



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.06.2017
DELIVERED ON : 17.07.2017

WEB COPY

CORAM :

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.(MD) No.19247 of 2014

and

M.P.(MD) Nos.1 and 2 of 2014

A.Rajendran

... Petitioner

Vs.

1.The Regional Joint Registrar of Co-operative Societies,
The Revisional Authority,
Trichirappalli Zone,
Trichirappalli.

2.The Special Officer,
(now by President),
R-1592, Pachaperumalpatti Primary Agricultural
Co-operative Credit Society,
Pachaperumalpatti,
Thuraiyur Taluk,
Trichy District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue of a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in connection with the impugned order of removal from service in his Proceedings No.Nill dated 30.04.2008 and consequential rejection of appeal by the 1st respondent in his impugned Proceedings in Na.Ka.4634/2012/Sa.Pa. Dated 18.11.2013 (served only on 28.04.2014) and quash the both and consequently to direct the respondents to reinstate the petitioner in service with all service and monetary benefits.

For Petitioner : Mr.R.Singaravelan,
Senior Counsel
for Mr.K.Gurunathan
For R1 : Mr.C.Selvaraj,
Special Government Pleader.
For R2 : Mr.D.Shanmugarajasethupathi,

ORDER

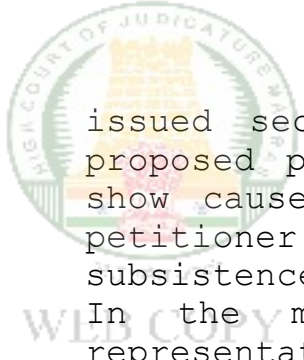
The above Writ Petition is for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent in connection with the impugned order of removal from service in his Proceedings dated 30.04.2008 and consequential rejection of appeal by the first respondent in his impugned Proceedings dated 18.11.2013 and quash both the proceedings and consequently to direct the respondents to reinstate the petitioner in service with all service and monetary benefits.

2. The brief facts that are necessary for the purpose of disposal of the above Writ Petition are as follows:

2.1. The petitioner was appointed as "Clerk" and joined in service on 02.12.1991. The petitioner was posted as Secretary-in-charge of the second respondent society on 08.01.2013. When the petitioner was working as Secretary-in-charge of the society, he was placed under suspension by the second respondent on 27.02.2006 in contemplation of disciplinary proceedings and the charge memo was issued to the petitioner. As per the charge memo dated 27.03.2006, three charges were framed, pointing out certain irregularities in the disbursement of flood relief fund. The allegations were that the petitioner had failed to discharge his duty and responsibility and he has been ignoring the instruction of his Superior Officer and he had committed breach of trust and caused disrespect to the administration. The petitioner tendered his explanation dated 24.04.2006 and an enquiry officer was appointed. The Enquiry Officer submitted his report, finding the petitioner guilty of all the three charges.

2.2. A Second show cause notice was issued to the petitioner on 26.06.2006, indicating the proposed punishment of removal from service. Though the petitioner submitted his explanation on 12.07.2006, final order was not passed. However the petitioner's suspension was revoked on 14.07.2006.

2.3. Once again, the petitioner was suspended on 11.12.2006 and issued with a second charge memo dated 07.04.2007. In the second charge memo dated 07.04.2007, two other charges were framed for misusing the official position and for dereliction of duty. Even for the second charge memo, the petitioner submitted a detailed explanation. The petitioner also issued a legal notice dated 24.09.2007, against the second respondent, alleging *mala fide* and colourable exercise of power including the corruptive activities. When the Enquiry Officer was appointed, the petitioner raised some objections apart from seeking some documents to be furnished to him before participating in the enquiry. Even with regard to the second set of charge memo, the second respondent



issued second show cause notice on 05.10.2007, indicating the proposed punishment of removal from service. Even to the second show cause notice, a detailed explanation was submitted by the petitioner and the request was also made for arrears of salary and subsistence of allowance vide a separate letter dated 02.11.2007. In the meanwhile, the petitioner has been making several representations, pointing out certain lacunae in the enquiry proceedings, non-payment of subsistence allowances and non-production of documents apart from specific allegations against the Enquiry Officer.

2.3. With regard to the second charge memo, the allegation was that the petitioner caused loss to the society to the tune of Rs.2,55,000/-. In relation to the same, an enquiry under Section 87 of the Co-operative Societies Act, was conducted by the Deputy Registrar of Co-operative Society, Musiri and it was found that there was no loss caused to the Society and thereby exonerated the petitioner and other delinquents from the charges. However, without considering the fact that the enquiry report of Deputy Registrar, Co-operative Society, was in favour of the petitioner, pointing out that there was no loss to the Society and that the allegations found in the second charge memo are against the material, recorded in the report, the second respondent issued a final order, removing the petitioner from service with effect from the date of suspension i.e., 11.12.2006, by an order dated 30.04.2008. It is to be noted that this order of removal was on the basis of the enquiry report, in relation to the first charge memo and the subsequent report in relation to the second charge memo.

2.4. Aggrieved by the final order, the petitioner preferred revision before the first respondent on 26.06.2008, and the revision was dismissed without assigning any reason on 26.11.2008. The petitioner filed a Writ Petition against the rejection of revision in W.P.(MD) No.2617 of 2008 and this Court was pleased to set aside the order and remitted the matter for fresh consideration to the first respondent. The operative portion of the judgment of this Court in the above said writ petition are as follows :

"5.A perusal of the impugned orders reveals that the first respondent after narrating the facts, charges and the findings of lower authorities without discussing anything about findings arrived at by the lower authorities and without considering the explanation offered by the petitioner stating that all the materials are carefully perused and straightaway rejected the

revision preferred by the petitioner herein.

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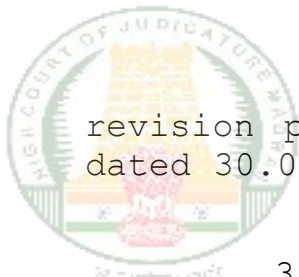


6. In views of the same, this Court is of the considered view that the impugned orders are nothing but cryptic and non-speaking orders. It is needless to say that the first respondent, being a quasi-judicial authority, ought to have considered the matter in the manner known to law by considering the defence and the explanation of the petitioner apart from the materials available on record and by discussing the findings arrived at by the lower authorities, but in a casual and arbitrary manner the first respondent passed the impugned orders without application of independent mind. Therefore, this Court is constrained to set aside the impugned orders and accordingly, the impugned orders dated 30.10.2008 in Na.Ka.No.6641/2008/sa.pa and dated 26.11.2008 in Na.Ka.No.3067/2008/sa.pa are hereby quashed and also constrained to remand the matter for fresh consideration to the first respondent in the manner known to law by giving opportunity to the petitioner.

2.5. In the meanwhile, one Anandan, who was also involved and also responsible for the alleged loss caused to the Society, filed a Writ Petition challenging the charge memo, dated 07.04.2007 which is identical to the second charge memo issued to the petitioner. It is pertinent to mention that the charge memo issued to the said Anandan, was also for the same irregularities, for which the second charge memo was issued to the petitioner. Based on the enquiry report submitted under Section 87 of the Act, the charge memo against the said P.Anandan, was quashed in W.P. (MD) No.6781 of 2008.

2.6. In the meanwhile, the second respondent also preferred an appeal in C.M.A.No.4 of 2009, before the Principal District Judge, Tiruchirappalli, challenging the order of Deputy Registrar, Co-operative Society, Musiri, dated 31.01.2008, pursuant to the enquiry under Section 87 of the Act. This appeal was also dismissed confirming the findings of the Deputy Registrar, Co-operative Society, Musiri, relieving the respondents 2 to 7 therein, including the petitioner from all the charges. The charges against the petitioner found in the second charge memo, require to be reconsidered and the order of dismissal cannot be justified as it was also on the basis of the two charges found in the second charge memo.

2.6. The first respondent, thereafter passed final orders, once again dismissing the revision petition filed by the petitioner. Even this time, the first respondent has not considered the revision on the grounds raised by the petitioner. Challenging the order of the first respondent, dismissing the



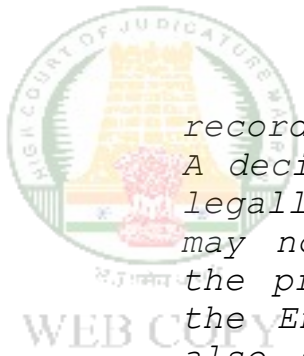
revision petition and confirming the order of second respondent, dated 30.04.2008, the above Writ Petition is filed.

3. The learned Senior counsel appearing for the petitioner, though raised several grounds on the merits of the order, one of the submissions is about the nature of order, which according to him is cryptic and non-speaking. He further pointed out that despite, this Court in the earlier Writ Petitions in W.P. (MD) No.13079 of 2009, by order dated 21.12.2009, has set aside the order on the ground of non application of mind, once again without considering the grounds raised before the Revisional Authority and the material facts relating to the second charge memo, dismissed the revision petition.

4. I have carefully perused the order of the first respondent dated 18.11.2013. Though the petitioner has submitted written arguments and the written arguments were extracted by the Revisional Authority, there was no discussion on the points raised by the petitioner. The Revisional Authority has extracted the elaborate arguments submitted by the respondents as well as the petitioner and framed a question whether the petitioner is guilty of the charges. However the three charges and the statement in relation to the first charge memo alone were extracted. After elaborating the charges, with reference to documents, the next issue was whether the petitioner is entitled to any relief. Then in a single paragraph, it was held by the first respondent that the petitioner is guilty of the charges as seen from the documents, perused. There is total non-application of mind with regard to the points raised by the petitioner in the arguments. The conclusion arrived at by the first respondent is cryptic and non-speaking. There is no consideration of points or grounds raised by the petitioner challenging the order of second respondent.

5. In this factual scenario, the learned Senior Counsel appearing for the petitioner relied upon a judgment of the Honourable Supreme Court in the case of *Roop Singh Negi vs. Punjab National Bank and others* reported in 2009 2 SCC 570. Wherein it has been held as follows:

"23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on

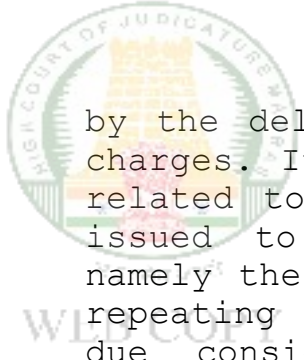


record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

6. The learned Senior Counsel appearing for the petitioner also relied upon another judgment of the Honourable Supreme Court in the case of *Director (Marketing), Indian Oil Corporation Limited and another vs. Santhosh Kumar* reported in 2006 11 SCC 147, wherein it has been held as follows:

"A perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority. We, therefore, have no other option except to set-aside the order passed by the Disciplinary Authority and the Appellate Authority and remit the matter for fresh disposal to the Disciplinary Authority. The Disciplinary Authority shall consider the detailed representation made by the respondent and also consider the detailed report of the Enquiry Officer and the records placed before him in its proper perspective and decide the matter afresh on merits. The Disciplinary Authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material or record before the Disciplinary Authority. The order passed by the High Court is set-aside for the above reason. We also set-aside the direction issued by the High Court ordering re-instatement into service with continuity in service and all consequential benefits. The Disciplinary Authority is also directed to dispose of the matter, within three months from the date of receipt of this order, after affording an opportunity to both the parties. The Civil Appeal is disposed of accordingly. No order as to costs. "

7. Despite, the finding recorded by this Court earlier, the explanation offered by the petitioner was not considered by the first respondent. Even after remand the Revisional Authority has also not considered the case of the petitioner. The impugned order clearly shows that it is arbitrary and biased. This Court has already in several cases has insisted the importance of giving reasons and the requirements of passing orders after giving due opportunities to the delinquent and to consider the points raised



by the delinquent explaining his stand that he is not guilty of charges. It is true that the order of the first respondent is not related to the two charges framed as per the second charge memo issued to the petitioner. However, the Revisional Authority, namely the first respondent cannot simply dismiss the revision by repeating the finding of original authority and there should be due consideration of the grounds, on which the delinquent challenges the order of original authority, namely the second respondent.

8. Hence without going into the merits of the case, on the ground of failure to give reasons and non application of mind as to the points raised by the petitioner, this Court is inclined to allow the Writ Petition. Hence the impugned order passed by the first respondent vide proceedings reference Na.Ka.No.4634/2012/Sa.Pa. dated 18.11.2013, is set aside and the matter is remanded to the first respondent for fresh consideration and the first respondent is directed to give opportunity to the petitioner and to pass orders, after considering the explanation offered by the petitioner and the points raised in the revision, on merits and in accordance with law.

9. Having regard to the fact that the matter is pending for a long time, the above exercise shall be completed within a period of two months from the date of a receipt of copy of this order. Consequently the connected M.P.Nos. 1 and 2 of 2014 are closed. No Costs.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

The Regional Joint Registrar of Co-operative Societies,
The Revisional Authority,
Trichirappalli Zone,
Trichirappalli.

+One cc to Mr.D.Shanmugaraja Sethupathi, Advocate, SR.No.65818
+One cc to M/s.K.Gurunathan, Advocate, SR.No.65790

cmr/gsp

RL/4C/7P/MR/KKR/SAR1/25/7/2017

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