

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 27.10.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No. 2590 of 2011 &
M.P.No. 2 of 2011

S.Karunanidhi

.... Petitioner

vs

1. The Registrar of Cooperative Societies
NVN Maaligai,
No.170 EVR Periyar Salai,
Kilpauk, Chennai-600 010.

2. The Joint Registrar of Cooperative Societies,
Tanjore Region at Tanjore. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the relating to the orders made in Na.Ka.No.6620/2008 Ka dated 28.10.2009 of the 2nd respondent and as confirmed by the 1st respondent in his order made in Na.Ka.No.7936/2010 Oo.Na.3 dated 15.11.2010, quash the same and consequently, direct the respondents to promote the petitioner as Cooperative Sub Registrar from the date on which his immediate junior was promoted as such.

For petitioner : Mr.L.Chandrakumar

For respondents: Ms.T.Girija, GA

ORDER

The present writ petition has been filed, seeking for the following relief:

"Issue Writ of Certiorarified Mandamus, to call for the relating to the orders made in Na.Ka.No.6620/2008 dated 28.10.2009 of the 2nd respondent and as confirmed by the 1st respondent in his order made in Na.Ka.No.7936/2010 Oo.Na.3 dated 15.11.2010, quash the same and consequently, direct the respondents to promote the petitioner as Cooperative Sub Registrar from the date on which his immediate junior was promoted as such.

2. The case of the petitioner was that he was appointed on temporary basis as Junior Inspector of Co-operative Society on 6.12.1985 and thereafter his services came to be regularized with effect from 16.10.1989. He was promoted as Senior Inspector of Co-operative societies during 1998. While working as such, a charge memo dated 07.08.2006 was issued under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for certain acts of misconduct. An enquiry was conducted into the charges and the second respondent finally imposed a penalty of stoppage of increment for a period of one year without cumulative effect vide proceedings dated 9.2.2008. Aggrieved by the order of the second respondent, an appeal was preferred by the petitioner and the appellate authority, namely, the first respondent set aside the penalty vide proceedings dated 21.8.2008 on the ground that the enquiry was not properly conducted against the petitioner.

3. Thereafter, further enquiry was conducted and based on the findings, the second respondent once again imposed the same punishment of stoppage of increment for a period of one year without cumulative effect vide proceedings dated 28.10.2009. During pendency of the disciplinary action against the petitioner, he was overlooked for promotion to the next higher post of Co-operative Sub Registrar from 2008-09 onwards while his juniors were promoted. Therefore, he was constrained to approach this Court in W.P.No.22871 of 2010, seeking to issue a Writ of Mandamus, to direct the respondents therein to consider his representation dated 3.12.2010 and promote him as Cooperative Sub-Registrar. This Court vide order dated 3.12.2010 directed the competent authority to dispose of the representation of the petitioner in accordance with law.

4. While matters stood thus, the first respondent instead of considering the claim of the petitioner for promotion, has passed orders in the appeal filed by the petitioner against the punishment dated 28.10.2009. The first respondent by proceedings dated 15.11.2010 rejected the appeal thereby confirming the Disciplinary Authority's order of punishment of stoppage of increment for a period of one year with cumulative effect. The said orders of penalty are put to challenge in the writ petition.

5. Upon notice, Ms.T.Girija, learned Government Advocate entered appearance and filed a detailed counter affidavit.

6. In the counter affidavit, it is stated that the petitioner was given full opportunity to participate in the enquiry and since the charges were held proved, the Disciplinary Authority imposed a penalty for stoppage of increment for a period of one year without cumulative effect having considered the gravity of misconduct committed by the petitioner as a minor one and a lenient view was taken in the matter. As far as

promotion was concerned, the charge was pending under major penalty proceedings, i.e. under Rule 17(B) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules and therefore, there was a bar to include his name in the panel for promotion on the crucial dates.

7. In the counter affidavit, it has been clearly explained the role of the petitioner leading to the act of misconduct committed by him and therefore, he would submit that the penalty was imposed after affording sufficient opportunity of hearing to the petitioner and after charges were held proved in a properly conducted enquiry. Therefore, the penalty imposed on the petitioner is not required to be interfered with.

8. Per contra, Shri L.Chandrakumar, learned counsel appearing for the petitioner would strongly contend that only the petitioner alone was singled out in the matter of disciplinary proceedings leaving out two other members of the committee. According to the learned counsel, in the audit report dated 31.3.2005, no irregularities were pointed out and there was no loss or any discrepancy or deficiency found. He would further submit that some statements have been obtained in the departmental enquiry from two officials after the enquiry was over and the petitioner was denied to cross examine the said witnesses. In all, the learned counsel would submit that the enquiry was not properly conducted and the same was vitiated and the Disciplinary Authority had not appreciated the defence of the petitioner in a proper perspective and had proceeded to impose the penalty on the basis of flawed enquiry.

9. This Court has considered the rival submissions of the learned counsel appearing for the parties and also perused the pleadings and materials placed on record.

10. It is seen from the record that the petitioner had been afforded reasonable opportunities to participate in the enquiry and in fact, the records would disclose that the petitioner refused to cross-examine the witnesses who appeared on behalf of the department. Since the petitioner himself had not chosen to cross-examine the witnesses, he cannot be allowed to complain against the conduct of the enquiry and assail the same. Moreover, it is seen that the Disciplinary Authority notwithstanding the serious allegations, has imposed only a minor penalty of stoppage of increment for a period of one year that too without cumulative effect and such penalty does not require any reconsideration by this Court.

11. In the departmental enquiry, it is to be seen that whether there is substantial compliance by the department in terms of the regulations and the principles of natural justice. In this case, it appears that the department has substantially complied with the regulations and also the principles of natural justice and the petitioner having failed to prove his innocence

in the duly conducted enquiry, cannot be heard to complain against the punishment imposed on him and the punishment being minor one, cannot also be assailed on the plea of proportionality. In view of the pendency of disciplinary action against the petitioner, as rightly contended by the learned Government Advocate appearing for the respondents, the petitioner was not considered for promotion to the post of Co-operative Sub Registrar during the relevant years.

12. In all, this Court does not find any merit and substance in the writ petition and accordingly, it is dismissed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

suk

To

1. The Registrar of Cooperative Societies
NVN Maaligai,
No.170 EVR Periyar Salai,
Kilpauk, Chennai-600 010.

2. The Joint Registrar of Cooperative Societies,
Tanjore Region at Tanjore.

+lcc to Mr.L.ChandraKumar, Advocate SR.No.76190
+lcc to Government Pleader SR.No.76722

सत्यमेव जयते

W.P.NO.2590 OF 2011

KJI (CO)
GN (07/12/2017)

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