

(2010) 06 MAD CK 0076

In the Madras High Court

Case No : Writ Petition No. 2562 of 2010 and M.P. No. 1 of 2010

M. Muthudurai

APPELLANT

Vs

The Tamil Nadu Civil Supplies Corporation Ltd.

RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1953 — Rule 36

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 36

Tamil Nadu Civil Supplies Corporation Limited Employees Service Regulations, 1989 — Regulation 13(2)

Citation : (2010) 06 MAD CK 0076

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Venkatraman, for the Appellant; V. Selvanayagam, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner who was a Bill Clerk employed by the respondent Tamil Nadu Civil Supplies Corporation (for short

TNCSC) has come forward to challenge a show cause notice dated 22.01.2010 issued by the Managing Director of the Corporation.

2. When the writ petition came up on 15.02.2010, this Court directed notice to be issued to the Standing Counsel of the Corporation. Pending

further orders, status quo was directed to be maintained. On behalf of the respondent TNCSC, a counter affidavit dated 03.03.2010 was filed,

justifying the show cause notice.

3. The facts leading to the filing of the writ petition are as follows:

The petitioner was employed as a Bill Clerk in the Amudham Retail Shop at Brindavan Street, Chennai -37. The shop was inspected by the

Assistant Commissioner of Civil Supplies, T. Nagar Zone. On the inspection, bogus billing for huge quantities of rice, sugar and Kerosene were

found. The Inspecting Officer held that the petitioner was responsible for billing the ration commodities and hence, he was placed under suspension

on 15.04.2008. Charges were framed against the petitioner on 06.06.2008. The petitioner submitted his explanation on 07.08.2008 and an

enquiry was ordered. The Enquiry Officer held that all the charges were proved. By an order dated 04.06.2009, the first respondent Senior

Regional Manager, Chennai Southern Region imposed the punishment of stoppage of increment for a period of one year with cumulative effect.

During this time, the petitioner remitted a sum of Rs. 27,640/- on 24.02.2009 equivalent to the value of commodities sold through bogus billing.

4. The second respondent Managing Director by exercise of his power under the TNCSC Employees Service Regulations more particularly

invoking the suo motu power of review under Regulation 13(2) of the Regulations issued a show cause notice to the petitioner on 22.01.2010

asking his explanation as to why suo motu review of the penalty cannot be imposed.

5. It is the case of the petitioner that the notice issued was defective and he was not given an initial notice as to why the power of review cannot be

exercised. Reliance was placed upon judgments of this Court in A. Thangavelu Vs. The Tamil Nadu Civil Supplies Corporation Limited, and The

Tamil Nadu Civil Supplies Corporation Limited, represented by its Chairman-cum-Managing Director v. A. Thangavelu reported in 1999 W.L.R

180, wherein a notice issued for suo motu review was set aside by this Court. But however in those cases the Tamil Nadu Civil Services (D & A)

Rules more particularly Rule 36 came to be interpreted.

6. In the present case, the second respondent Managing Director found that for the proved misconduct the imposed penalty of stoppage of

increment for one year was not sufficient. The amendment issued to Regulation 13 authorising the Managing Director, which is as follows:

Amendment issued to Regulation 13 Chapter V as per 209th Board Meeting held on 27.11.1992 under item No. 329 and as per reference No.

109037/92-G2 dated 13.03.1993 as follows with immediate effect;

READ

(1) Notwithstanding anything contained in these regulations the Board may review its own orders or any other orders of the Officers of the

Corporation, in respect of the cases relating to the cadres of Manager and above cadres, provided no such review shall be detrimental to the

interest of the employee without giving him an opportunity to show cause against such action.

2. Notwithstanding anything contained in these regulation the Chairman Cum Managing Director may review any orders of the Officers of the

Corporation in respect of the cases relating to the cadres below the level of Managers, provided no such review shall be detrimental to the interest

of the employee without giving him an opportunity to show cause against such action.

7. In the decision reported in 1999 WLR 180 (cited supra), the Division Bench, in paragraph 6 held as follows:

6. Though we could appreciate the submissions of the learned Senior Counsel for the appellant ½ Corporation about the need for the authorities

higher than the Appellate Authority to exercise the powers of review envisaged in the rules, unfortunately for the Corporation, the language of the

rule as it stands does not and cannot be claimed to come to the rescue of the learned senior counsel. The provisions contained in Rule 36 of the

Tamilnadu Civil Services (Classification, Control and Appeal) Rules, while providing for the power of review, purports to classify the power also

by adopting a division of class of officers, who can exercise such power with reference to class of service and also with reference to whom such

power could be exercised. In so doing, the powers envisaged in favour of the State Government or the head of the department directly under the

State Government are concerned, the exercise in our view, is relatable and confined to the case of Government servants serving in a Department or

the office under the control of such head of the department or departments and not to all or every other class or category of service, which does

not belong to such category. Consequently, in respect of those employees serving in the Corporation, who are not Government servants serving in

a department or office under the control of such department or departments, the Chairman-cum-Managing Director cannot claim to exercise the

power of review and it is only the Appellate Authority, who falls under the category envisaged under the limb of the said rule could alone exercise

the power conferred subject to the limitation imposed therein. In view of the above, no exception, in our view, could be taken to the construction

applied by the learned single Judge on the scope of the powers of review available under the Rule in question.

8. In that judgment the present service regulations were not noted. On the contrary, on an interpretation of Rule 36 of the Tamil Nadu Civil

Services (D & A) Rules in its application to TNCSC alone was considered. Subsequently another Division Bench of this Court in V.G.

Manoharan v. The Managing Director Tamil Nadu Civil Supplies Corporation Ltd. by its Judgment dated 13.08.2008 interpreted the present rule.

In paragraph 10, it was held as follows:

10. The amendment to Regulation 13, by which the power to review was incorporated, was brought into effect from 13.03.1993 and the show

cause notice was issued thereafter on 28.08.1998. Since no period has been prescribed, one may conclude that such power is to be exercised

within a reasonable period. That, however, does not mean that the period prescribed Under Rule 36 of the Tamil Nadu Civil Services (Discipline

and Appeal) Rules, is ipso facto applicable. What would be the reasonable period would depend upon the facts and circumstances of a particular

case and it would not be advisable to lay down a specific period for the above aspect. Accordingly, the contention relating to the limitation is not

acceptable.

9. The petitioner himself never questioned the power of the Managing Director to initiate suo motu review of the penalty over all the subordinate

employee as authorised under the Regulations. His attempt is only to create a further opportunity viz., there must be a first show cause notice by

the competent authority about his intention to exercise that power and a further notice to show his mind indicating the proposal to impose the

punishment. A reading of the relevant rules does not show any such dichotomous procedure as urged by the counsel for the petitioner. On the

contrary, there is no attempt to challenge either the power of suo motu review or there is any allegation that the review undertaken by the authority

was beyond the time limit prescribed therein. The attempt made by the petitioner to stall a show cause notice on unfounded allegations cannot be

countenanced by this Court.

10. In the light of the above, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.