

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.32381 of 2017

C.Udayakumar

.. Petitioner

-vs-

1. The Deputy Registrar of Cooperative Societies
Hosur Circle, Hosur
Krishnagiri District

2. K.K.127, Hosur Primary Agricultural
Cooperative Credit Society Ltd.,
rep.by its President
Hosur, Krishnagiri District .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to the show cause notice dated 19.06.2017, quash the same and consequently direct the respondents to reinstate the petitioner in service and pay the subsistence allowance to the petitioner from 1.9.2016 to till date and all other attended benefits.

For Petitioner :: Mr.Balan Haridas

For Respondents:: Mr.L.P.Shanmughasundaram
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned show cause notice dated 19.6.2017 issued by the disciplinary authority, proposing the major penalty, while differing from the report of the enquiry officer.

2. Challenging the approach adopted by the disciplinary authority, the learned counsel for the petitioner submitted that when the report of the enquiry officer, after completion of the enquiry, shows that the petitioner is not found guilty of all the charges, no doubt, the disciplinary authority is entitled to differ from the findings given by the enquiry officer. But while differing from the findings of the enquiry officer, the disciplinary authority should assign deviating note/reasons for differing from such findings of the enquiry officer and then call for a written explanation from the delinquent officer/petitioner herein to show cause as to why the report of

the enquiry officer should not be differed. Without resorting to that course, the disciplinary authority, while asserting the reasons for differing from the report of the enquiry officer, has straightaway come to the conclusion to impose the major penalty on the petitioner, which is impermissible in law. Therefore, the impugned notice is liable to be set aside, since the respondents have already pre-judged the issue even before submission of the petitioner's reply to the deviating note reached by the disciplinary authority.

3. The learned Special Government Pleader for the respondents, taking on these contentions, at the outset replied that the disciplinary authority is legally entitled to differ from the report of the enquiry officer. Only after giving various reasons for not accepting the report of the enquiry officer, the disciplinary authority has issued the impugned notice. Therefore, the petitioner may be directed to give his written explanation, he pleaded.

4. But I do not find any merit in the submissions made by the learned Special Government Pleader for the respondents. The reason is that in page-7 of the impugned show cause notice, the disciplinary authority has already proposed the punishment, without even putting on notice the reasons for differing from the report of the enquiry officer and before receiving the explanation from the delinquent/petitioner herein. In fact, the relevant portion of the impugned notice reads as follows:-

“மேற்குறிப்பிட்ட நிலையில் குற்றம் சாட்டப்பட்ட சங்கச் செயலாளர் மீது சாட்டப்பட்ட குற்றச் சாட்டு நீர்பணமாகிறது என்றே நிர்வாகம் கருதுகிறது. இந்த நீர்பணமான குற்றச் சாட்டுக்கு, குற்றம் சாட்டப்பட்ட சங்கச் செயலாளர் திரு.சி.உதயகுமார் மீது அதிகபட்ச தண்டனை வழங்க நிர்வாகத்தினால் உத்தேசிக்கப்பட்டுள்ளது.”

5. A perusal of the same shows that the respondents have already pre-judged the issue by proposing the punishment. Moreover, the Apex Court has already settled the legal position in the case of Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84 holding that the disciplinary authority should issue notice with the reasons for deviating from the report of the enquiry officer and call for explanation from the delinquent to show cause as to why the disciplinary authority should not deviate from the enquiry officer's report. In this context, the relevant paragraphs of the aforementioned judgment are extracted hereunder:-

“18.....When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry

officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (1994 AIR SCW 1050) (supra).

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer.

That stage has not been complied with.

6. In that view of the matter, the impugned show cause notice is set aside and the respondents are directed to proceed

from the stage indicated as above, namely, that the disciplinary authority shall cause notice with the reasons for differing from the report of the enquiry officer and call for explanation from the petitioner as to why the disciplinary authority shall not disagree with the report of the enquiry officer and thereafter the disciplinary authority shall take a final call on the issue.

7. The learned counsel for the petitioner, however, submitted that the petitioner has not been paid with the subsistence allowance from September, 2016 till this date. The learned Special Government Pleader for the respondents, in reply, submitted that if the petitioner has not been paid with the subsistence allowance as of now, the same will be paid by the respondents as per the rules. Recording his statement, the respondents are directed to pay the subsistence allowance to the petitioner for the relevant period within a period of two weeks from the date of receipt of a copy of this order, if the same has not been paid already, and thereafter shall proceed with the matter as indicated above. With this direction, the writ petition stands allowed. Consequently, W.M.P.Nos.35671 to 35673 of 2017 are closed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Registrar of Cooperative Societies
Hosur Circle, Hosur
Krishnagiri District

+2cc to Mr.Balan Haridas, Advocate SR.No.88689, 88664
+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.88898
+1cc to Government Pleader SR.No.88996

W.P.No.32381 of 2017

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