

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.20314 of 2004
WMP.Nos.24445 and 24446 of 2004

R.Murugesan
Petitioner

Vs

- 1.The Director of Industries and Commerce
Chepauk, Chennai-5
- 2.The Joint Director (Industrial Cooperative)
and Special Officer, The Salisbury Industrial
Cooperative Tea Factory, Gudalur
Nilgiris 643 212
Respondents

Prayer:- This Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the 2nd Respondent, dated 7.7.2004 in Rc.No.E1/Cashier/2002 and to quash the same as illegal and to direct the Respondents to provide work to the Petitioner with all attendant benefits including monetary benefits and due seniority.

For Petitioner : Mr.L.Chandrakumar for
Mr.K.Lavan

For Respondents : Mr.R.Parthiban-R2

ORDER

This Writ Petition is filed against the order of the 2nd Respondent dated 7.7.2004, terminating the Petitioner from service.

2. This court heard the learned counsel on either side and also perused the materials placed on record.

3. Originally the Petitioner joined the service as Junior Clerk in the year 1984 and later, he was promoted as Cashier in the year 1988. For the offence of misappropriation of amount, the Petitioner and another were charge sheeted and in the departmental enquiry, they have been found guilty of the said offence. Accordingly, by order dated 25.9.2002, they had been initially imposed with the punishment of reversion to the post of Record Clerk, which is the post below the post of Junior Clerk. Hence, he filed WP.No.30657 of 2003,

challenging the reversion and the said Writ Petition was allowed on 18.6.2004 on technical grounds that there cannot be reversion to the post below the post to which an employee was originally appointed i.e. below the two ranks, however, liberty was given to the authorities to initiate fresh proceedings, in accordance with law. Thereafter, the Department passed the impugned order, terminating the Petitioner from service. Hence, this Writ Petition has been filed.

4. The only ground, on which, the learned counsel for the Petitioner has assailed the impugned order of dismissal from service as illegal, is that without even giving an opportunity to the Petitioner and without giving any valid reason and without conducting any enquiry, the impugned order has been passed and hence, it is a non speaking order and not sustainable.

5. The learned counsel for the Respondents would contend that the Petitioner being a Cashier is a accomplice, as he helped another in committing the offence. Further, he has accepted the offence and deposited the entire amount. Subsequently, the criminal proceedings initiated against ended in conviction. Therefore, considering all those aspects, he was removed from service by the impugned order.

6. On a careful consideration of the submissions of the learned counsel on either side and the materials available on record, it is seen that the earlier order of reversion and the present impugned order were passed by the same authority. While passing the earlier order of revision, on considering the previous conduct of the Petitioner and the family circumstances and the period of service and also the fact that the entire amount has been paid back if not by the Petitioner himself, but by the other accused, the authority thought it fit to take a lenient view and to give him one more chance in his life and accordingly, he was imposed with the punishment of reversion. Though such a punishment is proper, still there is a technical mistake, since he was reverted to the post, to which he was not appointed, but to the post below two ranks. Unfortunately, the Petitioner lost his life miserably, though he had succeeded in the earlier writ petition. The present Writ Petition is pending for the past 12 years. The only contention of the Petitioner is that after setting aside the order of reversion in the earlier Writ Petition, the authority did not conduct fresh enquiry and did not give any opportunity to the Petitioner and based on the original enquiry report, the impugned order has been passed, without giving any reasons.

7. In the impugned order, it is stated as follows:-
"FINDINGS:-

Under the circumstances narrated above, I find that all the three charges framed against Thiru.R.Murugesan, Cashier (under suspension) are held proved. The charges are very grave in nature.

For the charges held proved, pending criminal investigation, he was arrested, remanded and is on bail only and for the general welfare of the factory, I hereby order that Thiru.R.Murugesan, Cashier (under suspension) be removed from service with immediate effect as per the Tamil Nadu Cooperative Societies Act 1983 and Tamil Nadu Cooperative Societies Rules 1988 and the by-laws of the factory."

8. On a careful consideration of the impugned order, it is seen that the authority simply extracted the charges framed against the Petitioner, the explanations and the remarks of the enquiry officer and thereafter, simply in the last page, he has stated that the charges were held proved, without discussing in detail and without assigning any reason for removing him from service. Further, there is no whisper as to how the authority has come to such a conclusion and in what way the original enquiry report is correct and hence, it can be said that there was non application of mind on the part of the authority, while passing the impugned order. In the earlier order of reversion also, there was a technical mistake, inasmuch as, he was reverted to the post of record clerk, which is below the rank of the Petitioner viz. junior clerk. Even for giving such punishment, the authority should have given reasons. When the authority took a lenient view while ordering reversion, the reason for ordering termination may be the Petitioner approaching the court. Though the authority has got every right to impose any punishment, but it should be done in a manner known to law.

9. Reason is the heart beat of every conclusion and without the same, it becomes lifeless, as has been laid down by the Honourable Supreme Court in 2008-16-VST181-SC (SAIL Vs. Sales Tax Officer, Rourkela) and 2003 (11) SCC 519 (Raj Kishore Jha v. State of Bihar). In the case on hand, as already discussed above, there is no reason or discussion in the impugned order for imposing such punishment.

10. For the reasons stated above and in the absence of any discussion or explanation or reason having been given by both the authorities for imposing the impugned punishment and in the light of the decision cited supra, the impugned order is not sustainable.

11. The Petitioner has already undergone the punishment for 12 years. At this stage, the learned counsel for the Petitioner undertakes to file an affidavit of undertaking before this court that the Petitioner is willing to work in the post to which he was originally appointed, namely, Junior Clerk and he will not claim any back wages and he will not do any such act in future. On such an undertaking being filed, the impugned order is set aside and the

Petitioner shall be posted to the post, to which the Petitioner was originally appointed, namely, Junior Clerk.

12. In the result, this Writ Petition is allowed on the above terms. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To:

1.The Director of Industries and Commerce, Chepauk, Chennai-5

2.The Joint Director (Industrial Cooperative), and Special Officer, The Salisbury Industrial Cooperative Tea Factory, Gudalur, Nilgiris 643 212

+1 cc to Mr.R.parthiban, advocate,sr.43996

+1 cc M/s.K.lavan, advocate,sr.43928.

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WP.No.20314 of 2004

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