

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.02.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

WP.No.3435/2017 & WMP.No.3413/2017

K.Nedunchezian

... Petitioner

Versus

- 1.The Joint Registrar of Cooperative Societies
Kancheepuram Region, Kancheepuram.
- 2.The Deputy Registrar of Cooperative Societies
Chengalpet.
- 3.The President
Atomic Energy Employees Consumers Cooperative
Stores Limited, G-216-O, No.13, 11th Street, DAE
Township, Kalpakkam-603102
Kancheepuram District. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records in connection with the impugned order bearing in Na.Ka.No.1974/2015/Aa3 dated 28.06.2016 passed by the 2nd respondent and quash the same and consequently direct the respondents to pay all the benefits withheld by them and further direct the 3rd respondent to treat the period of suspension from 04.05.2009 to 23.02.2012 as period on duty and pay salary and other benefits for the said period to the petitioner.

For Petitioner :Mr.B.Hari Babu

For Respondents:Mrs.T.Girija, GA [Coop.]

ORDER

By consent, the writ petition is taken up for final disposal. Mrs.T.Girija, learned Government Advocate [Coop] accepts notice on behalf of the respondents.

2 The petitioner, while working as the Secretary in the services of the 3rd respondent / Society, was visited with disciplinary proceedings in the form of charge memo on

24.02.2009, for which, the petitioner submitted his explanation on 06.03.2009. The 3rd respondent placed the petitioner under suspension on 04.05.2009 and challenging the same, the petitioner filed a revision by invoking section 153 of the Tamil Nadu Cooperative Societies Act, 1983, before the 1st respondent, who vide order dated 24.06.2009, had set aside the order of suspension. The 3rd respondent challenged the said order by filing WP.No.14118/2009 and this Court, vide order dated 13.11.2009, had set aside the order passed by the 3rd respondent with a further direction, directing the said official to hold a fresh enquiry after affording reasonable opportunity and pass appropriate orders. The 3rd respondent filed WA.NO.812/2010 and orders came to be passed, directing the 3rd respondent to proceed with the disciplinary proceedings against the petitioner from the stage of conducting the enquiry by Sub Committee and pass orders in accordance with law.

3 The petitioner would further aver that in accordance with the orders passed in the writ petition and writ appeal, the 3rd respondent started paying the subsistence allowance at 100% wages from July 2010 ; but failed to pay the arrears of the subsistence allowance from 04.05.2009 to June 2010 and ultimately, passed an order on 21.02.2012, reverting the petitioner from the post of Secretary to Assistant Secretary and also placed him in the bottom list of Assistant Secretary and the period of suspension was also regularised as one of suspension only with consequential benefits. The petitioner joined duty in the reverted post of Assistant Secretary on 23.02.2012 and thereafter, filed a revision before the 1st respondent challenging the order of the 3rd respondent dated 21.02.2012. The 1st respondent passed an order on 18.01.2013, holding that the punishment imposed on the petitioner was disproportionate and thereby, set aside the order of reversion and also imposed a further punishment of withholding of next increment for a period of one year without cumulative effect and authorised the 3rd respondent to regularise the suspension period by sanctioning eligible leave by obtaining application for leave. The petitioner was reinstated as the Secretary and the 3rd respondent has also passed an order on 05.05.2014 regularising the period of suspension and treated the same as extraordinary leave [Leave on loss of pay] and also ordered to withhold the petitioner's increment which falls due on 01.07.2009, for one year without cumulative effect. The 2nd respondent, taking cognizance of the order, sought explanation from the 3rd respondent vide proceedings dated 14.06.2016 and it was also offered on 21.06.2016. However, the 2nd respondent, without considering the same, has passed an order dated 28.06.2016, holding the period of suspension from 05.05.2014 onwards to be treated as earned leave which lies to his credit and balance leave to be treated without salary and the period of

loss of wages need not be considered for computation of Gratuity. According to the petitioner, on account of the said order, his security deposit to the tune of Rs.30,000/-, EL accumulation amounting to a sum of Rs.2,27,000/- have been withheld by the 3rd respondent despite his retirement. The petitioner, challenging the order of the 2nd respondent dated 28.06.2016, filed a revision before the 1st respondent and it was returned on the ground that the original order has not been enclosed and therefore, he came forward to file the present writ petition.

4 The learned counsel for the petitioner would submit that admittedly, the order of the 2nd respondent dated 28.06.2016 has not been communicated to the petitioner and as such, the petitioner is not in a position to produce the original of the same and therefore, prays for appropriate orders.

5 Per contra, Mrs.T.Girija, learned Government Advocate [Coop] appearing for the respondents would submit that in the revision filed before the 1st respondent, the petitioner has not clearly disclosed the prayer or the relief he wants and on that ground also, the revision cannot be entertained.

6 This Court has considered the rival submissions and also perused the typed set of documents.

7 Admittedly, the 2nd respondent did not communicate a copy of the order dated 28.06.2016 addressed to the 3rd respondent to the petitioner and therefore, there is every justification on the part of the petitioner in not producing the original order and therefore, it cannot be insisted upon and however, the petitioner has to file the attested true copy of the same along with the revision petition. As rightly pointed out by the learned Government Advocate appearing for the respondents, in the revision petition preferred by the petitioner against the order of the 2nd respondent dated 28.06.2016, the prayer/relief sought for by him, has not been clearly indicated.

8 This Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, permits the petitioner to represent the revision to the 1st respondent with proper prayer/relief along with the attested true copy of the order of the 2nd respondent dated 28.06.2016 within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the 1st respondent shall entertain the revision, if the papers are otherwise in order and without putting the issue of limitation, shall pass orders on merits and in accordance with law within a further period of eight weeks thereafter and

communicate the decision taken, to the petitioner as well as to the 3rd respondent herein.

9 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

AP

To

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- 2.The Deputy Registrar of Cooperative Societies
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- 3.The President
Atomic Energy Employees Consumers Cooperative
Stores Limited, G-216-O, No.13, 11th Street, DAE
Township, Kalpakkam-603102
Kancheepuram District.

+1cc to M/S.B.Haribabu, Advocate Sr.9151
+1cc to M/S.T.Girija, Advocate Sr.9403
+1cc to the Government pleader Sr.9722

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WP.No.3435/2017

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