



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.04.2017
CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.(MD) No.4842 of 2011
and
M.P.(MD) No.2 of 2011

A.Muthukrishnan

.. Petitioner

vs

1. The Deputy Registrar of Co-operative Societies,
Trichy Zone,
Trichy.

2. The Joint Registrar of Co-operative Societies,
Trichy Zone,
Trichy - 20.

3. The Special Officer,
R-1608, Ettarai Primary Agricultural
Co-operative Loan Society,
Errarai Post,
Trichy District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records pertaining to the impugned order dated 23.07.2010 in Na.Ka.No.13680/2009 S.P. passed by the second respondent and the impugned order dated 21.08.2009 passed by the third respondent and quash the same.

For Petitioner : Mr.V.O.S.Kalaiselvam

For Respondents : Mr.K.Guru (for R1 & R2)
Government Advocate
Mr.D.Muruganathan (for R3)
AGP

ORDER

This writ petition has been filed by the petitioner seeking to quash the impugned order of the second respondent in Na.Ka.No.13680/2009 S.P., dated 23.07.2010 and also the order of the third respondent dated 21.08.2009.



2. The case of the petitioner is that he was working as Secretary in the third respondent Society. On 26.08.2008, without assigning any reason, the petitioner was placed under suspension. On the same day, the third respondent conducted an enquiry and submitted the inspection report to the first respondent, who on the basis of the report, ordered enquiry under Section 81 of the Co-operative Societies Act, 1983. An ex parte enquiry was conducted and a report was submitted to the Deputy Registrar, Trichy on 19.09.2008. Based on the enquiry report, the third respondent issued a charge memo dated 07.10.2008 to the petitioner alleging that (a) 15 gold pockets are missing out of 131 gold pockets; and (b) the petitioner did not give receipts to 10 members for the amount of Rs.3,98,100/- received from them and did not enter it in the ledger and had also failed to remit the amount into the bank on the same day, but remitted on 28.08.2008 in the Trichy District Co-operative Bank.

3. The third respondent sought for an explanation for the charge memo. For want of documents, the petitioner was not able to submit explanation to the charges levelled against him. Thereafter, the third respondent appointed an Enquiry Officer to conduct a departmental enquiry. On 22.04.2009, the petitioner sent a representation to the Enquiry Officer to supply relevant documents.

4. According to the petitioner, he has filed W.P.(MD) No.650 of 2009 seeking to quash the charge memo dated 07.10.2008. By an order dated 27.01.2009, the writ petition was dismissed with a direction to the third respondent to consider the explanation of the petitioner and pass final orders.

5. The case of the petitioner is that the departmental enquiry was conducted without serving necessary documents on him and without permitting the petitioner to examine the departmental witnesses. In the meanwhile, the Enquiry Officer held that the charges are proved. On the basis of the enquiry report, the third respondent served a show cause notice dated 27.04.2009 seeking explanation within a period of seven days. On 28.07.2009, the petitioner submitted an explanation stating that due to power failure, he was not able to give receipts to the members and the amount was in the bureau and the 15 gold pockets were also in the bureau. But the third respondent without appreciating the explanation of the petitioner, passed an order dated 21.08.2009 awarding stoppage of 5 years increment with cumulative effect and treated the period of suspension as the actual period of suspension itself.

6. Aggrieved by the order of the third respondent, the petitioner filed a review petition in Na.Ka.No.13680/2009 S.P. on 07.10.2010 before the second respondent. By an order dated 23.06.2011, the second respondent set aside the order of the third respondent and awarded punishment of reduction of salary and thus fixed the basic salary of the petitioner as Rs.6,400/-.



7. According to the petitioner, before the second respondent set aside the order of the third respondent and awarded a revised punishment, he ought to have afforded an opportunity to the petitioner to explain his case and inasmuch as the same was not done by the second respondent, the impugned orders suffer from infirmity and the same are liable to be quashed.

8. Resisting the writ petition, the respondents 1 and 2 have filed the counter stating that the petitioner has suppressed the material facts. After the receipt of charge memo, the petitioner sought permission for submitting explanation and the third respondent gave permission till 31.10.2008. However, the petitioner vide letter dated 10.11.2008 sought further time and also permission to peruse the records. The third respondent gave permission till 04.12.2008. Since the petitioner has not availed of the opportunity, the third respondent ordered domestic enquiry.

9. It is stated that in the meanwhile as against the disciplinary action initiated against the petitioner, he filed O.S.No.1406 of 2008 before the District Munsif Court, Trichy. He also filed I.A.No.624 of 2008 for interim injunction. Thereafter, the petitioner has not pressed the suit.

10. According to the respondents 1 and 2, the Enquiry Officer sent notices to the petitioner to attend the enquiry to be held on 24.02.2009, 07.03.2009 and 28.03.2009. However, the petitioner neither chose to attend the enquiry nor submitted any explanation. The Enquiry Officer requested the petitioner to participate in the enquiry and peruse the documents submitted by the Management of the Society. The Enquiry Officer has also offered the petitioner to cross examine the witnesses and put forth his arguments. However, the petitioner after having signed in the enquiry proceedings has walked out from the enquiry. Thereafter, the Enquiry Officer set the petitioner ex parte and gave the finding based on the documents. In the meanwhile, the petitioner was reinstated on 20.04.2009. It is stated that thereafter, the petitioner was issued with a show cause notice on 27.04.2009. On 09.07.2009, the petitioner, after perusing the documents, submitted an explanation. Since the explanation offered by the petitioner was found not acceptable, punishment of stoppage of increments was ordered.

11. In the review petition, the second respondent has afforded the petitioner an opportunity to explain his case and the petitioner engaged an advocate and submitted his submissions. Therefore, the petitioner cannot contend that he has not been afforded an opportunity. Since the punishment imposed by the third respondent was not in proportion, the second respondent enhanced



12. I heard Mr.V.O.S.Kalaiselvam, learned counsel appearing for the petitioner, Mr.K.Guru, learned Government Advocate appearing for the respondents 1 and 2 and Mr.O.Muruganathan, learned counsel appearing for the third respondent. Perused the materials available on record.

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13. The learned counsel for the petitioner challenged the orders impugned on the following grounds:

(a) The same are illegal, arbitrary, unjust and are in violation of Article 21 of the Constitution of India.

(b) The second respondent ought to have seen that the Enquiry Officer conducted the departmental enquiry without serving on the petitioner the required documents relied on by the third respondent and also without permitting the petitioner to examine the departmental witnesses.

(c) The second respondent failed to see that 15 gold pockets were in the bureau.

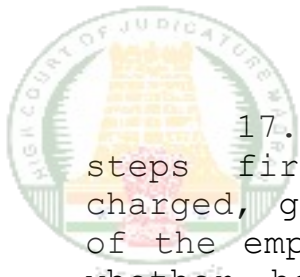
(d) Two punishments were given for the same offence.

(e) The enquiry was conducted without supplying the documents relied on by the third respondent. Even the enquiry report was not given to the petitioner to submit his explanation to the show cause notice.

14. Per contra, the learned counsel appearing for the respondents submitted that despite opportunities given to the petitioner, he has not perused the documents and also not submitted the explanation. He submitted that the petitioner after having signed in the enquiry proceedings has walked out from the enquiry and after analysing the documents, the Enquiry Officer gave his finding.

15. The main contention of the petitioner is that without supplying of the documents relied upon by the third respondent and without affording sufficient opportunity, the petitioner was awarded punishment, nor was he afforded an opportunity to cross-examine the witnesses relied on by the respondents.

16. Though the respondents state that Enquiry Officer requested the petitioner to participate in the enquiry and peruse the documents of the Management and also offered him opportunity to cross-examine the witnesses and that the petitioner has not availed of the same, to prove the said contention, the respondents have not produced material. In the counter, it has been admitted that the Enquiry Officer set the petitioner ex parte and gave the finding based on the documents, which clearly attracts violation of principles of natural justice.



17. In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him. On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any which clearly held by the Hon'ble Apex Court in the case of *State of Uttaranchal v. Kharak Singh*, (2008) 8 SCC 238.

18. The disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence in respect of the charges. Article 311(2) of the Constitution of India mandates that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him".

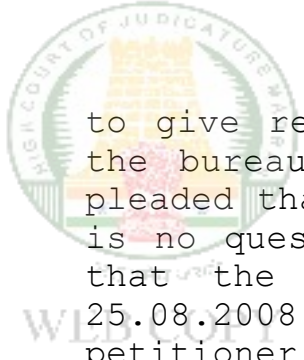
19. In *State of U.P. v. Shatrughan Lal and another*, reported in (1998) 6 SCC 651, the Hon'ble Supreme Court held that where the statements of preliminary inquiry were not supplied to the delinquent, the inference was correctly drawn that effective opportunity of hearing was not given to the delinquent and that the employer had failed to establish that the non-supply of copy of the statements recorded during the preliminary hearing did not cause any prejudice to the delinquent.

20. Thus, in the aforesaid decision, the Hon'ble Supreme Court gave its finding that non-supply of relied upon the documents to the delinquent vitiates the enquiry proceedings on account of breach of principles of natural justice.

21. In fact, in *Shatrughan Lal*, supra, the Hon'ble Supreme Court observed that the burden of proof that the charged employee was not prejudiced on account of non-supply of statement recorded during preliminary enquiry is on the department and not on the employee and in the case on hand, such onus has not been discharged by the employer.

22. Without following the elementary principles of natural justice and the manner in which disciplinary proceedings should be conducted, as enunciated in the decision referred supra, by the impugned order dated 21.08.2009, the third respondent imposed punishment of stoppage of 5 years increment with cumulative effect and also treated the period of suspension as suspension period itself. The said approach adopted by the third respondent would ~~show no error in the award~~ awarded two punishment for the same charge.

23. Coming to the charges levelled against the petitioner, according to the petitioner, due to power failure, he was not able



to give receipts to the members and the amount was very much in the bureau and was never embezzled by the petitioner. He also pleaded that the 15 gold pockets were also in the bureau and there is no question of misappropriation. The next charge levelled is that the petitioner collected an amount of Rs.3,98,100/- on 25.08.2008 and failed to enter it in the account ledger. The petitioner pleaded that the said amount of Rs.3,98,100/- was also in the bureau. In any event, the respondents in their counter admitted that the collected amount of Rs.3,98,100/- was remitted in the District Central Co-operative Bank Branch on 28.08.2008 by the relative of the petitioner.

24. It is pertinent to point out that one of the witnesses viz., P.Chinnadurai, in his evidence, stated that the petitioner gave Rs.3,98,100/- from the almirah of the Society and directed him to remit the same at the District Central Co-operative Bank. As per the evidence of P.Chinnadurai, the amount was very much available at the Society. Therefore, when the collected amount was in the Society, there is no question of misappropriation. On overall analysis of the materials available on record, I am of the firm view that both charges are self-contradictory to each other and do not hold water.

25. Coming to the order of the Revisional Authority enhancing the punishment, according to the petitioner, the Revisional Authority has no power to do so. The learned counsel for the petitioner submitted that the Revisional Authority at best can only take a decision to the extent to modify, annul, reverse the punishment and had no power to enhance the punishment.

26. A bare reading of Rule 153(2) of the Tamil Nadu Co-operative Societies Rules makes it ample clear that "*No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation.*" In the case on hand, the punishment imposed by the Revisional Authority is severe and before imposing such punishment which is certainly prejudicial to the interest of the petitioner, no opportunity was given to him. Therefore, the violation of the procedure contemplated is writ large. In this writ petition, this Court does not propose to test the power of the Revisional Authority to modify, annul or reverse the punishment.

27. For the foregoing reasons, the writ petition is allowed by setting aside the impugned order dated 23.07.2010 in Na.Ka.No.13680/2009 S.P. passed by the second respondent and the impugned order dated 21.08.2009 passed by the third respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)



To

1. The Deputy Registrar of Co-operative Societies,
Trichy Zone,
Trichy.

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2. The Joint Registrar of Co-operative Societies,
Trichy Zone,
Trichy - 20.

+1cc to Mr.V.O.S.Kalaiselvam, Advocate Sr.No.51148
+1cc to The Spl. Government Pleader Sr.No.50927

VS

VB/SV/MMS/SAR1/14/05/2018/7P/5C

order made in
W.P. (MD) No.4842 of 2011
and
M.P. (MD) No.2 of 2011
06.04.2017