

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.22635 of 2011

A.Rajendran

... 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, calling for the records from the 2nd respondent pertaining to the impugned order in Na.Ka.No.181/07-08/E5 dated 19.06.2009 and the consequential order Na.Ka.8315/2009/C2 dated 02.05.2011 passed by the 1st 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.Venkatasamybabu

For Respondents : Mr.L.P.Shanmugasundaram for R1
M/s.M.E.Raniselvam for
Mr.P.Chinnadurai for R2

O R D E R

The petitioner has approached this Court, seeking the following relief:-

"To issue a Certiorarified Mandamus, calling for the records from the 2nd respondent pertaining to the impugned order in Na.Ka.No.181/07-08/E5 dated 19.06.2009 and the consequential order Na.Ka.8315/2009/C2 dated 02.05.2011 passed by the 1st 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. "

2. The petitioner was appointed as Binder in the year 1984 in the second respondent Society. While he was working as Binder, the petitioner was placed under suspension on 14.12.2007 for certain acts of misconduct. Therefore, the disciplinary action was initiated against the petitioner by issuance of a charge memo dated 08.02.2008 containing four charges. A reply was submitted in response to the charges, denying the charges. Thereafter, an enquiry was conducted into charges and on the basis of the enquiry report, a second show cause notice was issued on 21.10.2018. According to the enquiry report, the charges were held proved. However, the case of the petitioner is that without furnishing a copy of the enquiry report, a second show cause notice was issued on 21.10.2008 and despite the fact that no enquiry report was furnished, a reply was submitted by the petitioner to the second show cause notice and the same was not accepted and finally an order was passed on 16.09.2009, dismissing the petitioner from service. As against the order of dismissal from service, a Revision Petition has been filed before the first respondent under Section 153 of the Tamil Nadu Co-operative Societies Act and the same was rejected without duly and properly appreciating the points raised in the revision petition. In the said circumstances, the petitioner is before this Court challenging the order of dismissal from service dated 16.09.2009 and as confirmed in the revision petition by the first respondent, dated 02.05.2011.

3. When the matter was taken up for hearing, the learned counsel for the petitioner would submit that the second respondent has not furnished a copy of the enquiry report which is mandatory as per the rules, particularly, the disciplinary action culminated in the order of dismissal from service. The statement made by the learned counsel for the petitioner has not been disputed and on behalf of the respondents and no contra evidence was made available before this Court stating that the enquiry report was furnished. Therefore, the submission made on behalf of the petitioner that the enquiry report was not furnished to the petitioner is not in dispute.

4. According to the learned counsel for the petitioner, in similar circumstances, this Court has allowed the writ petition and remitted the matter back to the authority concerned. The learned counsel for the petitioner would also submit that during the period of suspension, he was not paid admissible subsistence allowance.

5. At this, the learned counsel for the respondents would submit that the petitioner had not produced required certificate

that he was not in any employment during the relevant period and therefore, he was not paid the subsistence allowance.

6. The learned counsel for the petitioner would draw the attention of this Court to the similar order passed in W.P.No.22626 of 2011 dated 08.02.2018, wherein paragraphs 6 to 8 which are extracted below, this Court held as follows:

"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". "

7.This Court had considered the issue of non-furnishing of report, which was directly covered under the orders passed by this Court recently and therefore, the impugned orders viz., Na.Ka.No.181/07-08/Er dated 19.06.2009 of the second respondent and Na.Ka.No.8315/2009/C2, dated 02.05.2011 of the first respondent, are hereby set aside and the matter is remitted back to the second respondent for furnishing of the enquiry report and issue fresh notice for obtaining explanation from the petitioner on the enquiry report.

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. However, the learned counsel appearing for the second respondent would submit that the petitioner has not submitted the required certificate for claiming subsistence allowance. Therefore, the petitioner is directed to submit the certificate as required by the second respondent for claiming subsistence allowance. 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 stands allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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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 Mr.Venkataswamy Babu, Advocate, S.R.No.13137

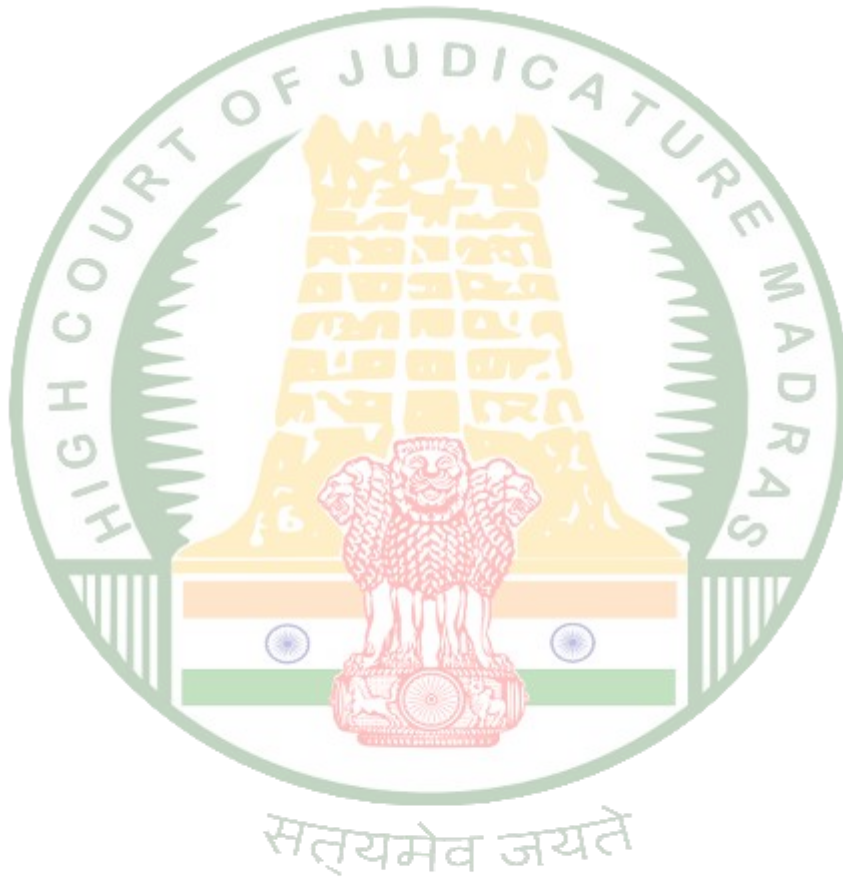
+1cc to Mr.P.Chinnadurai, Advocate, S.R.No.13965

+1cc to the Government Pleader, S.R.No.14051

W.P.No.22635 of 2011

KS (CO)

RRK (20/03/2018)



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