IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-11-2016

(Orders reserved on 08.11.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.16500 of 2016
and
W.M.P.No.14264 of 2016

V.Annamalai .. Petitioner

Vs.

1. The Chairman and the Managing Director,
Food Corporation of India,
Head Quarters, 16-10, Barakhamba Lane,
New Delhi-110 001.

2. The Executive Director (S),
Food Corporation of India,
Zonal Office, No.3, Haddows Road,
Chennai-600 006. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings vide No.Vig.4/(11)/2010, dated 29.05.2012 passed by the second respondent and consequential order/proceedings vide No.A&R/10 (21)/2015, dated 03.02.2016 passed by the first respondent and quash the same and consequently direct the second respondent to issue the additional/annual increment and further treat the suspension period as duty period for all purposes.

For Petitioner : Mr.R.Govindasamy
For Respondents : Mr.S.Vijayakumar

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings vide No.Vig.4/(11)/2010, dated 29.05.2012 passed by the second respondent and consequential order/proceedings vide No.A&R/10(21)/2015, dated 03.02.2016 passed by the first respondent and quash the same and consequently direct the second respondent to issue the additional/annual increment and further treat the suspension period as duty period for all purposes.

2. In the affidavit filed in support of the Writ Petition, it is averred by the petitioner that he was originally appointed as Typist in the Food Corporation of India (FCI) on 04.04.1978. He has rendered service for the period of 37 years and retired from service in the year 2015. There is a Society in the name and style of Food Corporation of India Employees' Co-operative Society Ltd., which was duly registered under the Multi-State Co-operative Societies Act. In order to develop the activities of the Society, once in every five years, the office bearers of the Society are elected through election among the permanent members of the Society. On considering the meritorious and unblemished service in the FCI, the petitioner was elected as one of the Board of Director as honorary post of the Society for a period of five years from 01.01.2005 to 31.12.2009. It is further stated that in order to improve the financial position of the Society and for the welfare of the members of the Society, the Society unanimously decided to avail loan from ICICI Bank and accordingly, the Society availed loan to the tune of Rs.50 crores. The main object for which the loan was availed by the Society, was to provide various loans to the members as per Society's Bye-laws.

3. It is further stated that as per the powers conferred upon the President under the Multi-State Co-operative Societies Act/Rules, the Society had formed a sub-committee with Society President along with six Directors, who actually transferred the amount availed from the ICICI Bank for housing scheme for the welfare of the members of the Society as per the terms and conditions of the Bye-laws. The petitioner has not figured in the sub-committee. One of the member of the Society who belonged to rival group, was defeated by the petitioner's group in the election to the post of Director of the Society, by name N.Soundararajan, who made baseless complaint against the FCI Employees Co-operative Society by alleging that the loan of Rs.50 crores availed from ICICI Bank, was not properly utilised by the Society for which it was sanctioned and the funds were misappropriated and diverted for some other purpose without the approval of the General Body and the Registrar of Co-operative Society. It is further stated that the complainant made a complaint only against the Society and not against the petitioner or his roles in the Society as one of the Directors.

4. It is further stated by the petitioner that as per Clause 36(h) of the Bye-laws of the Society, the Board of Directors are empowered to acquire or dispose of immovable property and as per the said Clause, only the sub-committee transferred the fund to M/s.Om Sakthi Agencies, Madras, for acquiring plots for the benefit of the permanent members of the Society. While so, since no action was initiated on the basis of the complaint, by the authority concerned, the complainant approached this Court in Crl.O.P.No.24283 of 2009 and as per the direction of this Court,

the CBI took the complaint on file for investigation by way of registering a case in RC.3/S/10 of CBI, SCB, Chennai and the CBI filed a petition before the Special Court for CBI cases, Chennai, under Section 173 Cr.P.C. to close FIR. The learned Judge directed for closure of the FIR by allowing the petition filed by the CBI on 05.07.2013 and in the report submitted by the CBI, the allegations levelled by the complainant are not at all attracted to punish the accused and based on the closure report, the learned Judge acquitted all the accused from the charges.

5. It is the further case of the petitioner that the second respondent directed the General Manager in the South Zone of FCI to take disciplinary action against the Directors of the FCI Employees Co-operative Society, who are working under his control separately, instead of conducting common proceeding against 17 Directors of the Society. Accordingly, the petitioner was made charged-official for the domestic enquiry conducted by the second respondent and in the result of the enquiry, the petitioner was found guilty and was imposed with the penalty of reduction of pay by two stages from the pay which the officer was drawing with cumulative effect immediately and his period of suspension was treated as not spent on duty for all purposes, vide penalty order, dated 29.05.2012. Aggrieved by the said penalty, the petitioner preferred appeal petition to the Managing Director, FCI, New Delhi on 06.08.2013 and also approached this Court for direction to the FCI to dispose of the appeal petition immediately, since the petitioner's superannuation was on 31.01.2015. This Court, by order dated 08.10.2014, has directed the FCI to dispose of the appeal within a period of twelve weeks from the date of receipt of a copy of the order. It is the grievance of the petitioner that the Managing Director, without properly applying his mind, rejected the appeal on 01.01.2015, by confirming the order passed by the second respondent. Aggrieved by the said order passed by the Managing Director in the said appeal, the petitioner filed Review Petition, and by the impugned order, dated 03.02.2016, the penalty was reduced by one stage in the time scale of pay for a period of one year, with further observation that during this period, he will not earn increment of pay, but it will not have the effect of postponing the future increments of pay and that the period of suspension was however directed to be treated as not spent on duty for all purposes. Aggrieved by the said order passed in the Review Petition, the present Writ Petition is filed for the relief stated supra.

6. Learned counsel for the petitioner mainly contended that the FCI is an entity under the control of the Government of India, whereas the Society is totally a different legal entity and it is being administrated and controlled by the Registrar of Co-operative Society, New Delhi and if any mal-practice or mis-

conduct is found in the Society against any member who is alleged to have been involved in the said mis-conduct, such delinquent shall be removed from holding the post by way of passing special Resolution, whereas the second respondent is one of the Zonal Head of the different entity, being controlled and administered by the Government of India. The second respondent can initiate the disciplinary proceedings only as against the employees who are found in misconduct in the course of office under the control of the second respondent.

7. It is the next submission of the learned counsel for the petitioner that though the other Board of Directors were also charged with the same set of charges like that of the petitioner, they were also involved in the department proceedings and they were given the minimum punishment and in the appeal preferred by the said Directors, only censure was awarded by the appellate authority, but the petitioner's disciplinary authority/Executive Director (South) awarded the major penalty to the petitioner and the petitioner was not considered in the reduction of punishment on par with the other Directors and the petitioner's punishment of reduction of pay by two stages with cumulative effect, was modified to that of one stage for a period of one year. Such modification was not on par with the other delinquent officers. Learned counsel further submitted that one Mr.K.Periyasamy, AGI(D) working in District Office, Coimbatore was exonerated and he was promoted as Manager and his suspension period was treated as duty period and he enjoyed all the benefits. Hence, learned counsel submitted that for the same set of charges, there cannot be any discrimination in awarding punishment. In support of his submissions, learned counsel for the petitioner relied on the judgment of the Supreme Court reported in 2013 (3) MLJ 101 (SC) = 2013 (3) SCC 73 (Rajendra Yadav Vs. State of M.P) and 2013 (12) SCC 372 (Lucknow Kshetriya Gramin Bank Vs. Rajendra Singh).

8. Countering the above submissions, learned counsel for the respondents, by filing detailed counter affidavit, submitted that the employees of the FCI (South Zone) promoted a Society in the name and style of Food Corporation of India Employees Co-operative Society, which is registered under the Multi-State Co-operative Societies Act. As per the Bye-laws, the Society is authorised to borrow funds from the members and others, to be utilised for loans to the members for useful purpose. In terms of the Bye-laws, once in five years, the office bearers are elected through elections and the present Board of Directors was constituted by election held on 20.12.2014. The petitioner herein was elected as one of the Board of Directors for the period of five years from 01.01.2005 to 31.12.2009. Learned counsel further stated that On 17.03.2005, the Board meeting was held by the then President M.Sakthivel and other Directors, and a sub-committee consisting of 10 members, was appointed under

Bye-law 20 of the Society. The Committee was constituted for the purpose of obtaining loan, foreclosing the loan amount with Central Chennai Cooperative Bank and for banking with ICICI Bank, Nungambakkam Branch.

9. Learned counsel for the respondents further contended that certain Directors of the Society misused the funds disbursed by the ICICI Bank and diverted the same to some other purpose. The members of the Society are all the permanent employees of the FCI and the Directors are elected through election from the members of the Society and that the Society is acting on behalf of the employees of the FCI and that the interest of the employees should be protected from misusing the funds disbursed by the ICICI Bank, and therefore, it is incorrect to state that FCI has nothing to do with the internal affairs of the Society. Learned counsel for the respondents further contended that one of the employees lodged a complaint with regard to the functioning of the Board of Directors in transferring the funds to one M/s.Om Sakthi Agencies, Madras, for acquiring plots for the benefit of the permanent members of the Society. Since no action was initiated on the basis of the complaint, the matter was taken up to this Court in Crl.O.P.No.24283 of 2009 for a direction to the CBI to investigate the matter, based upon which, CBI registered the FIR and the matter was investigated. Ultimately, final report was filed under Section 173 Cr.P.C. before the Special Judge for CBI cases, Chennai, which was taken on file and the accused were acquitted of the charges. But that does not mean that the respondent-FCI is not empowered to initiate disciplinary proceedings.

10. Learned counsel for the respondents further contended that on coming to know of the acts of the employees, who acted as Directors of the Society, FCI initiated disciplinary proceedings, in pursuance of which, the petitioner herein was suspended from service on 03.06.2010 under the FCI Staff Regulations and he was served with a charge memo by the second respondent and in the enquiry held, the disciplinary authority accepted the findings rendered by the enquiry officer and imposed a penalty of reduction of pay by two stages from the pay which the officer was drawing, with cumulative effect and the period of suspension was treated as not spent on duty for all purposes. Appeal against the same was rejected and in the Review Petition, the first respondent modified the order by reducing the penalty of reduction of pay to one year.

11. With regard to the discrimination in awarding punishment, as alleged by the petitioner, it is submitted by the learned counsel for the respondents that the petitioner was serving as an officer of the FCI and he is required to act in the interest of the FCI without giving any room for any

compliant whatsoever. The petitioner failed to maintain a respectable standard of conduct in life, thereby, brought discredit to the FCI. That is why, the punishment was awarded. For the above reasons, learned counsel for the respondents prayed for dismissal of the Writ Petition.

12. Keeping in mind the above submissions made by the learned counsel for the parties, I have carefully considered the same and perused the materials available on record.

13. Though very many contentions have been raised by either side, the main argument advanced by the learned counsel for the petitioner is that there was discrimination in awarding the punishment to the petitioner, and when some of the officers were awarded with lesser punishment, the petitioner must also be given the same benefit.

14. In the above context, learned counsel for the petitioner relied on the judgments of the Supreme Court reported in 2013 (3) MLJ 101 (SC) = 2013 (3) SCC 73 (Rajendra Yadav Vs. State of M.P) and 2013 (12) SCC 372 (Lucknow Kshetriya Gramin Bank Vs. Rajendra Singh), wherein the Supreme Court dealt with the applicability of Doctrine of Equality to all who are equally placed, even among persons who are found guilty and held that parity among co-delinquents had to be maintained when punishment is being imposed. It was also further held by the Supreme Court that punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. For the same proposition, it is also worthwhile to notice the judgments of the Supreme Court reported in 1998 (2) SCC 407 (Director General of Police Vs. G.Dasayan) and 2006 (6) SCC 548 (Anand Regional Coop. Oil Seeds Growers' Union Ltd. Vs. Shaileshkumar Harshadbhai Shah).

15. Therefore, following the dictum laid down by the Supreme Court in the above decisions, it has to be concluded that there cannot be any discrimination in awarding punishment to the delinquents facing the same set of charges. Hence, the Writ Petition is allowed and impugned orders are set aside and the matter is remitted back to the respondents and the respondents are directed to pass fresh orders with regard to the punishment in parity with other delinquents, if there are same set of charges for the delinquents. No costs. Consequently, W.M.P. is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

Copy to
1. The Chairman and
   the Managing Director,
   Food Corporation of India,
   Head Quarters,
   16-10, Barakhamba Lane,
   New Delhi-110 001.

2. The Executive Director (S),
   Food Corporation of India,
   Zonal Office,
   No.3, Haddows Road,
   Chennai-600 006.

+1 cc to Mr.S.Vijayakumar,advocate,sr.67198

+1 cc to Mr.I.Abraham,advocate,sr.67633

pvs(co)
krd 19/12

W.P.No.16500 of 2016