

B.Subramaniam Vs. the Director.

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Court : Chennai

Decided On : Mar-08-2012

Judge : Vinod K.Sharma, J.

Appeal No. : W.P. Nos.40493 and 40494 of 2006 (O.A.Nos.6504 and 6505 of 2001)

Appellant : B.Subramaniam.

Respondent : The Director.

Advocate for Def. : Mr.R.Ravichandran, Adv.

Advocate for Pet/Ap. : Mr.S.Sethuraman, Adv.

Judgement :

Prayer in W.P.No.40493/06: Writ petition is filed under Article 226 of Constitution of India for the issuance of a writ of Certiorari, to call for the records pertaining to the orders of the 1st respondent in Proc.Rc.No.3103/E3/99-22 dated 12.04.2001 and as confirmed by Roc.No.691/E/2001 dated 31.08.2001 and the consequential order passed by the 2nd respondent in Na.Ka.No.71418/Sa.Thi/1-1/2001-1 dated 24.09.2001 and set aside the same. Prayer in W.P.No.40494/06: Writ petition is filed under Article 226 of Constitution of India for the issuance of a writ of Certiorari, to call for the records pertaining to the proceedings of the 1st respondent in Rc.No.3103/E3/99-45 dated 12.04.2001 and as confirmed by Proc.Roc.No.691/E/2001 dated 31.08.2001 and the consequential order of the 2nd

respondent in Proc.Na.Ka.No.71418/Sa.Thi/1-1/2001-1 dated 24.09.2001 and set aside the same.

COMMON ORDER

1. The petitioners have approached this Court with a prayer for issuance of a writ in the nature of Certiorari, to quash the orders of recovery passed by the Managing Director of the Tamil Nadu Poultry Development Corporation Limited.

2. The petitioners were working as Junior Assistants with the Tamil Nadu Poultry Development Corporation Limited. The Tamil Nadu Poultry Development Corporation Limited was ordered to be closed and its assets and liabilities were taken over by the State Government. The petitioners were accordingly absorbed in the office of the Director of Veterinary Services as Junior Assistants.

3. While the petitioners were working in the office of the Director of Veterinary Services, they were issued with charge memo, for holding departmental enquiry on alleged misconduct for having extended credit sales in respect of the day old chicks, thus violating Government instructions, banning credit sale. The charge was also that, by the act of credit sale, the petitioners caused loss to the Corporation. The second charge against petitioners was that they failed to collect the amount of credit sale from the parties.

4. A detailed reply was sent to the charge memo. The competent authority did not agree with the explanation submitted by petitioners and appointed an enquiry officer. The Enquiry Officer conducted enquiry, in which petitioners participated. The Enquiry Officer, on appreciation of evidence brought on record, exonerated petitioners of all charges, by holding that petitioners were not responsible for the credit sale.

5. The competent authority did not agree with the findings of the enquiry officer, as being of the prima facie view, that the petitioners were guilty of charges.

6. However, keeping in view the fact, that the Tamil Nadu Poultry Development Corporation had been closed down, the procedures under the rules were not followed, and no show cause notice was issued to petitioners, by the competent

authority, giving reason for disagreement with enquiry officer and giving opportunity to petitioners to file objections against the proposal.

7. The competent authority did not pass any order of punishment, as the procedure under rules was not followed.

8. Subsequently, the impugned order was passed, wherein it has been specifically noticed, that the procedure laid down under rules were not followed and that taking lenient view, while waiving of the amount outstanding, 10% of the loss was ordered to be recovered from the employees.

9. Learned counsel for the petitioners challenged the impugned order, on the ground that there is no order holding petitioners guilty of charges, therefore, respondents have no jurisdiction to impose any punishment or order recovery.

10. The contention is opposed by the learned counsel for the respondents on the ground that though enquiry officer had exonerated petitioners, but the competent authority, had disagreed with the enquiry officer. Even though, no final order holding petitioners guilty was passed by following due process of law, but the petitioners cannot take benefit of it, as the enquiry report was not accepted by the competent authority.

11. On consideration, this Court finds that there is force in the contention of the learned counsel for the petitioners. In absence of holding petitioners guilty of charges, it was not open to the respondents to impose even minor punishment of recovery. Admittedly, after disagreeing with enquiry officer, no order holding petitioner guilty was passed by competent authority by following procedure laid down in service rules, as is clear from the reading of impugned order itself. In absence of enforceable order, no recovery can be effected, that too by violating principles of natural justice.

12. Consequently, these writ petitions are allowed. The impugned orders are set aside. The petitioners shall be entitled to all consequential benefits flowing from this order. No costs.