

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 6 OF 2017

Between:

P.Muthaiah

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 05.06.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

- 1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?**
- 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes**
- 3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes**

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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< Gist:

> Head Note:

! Counsel for the Petitioner : Mrs T.Pushpa Rani

^ Counsel for the Respondent: G.P. for Services I

? Cases Referred:

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 6 OF 2017****ORDER:**

Heard learned counsel for the petitioner and learned Government Pleader for Services-I.

2. This Writ Petition is filed to issue Writ of Mandamus declaring the order of dismissal passed by the 1st respondent in proceedings No.P.Admn,A3/2165/2014 dated 13.12.2016, as illegal, unjust, contrary to law, arbitrary, discriminatory, in violation of principles of natural justice and violative of Articles 14, 16 and 21 of the Constitution of India and to grant all the consequential benefits.

2) The case of the Petitioner, in brief, is as follows:

a) The Petitioner has been working as Godown Keeper in the Respondent Corporation from 1985 and his services were regularized as Attender and had been promoted from time to time and discharged his duties as Assistant Grade-II till he was Illegally suspended from his duties.

b) Petitioner had been placed under suspension by orders dated 22.09.2014 by the 3rd respondent and a charge sheet was issued against him on 14.02.2015 for allegedly misappropriating certain essential commodities during his tenure as Incharge MLS Point, Mothkur, April 2013 to December 2012.

c) Petitioner had submitted a representation dated 03.03.2015, a detailed explanation, denying all the charges and explaining his circumstances and that he was not involved in any act of the misappropriation of Essential Commodities.

d) Petitioner had never misappropriated rice or any other Amma Hastham commodities in his entire time working for the Respondent Corporation and would always concentrate on PDS work and his only intentions were to look after smooth functioning of respondent corporation.

e) During petitioner's work as incharge MLS Points, Mothkur, rice stocks were unloaded in godown without weighment by hamalis every month. Petitioner had unloaded about 30 to 40 trucks of rice without weighment and released stocks to fair price shop dealers with weighment.

f) The Petitioner had discharged duties as per the instructions of the 4th Respondent. Unsatisfied with the explanation of the petitioner, Enquiry Officer was appointed to conduct the enquiry by proceedings dated 07.07.2015 and the petitioner appeared before the Enquiry officer and submitted his explanation, which remained unchallenged and unrebutted.

g) Enquiry officer simply without any cross examination or witnesses has held him guilty of charges without confronting the alleged documents. The Enquiry, marking of documents or witness was not done in his presence.

h) Petitioner was issued show cause notice on 12.04.2015 by 1st respondent directing dismissal from service besides recovery of cost of shortage amounting to Rs. 36,01,993/- without furnishing any enquiry report.

i) On 21.04.2016, petitioner made representation asking the 1st respondent to furnish the entire copies of enquiry proceedings and on 18.05.2016, he was furnished with the copy of the enquiry report, which shows that the Enquiry

Officer had submitted his finding of the enquiry on 23.01.2016. Hence, the Writ Petition.

3. Counter affidavit filed by the 1st respondent, in particular, para 4 reads as under:

"On thorough verification of the record maintained by the petitioner, the JC&EOED, Nalgonda has given a detailed report on the irregularities committed by the petitioner.

The Board of the respondent Corporation in its meeting held on 5.11.2007 have resolved that strict and stringent action should be taken in all the cases of shortages, embezzlement, misappropriation and diversion of stocks, Board also directed that immediately on noticing of the case, disciplinary action should be initiated keeping the concerned under suspension apart from criminal action as per G.O.Ms.No.25, GA(Ser.c) Dept dated 03.02.2004 as the respondent Corporation is following all Government rules and orders from time to time and moreover Corporation handling the stocks of Government meant for poorest of the poor involving large scale subsidies provided by Government from Public Exchequer. In terms of directions issued by the Board of the respondent Corporation, upon noticing the large scale shortage of essential commodities at MLS point, Mothkur, Nalgonda during the tenure of the petitioner

as incharge, immediate action has been taken against the petitioner by placing him under suspension and lodging of criminal case.

The fact remain in the issue is that the petitioner engaged a private person to operate the MLS point in contravention of the circular instruction issued from time to time that no unauthorized persons should be allowed to function or assist MLS point incharge at the MLS point or in any other office of the Corporation. He never reported on the issue of forgery of his signature by the unauthorized person working at MLS point Mothkur either at the time of giving explanation to charge memo or before the Enquiry Officer. He raised the issue of forgery of signature upon issue of show cause notice to dodge the issue unsettled. The **petitioner vide his representation dated 30.07.2015 addressed to Project Director, DWAMA, Nalgonda/Enquiry Officer while narrating the incidents which lead to shortages in the godown and requested to recommend for permission for replenishment of rice which goes to prove that shortages were occurred at MLS point during his tenure as incharge.**

Taking into consideration of the misconduct/ misappropriation and gravity of charges the impugned proceedings has been passed dismissing the petitioner from the service apart from recovering the cost of the essential

commodities. All other allegations made by the petitioner are all false without any subsistence."

PERUSED THE RECORD

4. The relevant portion of the impugned order No.P.Admn.A3/2165/2014, dated 13.12.2016 of the V.C and Managing Director, Telangana State Civil Supplies Corporation Limited, Hyderabad, reads as under:

"ORDER:

NOW THEREFORE under Rule 25(1) (d) Section III and in exercise of the powers conferred under Section III Rule 26(3) of TSCSCL Employees Conduct, Discipline & Appeals Regulations and also in terms of provisions contained in G.O.Ms.No.25, GA (Ser.C) Dept dated 03.02.2004, Sri. P. Muthaiah, Asst.Gr.II& ex. i/c MLS point, Mothkur (U/S) is awarded with the punishment of Dismissal from service besides recovery of Rs. 18,00,966.36 being the single cost of the shortages along with interest @ 11.75% in lumpsum towards the rate charges by SBI on cash credit availing by the Corporation for the shortages noticed at MLS Point, Mothkur, Nalgonda Dist. during his tenure as incharge for which he is solely responsible. The period of suspension is treated as not on duty."

5. The final order No.P.Admn.A3/2165/2014, dated 13.12.2016 impugned in the present writ petition, which refers to facts on record and the findings of the disciplinary authority as per record is extracted hereunder:

"FACTS ON RECORD:

The individual vide his letter dated 30.07.2014 addressed to Dist.Manager, Nalgonda has stated that Sri B. Laxman, representative of B. Sreedhar Reddy contractor assisting him at MLS point Mothkur and forged his signatures on the second copy of Truck chits in having received the stocks supplied through above lorries. Whereas he was not aware that the said stock unloaded in the godown. Requested to take action against Sri. B. Laxman.

The fact remain in the issue is that he engaged a private person to operate the MLS Point in contravention of the circular instruction issue from time to time that no unauthorized persons should be allowed to function or assist MLS Point incharge at the MLS Point or in any other office of the Corporation.

He never reported on the issue of forgery of his signature by the unauthorized person working at MLS point, Mothkur either at the time of giving explanation to charge memo or before the Enquiry Officer. Now he

raised the issue of forgery of his signature to the reasons best known to him."

**FINDINGS OF THE DISCIPLINARY AUTHORITY AS
PER RECORD IS AS FOLLOWS:**

"a) The fact remain in the issue is that he engaged a private person to operate the MLS Point in contravention of the circular instruction issued from time to time that no unauthorised persons should be allowed to function or assist MLS Point incharge at the MLS Point or in any other office of the Corporation.

b) He never reported on the issue of forgery of his signature by the unauthorised person working at MLS point, Mothkur either at the time of giving explanation to charge memo or before the Enquiry Officer. Now all of a sudden the issue of forgery of signature brought into light by the delinquent.

c) Sri P.Muthaiah, Asst.Gr.II& ex i/c MLS point, Mothkur (U./S) vide his representation dated 30.7.2015 addressed to Project Director, DWAMA, Nalgonda, Enquiry Officer while narrating the incidents which lead to shortages in the godown and requested to recommend for permission for replenishment of rice which goes to prove that shortages were occurred at MLS Point during his tenure as incharge.

d) He is well aware of the fact that Project Director, DWMA, Nalgaonda was appointed as enquiry officer to enquire into the charges framed against him along with other supervisory officials. He never requested for production of witnesses or to cross examine the witnesses during the entire process of enquiry. He never represented that the enquiry officer has taken his signature on blank paper. Hence this is only an after thought to find fault with the process of enquiry to dodge the issue.

e) A.M. (Tech) Nalgonda who was appointed as Presenting Officer in the case, while furnishing the record of the case to Enquiry Officer has stated that after thorough reconciliation of accounts of MLS point, Mothkur with reference to monthly receipts and sale proceeds account, the variation of stocks was noticed between the balance shown by the incharge in his records and balance arrived as per the records maintained in the District Office. This clearly indicates that the entire issue of shortages at MLS point, Mothkur was established purely basing on the record of the godown but not in the presence of any witnesses."

DISCUSSION AND CONCLUSION

6. In the counter affidavit filed by the 1st respondent at para 4, it is specifically averred that the petitioner never reported on the issue of forgery of his signature by the unauthorized person working at MLS point, Mothkur either at the time of giving explanation to the charge memo or before the enquiry officer and that the petitioner raised the issue of forgery of signature upon issue of show cause notice to dodge the issue unsettled.

7. A bare perusal of the final order No. P.Admn.A3/2165/2014, dated 13.12.2016 on the contrary in its second page, in its narration, of facts on record in particular refers to the letter dated

30.07.2014 of the petitioner addressed to the District Manager, Nalgonda through which he has stated that Sri B.Laxman representative of Sri B.Sreedhar Reddy contractor assisting him at MLS point Mothkur forged his signatures on the second copy of truck chits in having received the stocks supplied through above lorries. This Court opines curiously the above referred fact on record pertaining to petitioner's letter dated 30.07.2014 about forgery of petitioner's signatures does not find place in the findings of the disciplinary authority as per records in final order No.P.Admn.A3/2165/2014, dated 13.12.2016 and curiously in para 'b' it is stated that the petitioner never reported on the issue of forgery of his signature by the unauthorized person working at MLS point, Mothkur either at the time of giving explanation to the charge memo or before the enquiry officer.

8. This Court opines that there is clear contradiction in so far as the aspect of forgery of the petitioner's signature is concerned in view of the fact that the facts on record specifically referred to the petitioner

representing about forgery of his signature vide letter dated 30.07.2014 the findings of the disciplinary authority strangely, curiously record contrary to record that the petitioner never reported on the forgery of signature by the unauthorised person working at MLS point Mothkur either at the time of giving explanation to the charge memo or before the Enquiry Officer. The charge memo is dated 14.02.2015, and the show cause notice is dated 12.04.2016 and the petitioner's representation pertaining to forgery of the signatures as per the facts on record, as per the impugned final order No. P.Admn.A3/2165/2014, dated 13.12.2016 is 30.07.2014.

9. Taking into consideration all the above referred facts and circumstances, this Court opines that the whole issue needs to be re-examined by the VC and Managing Director, Telangana State Civil Supplies Corporation Limited, Somajiguda, Hyderabad, in the light of the reasoning made in paras 6, 7 and 8, above the writ petition is disposed of directing the 1st respondent to re-consider his decision made vide final

order No. P.Admn.A3/2165/2014, dated 13.12.2016 within a period of four weeks from the date of receipt of a copy of this order, duly taking into consideration the clear contradiction on the point of forgery as discussed in paras 6, 7, and 8 of the present order, in accordance with law in conformity with principles of natural justice and pass appropriate reasoned order in the interest of justice duly communicating the decision to the petitioner. However, there shall be no order as to costs

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 05.06.2023

Note: L.R. copy to be marked
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