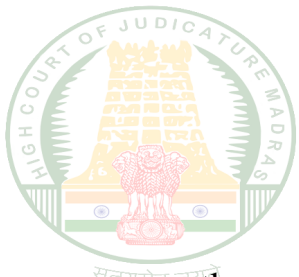
impugned order has been passed mechanically and contending and elaborating all these grounds the Writ Petition came to be filed.

4. The 3<sup>rd</sup> respondent has filed a counter justifying the action taken by the respondents. The respondents also stated that they have already filed a Civil Suit to recover the sum of Rs.12,08,589/- from the petitioner and the petitioner can canvass all these contentions in the said suit and the Writ Petition was liable to be dismissed.

5. To the said counter, the petitioner has filed a reply affidavit reiterating the averments made in support of the Writ Petition besides also stating that the pendency of the said suit was not a bar for the Writ Petition being prosecuted and that if the petitioner succeeds in the Writ Petition the suit would automatically fail.

6. Heard Mr. S.Venkataraman, learned counsel appearing for the petitioner and Mr.V.R.Thiyagarajan, Standing Counsel(Civil Supplies) for





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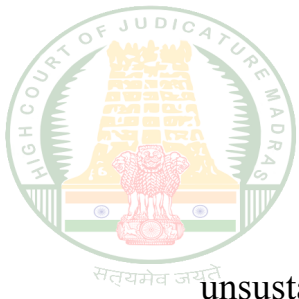
the respondents 1 to 3.

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7. Learned counsel for the petitioner took this Court through various charges and also the grounds raised in support of the Writ Petition and made his elaborate submissions with regard to each of the grounds, especially the right of the 1<sup>st</sup> respondent to initiate the disciplinary proceedings thereby the very charge memo itself being vitiated as one without jurisdiction.

8. Learned counsel also submitted that the petitioner was only in charge of “Movement” and not “Storage and Movement” and when the enquiry officer had rightly found the main charge of monetary loss having been caused to the respondent Corporation in favour of the petitioner by holding that the said charge is not proved. It is not open to the respondents to differ from the said well considered finding of the enquiry officer. Further, the procedure adopted by the respondents in totally giving a go by to the findings of the enquiry officer are also highly improper, arbitrary and the disposal of the appeal by a single line order and cryptic fashion is also

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unsustainable. The learned counsel further contended that if really the disciplinary authority decided to differ with the findings of the enquiry officer the same should have been done at the time when the findings of the enquiry officer were communicated to the petitioner and not after lapse of six months and this ground also would vitiate the disciplinary proceedings.

9. In this regard, learned counsel for the petitioner relied on the order of this Court in W.P.No.24776 of 2004 dated 23.11.2010, ***K.Ramasamy Vs. The General Manager (Administration), Tamil Nadu Civil Supplies Corporation Ltd and another***, this Court in the said case held that when the disciplinary authority had decided to differ from the report of the enquiry officer, the delinquent ought to have been given opportunity to let in evidence and fresh enquiry should have been conducted either by the disciplinary authority or by appointing an enquiry officer and that when such a procedure was not followed, the proceedings were improper and liable to be set aside. The learned counsel also relied on the Division Bench judgment of this Court in W.A.No.2236 of 2018, dated 15.03.2019, in the matter of ***The***

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**General Manager Administration, Tamil Nadu Civil Supplies Corporation**  
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**Limited and another Vs. T.Manivachagam**, the Division Bench held that when there was no evidence to show that the Corporation in that case had sustained a loss on account of the misconduct of the delinquent and when there was no independent evidence adduced before the enquiry officer to prove that the delinquent officer alone was responsible for the loss, the disciplinary authority was not right in directing the delinquent officer to indemnify the alleged loss occasioned to the respondent Corporation. Ultimately, the Division Bench while restoring the punishment of stoppage of increment for a period of two years with cumulative effect set aside the portion of the order directing the respondents to reimburse the amount towards the alleged loss caused to the Corporation.

10. This Court having heard the submissions made by the learned counsel for the petitioner and the learned standing counsel and has considered the available materials and also the decisions of this Court relied on by the Writ Petitioner.

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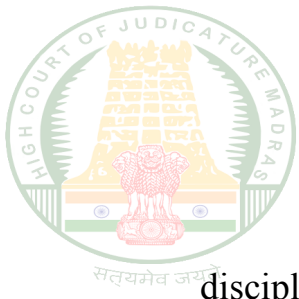


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11. On perusal of the impugned order of the 1<sup>st</sup> respondent, it is seen that the 1<sup>st</sup> respondent had ordered only stoppage of increment for a period of two years without cumulative effect and had only observed that if there had been any loss occasioned to the Corporation the same could be recovered from the Writ Petitioner. It is also seen from the impugned order that no documents were marked and no independent witnesses were examined. In a case of this nature when the main charge of causing huge monetary loss to the Corporation was specifically held not proved against the Writ Petitioner, the disciplinary authority ought to have adopted a proper approach before disposing of the matter. No doubt the disciplinary authority is entitled to take a different view from the one taken by the enquiry officer. However, while doing so the principles of natural justice would certainly require that the disciplinary authority to afford a fair opportunity to the Writ Petitioner to put forth all her contentions and thereafter the disciplinary authority ought to have marked documents and also examined relevant witnesses. In the said case admittedly, not even a list of documents and list of witnesses were enclosed along with the charge memo even at the inception. Atleast when the

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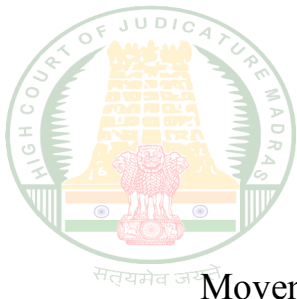


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disciplinary authority wanted to differ with the findings of the enquiry officer it should have take care and caution by conducting enquiry in a fair and transparent manner. Further, the action of the 3<sup>rd</sup> respondent in directing the recovery of a sum of Rs.12,08,589/- from the petitioner especially when the appeal was pending before the 2<sup>nd</sup> respondent was totally unwarranted and uncalled for, especially in the light of the fact that the disciplinary authority himself never quantified any loss that was caused to the Corporation as a result of any act or omission on the part of the Writ Petitioner. Further, the arguments put forth by the learned counsel for the petitioner with regard to delay also appeals to this Court. When the enquiry officer had given a categorical finding supported by reasons that the petitioner was not responsible for any monetary loss caused to the Corporation, it would be natural for the disciplinary authority to record reasons for differing with the same and intimate the said reasons to the Writ Petitioner simultaneously which communicating the enquiry report to the Writ Petitioner. There has been a delay of six months and it appears to be an after thought. One another important aspect to be noticed is that the petitioner was incharge of

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Movement and her immediate superior was incharge of not only movement but also storage. When the immediate superior was let off with a warning and no liability was fixed or punishment was imposed on the said immediate superior, this Court at a loss to understand as to how a subordinate employee who was not even incharge of storage could be saddled with such a monetary liability especially when the charge itself was revolving around failure to store full capacity of essential commodities in the rental godown.

12. The further contention of the learned counsel for the Writ Petitioner that the cryptic fashion in which the appellate authority has dealt with the matter also cannot be brushed aside, even though this Court finds that the rejection of the appeal is not a single line order as projected by the petitioner and contended by the learned counsel. However, on perusal of the same, this Court finds that the appellate authority has not applied its mind independently to the facts and even the charges and findings have not been discussed and the appellate authority merely confirms the order passed by the disciplinary authority. If the appellate authority adopts such a procedure in

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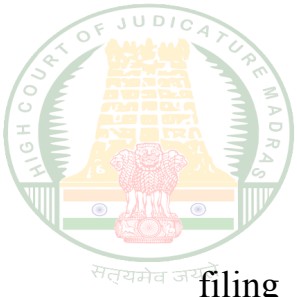
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deciding a statutory appeal, the very object of providing for such statutory appeals to correct erroneous orders by disciplinary authorities would stand defeated. The appellate authority should consider the charges, discuss the explanation offered by the delinquent officer or employee concerned one assess the same independently before concurring or dissenting with the findings of disciplinary authority. Merely endorsing the findings of the disciplinary authority as confirmed is certainly deplorable, especially in a case where the disciplinary authority has differed with the findings of the enquiry officer.

13. The contention of the learned counsel for the respondent Corporation that Civil suit has already been filed and therefore all these issues can be thrashed out in the Civil suit and that the Writ Petition should not be entertained does not merit any consideration. The very claim made in the suit is only a consequential action of the respondent Corporation in furtherance of the impugned order passed by the 3<sup>rd</sup> respondent. If the impugned order itself is bad in the eye of law, the very cause of action for

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filing of the Civil Suit itself vanishes and therefore the Writ Petition, is certainly maintainable as prayed and the pendency of the Civil Suit is no way a bar for this Court entertaining the Writ Petition and dispose of the same on merits.

For the above reasons, this Court allows the Writ Petition. No costs.

Consequently, connected miscellaneous petitions are closed.

19.06.2023.

Internet:Yes

Index:Yes/No

Neutral Citation:Yes/No

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To

1.The General Manager (Administration)  
Tamil Nadu Civil Supplies Corporation  
10, Thambuswamy Road, Chennai-10

2.The Managing Director  
Tamil Nadu Civil Supplies Corporation  
42 Thambuswamy Road, Chennai-10

3.The Senior Regional Manager  
Tamil Nadu Civil Supplies Corporation  
Chennai North Region, Chennai-86

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**P.B.BALAJI, J.,**  
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**Pre-delivery order in**  
**W.P.No.26113 of 2017**

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