

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

WP.No.23155/2012 & MP.No.2/2012 and WMP.No.6163/2017

R.Panneer Selvam

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Petitioner

Vs

1.The Joint Registrar of Cooperative Societies
Ramakrishna Road, Salem, Salem District.

2.The Special Officer
Salem Agricultural Producers Cooperative
Society Limited, Salem-9.

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Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records relevant to the order in டி.க.6380/2004ஈடி dated 13.04.2012 passed by the 1st respondent and the same was served upon the petitioner in the month of July 2012 by confirming the appeal order in டி.க.349/2004/ஈடி2 dated 18.02.2011 passed by the 2nd respondent and quash the same as illegal, improper, unreasonable, arbitrary and against the rule of law and natural justice and thereby direct the respondents to reinstate the petitioner into his service and pay back all the service benefits of the petitioner with effect from 18.02.2011.

For Petitioner : Mr.A.Rajesh Kanna
For R1 : Mrs.T.Girija, GA
For R2 : Mr.L.P.Shanmugasundaram
Spl.GP [Coop.]

ORDER

By consent, the writ petition is taken up for final disposal.

2 The petitioner challenging the order of dismissal from service dated 13.04.2012, has come forward to file the present writ petition.

3 The petitioner, in the affidavit filed in support of this writ petition, would aver among other things, he joined as Salesman in the 2nd respondent / Society on 29.01.1981 and he discharged his duties sincerely and honestly with utmost care and devotion. The petitioner would further add that on 31.07.2010, he has been suspended from the service on the allegation of misappropriation while he was working as Salesman in the Fair Price Shop situate at No.AP083, Kannukurichi-I, Ration Shop, Salem. The petitioner was also served with a charge memo dated 23.08.2010. The petitioner submitted his written statement

of defence and not satisfied with the same, the Departmental enquiry was ordered and the petitioner has also participated in the said proceedings wherein the petitioner took a stand that no revenue loss has been caused to the 2nd respondent / Society. The explanation offered by the petitioner is that the petitioner, by exercising due diligence, have sold the products to the nearby shops and credited the account of the 2nd respondent / Society and a receipt for a sum of Rs.1,175/- has also been issued by the Society and as such, he has not been personally benefited and there is no revenue loss to the 2nd respondent / Society. It is also pointed out that the petitioner has been entrusted with very many responsibilities without appointing the required staff and as such, he cannot be blamed for the lapses occurred. The petitioner would further state that he has distributed and sold the essential commodities and also made relevant entries in the Register and the petitioner, despite the fact that he has also paid the fine amount of Rs.1,680/- in favour of the 2nd respondent/Society, the same has not been considered. The petitioner would state that on conclusion of the enquiry, the Disciplinary Authority has imposed with the punishment of dismissal from service.

4 The learned counsel for the petitioner has drawn the attention of this Court to the impugned order of dismissal from service and would submit that even in the said order, the fact of the petitioner approaching the Labour Court and got his reinstatement has been disclosed and it has been further stated that on 18.02.2011, he was dismissed from service and would further add that without putting the petitioner on notice with regard to the past delinquencies or lapses, the Disciplinary Authority has placed reliance upon the same and thereby, imposed the order of dismissal from service and therefore, the order is *per se* in violation of principles of natural justice.

5 Alternately, it is contended by the learned counsel for the petitioner that in any event, the punishment of dismissal from service is disproportionate to the proved charges for the reason that admittedly, the petitioner did not cause any revenue loss and whatever loss caused, has been compensated in the form of fine levied by the 2nd respondent / Society and the petitioner would have retired on 28.02.2016, but for the order of dismissal from service and in stead of remanding the matter to the Disciplinary Authority for passing fresh order of punishment, this Court itself may modify the punishment accordingly and prays for appropriate orders.

6 Per contra, Mrs.T.Girija, learned Government Advocate appearing for the 1st respondent would submit that the petitioner, being the Salesman, was in the position of trust and confidence and the misdeeds on his part have been reduced in the form of charge memo and he has been awarded with all fair and reasonable opportunities and after adhering to the principles of natural justice only, the order of dismissal came to be passed and further added that since the petitioner has also lost trust and confidence, he cannot be reinstated into service and would further add that the scope of interference in respect of the punishment imposed by the Disciplinary Authority under Article 226 of the Constitution of India is very limited and prays for dismissal of the writ petition.

7 The Court heard the submissions of Mr.L.P.Shanmugasundaram, learned Special Government Pleader [Coop] appearing for the 2nd respondent and also perused the materials placed before it.

8 A perusal of the impugned order of dismissal would disclose that it contains nine pages and pages 1 to 8 deal with the

factual aspects and the concluding part is the opinion of the Disciplinary Authority for dismissing the petitioner from service. The major portion of the said order pertains to the past delinquency of the petitioner and admittedly, the petitioner was not at all put on notice. The reason assigned would also disclose the petitioner, on an earlier occasion, had approached the Labour Court and got his reinstatement also. It is also the specific stand of the petitioner that whatever acts done by him were beneficial to the 2nd respondent / Society and the fine amount imposed on him, was also promptly repaid and as such, there was no revenue loss at all to the 2nd respondent / Society.

9 Since no opportunity has been afforded with regard to the reliance placed upon the past delinquencies, the normal course opened to this Court would be to set aside the order of punishment and remand the matter back to the Disciplinary Authority to consider the matter afresh. But the fact remains that the petitioner had reached the age of superannuation on 28.02.2016 and therefore, no purpose would be served by remanding the matter to the Disciplinary Authority after setting aside the order of dismissal from service.

10 In the light of the above facts and circumstances and the reasons recorded, this Court is of the considered view that the order of dismissal from service passed against the petitioner, is disproportionate and in stead, he is to be imposed with minor penalty.

11 At this juncture, the learned Government Advocate appearing for the 1st respondent has drawn the attention of this Court to the Special By-laws and would submit that as per Clause No.13, the Disciplinary Authority is entitled to impose the punishment of Censure / fine / withholding the increments, suspend or reduce to lower rank or to a lower post or from dismissal from service.

12 Since this Court has already held that the punishment of dismissal from service is highly disproportionate to the delinquency, is of the opinion that withholding / postponing two increments without cumulative effect is fit and proper punishment.

13 In the result, the writ petition is partly allowed and the impugned order passed by the 2nd respondent dated 18.02.2011 as confirmed by the 1st respondent in his order dated 13.04.2012, is hereby set aside and in stead of dismissal from service, the petitioner is

imposed with the punishment of withholding / postponement of two increments without cumulative effect.

14 The respondents 1 and 2, in the light of this order, modifying the punishment, is directed to pass appropriate orders including conferment of consequential terminal / service benefits to the petitioner, as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. It is also made clear that the petitioner is not entitled to arrears of salary for the period between the date of dismissal and the date of reinstatement as the punishment alone has been modified and also on the principle of 'no work and no pay'. No costs. Consequently, the connected miscellaneous petitions are closed.

09.06.2017

Index : No

Internet : Yes

AP

To

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Ramakrishna Road, Salem, Salem District.
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M.SATHYANARAYANAN, J.,

AP

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