

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.02.2018
CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.22626 of 2011

N.Ramakrishna Panickar

... Petitioner

Vs

1.The Additional Registrar,
Chennai Division,
Co-Operative Society, Mandaveli,
Chennai-18.

2.The Special Officer,
Park Town Co-Operative Society W.S.Shop,
Chennai-102.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records from the 2nd respondent pertaining to the impugned order in Na.Ka.No.76/08-09/E5 dated 19.07.2009 and its consequential order in Na.Ka.No.8314/2009/E2 dated 28.04.2011, passed by the first respondent respectively and quash the same and consequently direct the 2nd respondent to reinstate the petitioner with continuity of service, back wages and all other attendant benefits.

For Petitioner : Mr.P.Vijendran

For Respondents : Ms.T.Girija

Additional Government Pleader for R1
: Ms.M.E.Raniselvam for
Mr.P.Chinnadurai for R2

O R D E R

Heard Mr.P.Vijendran, learned counsel for the petitioner and Ms.T.Girija, learned Additional Government Pleader appearing for the first respondent and Ms.M.E.Raniselvam, learned counsel appearing for the second respondent.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records from the 2nd respondent pertaining to the impugned order in Na.Ka.No.76/08-09/E5 dated 19.07.2009 and its consequential order in Na.Ka.No.8314/2009/E2 dated 28.04.2011, passed by the first respondent respectively and quash the same and consequently direct the 2nd respondent to reinstate the petitioner with continuity of service, back wages and all other attendant benefits."

3. The case of the petitioner is as follows:-

<https://hcservices.ecourts.gov.in/hcscservices/>

The petitioner was employed as Salesman in the second

respondent Society. He was initially placed under suspension on 29.04.2008 for certain acts of misconduct. A charge memo was issued on 10.06.2008, containing three articles of charges. A reply was submitted in response to the charges, denying the charges. Thereafter, an enquiry was conducted and on the basis of the report of the enquiry, a show cause notice was issued on 10.12.2008. According to the petitioner, a copy of the enquiry report was not furnished when the second show cause notice was issued. According to the enquiry report, the charges were held proved. However, without furnishing a copy of the enquiry report, final order was passed on 19.07.2009, dismissing the petitioner from service. As against the order of dismissal from service, a representation was filed before the first respondent under Section 153 of the Tamil Nadu Co-operative Societies Act.

4. The first respondent vide proceedings dated 28.04.2011, rejected the representation of the petitioner. The main grievance of the petitioner in this writ petition is that no procedure was followed while conducting the enquiry and more particularly, the enquiry report was not furnished to the petitioner, despite the demand for furnishing of the same. Therefore, the action of the second respondent, dismissing the petitioner from service and confirmation of the same by the first respondent, cannot be sustained in law.

5. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance and made her submissions. When the Court confronted the learned counsel appearing for the respondents whether the allegation of not furnishing of the enquiry report was correct or not, she was unable to contest the claim, in view of the absence of any acknowledgment of the enquiry report being furnished to the petitioner. In the absence of contra assertion on behalf of the respondents, the Court has to accept the averments and the arguments made on behalf of the petitioner in regard to non furnishing of the enquiry report to the petitioner.

6. It is needless to mention that furnishing of the enquiry report is a mandatory procedure to be followed by the authority concerned while imposing penalty on the petitioner on the basis of the findings rendered in the enquiry. Non furnishing of the enquiry report is fatal to the further disciplinary action of imposing penalty by the Disciplinary Authority and subsequent confirmation by the confirming Authority viz., the first respondent herein. According to the learned counsel for the petitioner, even as on date, the enquiry report has not been furnished.

7. In the above circumstances, this Court is of the considered view that the imposition of penalty on the petitioner and confirmation of the same by the impugned proceedings, cannot be sustained in law. Therefore, the impugned proceedings in Na.Ka.No.76/08-09/E5 dated 19.07.2009

and its consequential order in Na.Ka.No.8314/2009/E2 dated 28.04.2011 are set aside and the matter is remitted back to the second respondent for furnishing of the enquiry report and issue fresh notice after obtaining explanation from the petitioner.

8. The petitioner has also come forward with the grievance that during the period of suspension, he was not paid subsistence allowance. That be so, the subsistence allowance as admissible to the petitioner shall be paid forthwith. It is also made clear that the disciplinary action shall be proceeded from the stage of the enquiry report and the same shall be completed within a period of ten weeks from the date of receipt of a copy of this order. The petitioner is however not entitled to any back wages for the period of non-employment on the principle of "no work no pay".

9. With the above direction, the writ petition stand allowed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gsk
To

1.The Additional Registrar,
Chennai Division,
Co-Operative Society, Mandaveli,
Chennai-18.

2.The Special Officer,
Park Town Co-Operative Society W.S.Shop,
Chennai-102.

+1cc to Government Pleader Sr.No.10257

+1cc to Mr.P.Chinnadurai, Advocate Sr.no.9684

sm:8.3.2018

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