

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2018

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.29921 of 2011

D.Pandian

.. Petitioner

Vs.

1. The Joint Registrar of Co-op. Societies,
Perambalur Region,
Perambalur.
 2. The Special Officer,
T.Palur Primary Agricultural Co-op. Credit Society,
Palur, Udyarpalayam Taluk,
Perambalur District.
- .. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.3765/11 Sa.Pa. - suo motu Revision No.1/2011, dated 30.09.2011 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits and other backwages.

For Petitioner .. Mr.C.Prakasam

For Respondents.. Mr.L.P.Shanmughasundaram
Spl. Govt. Pleader

ORDER

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

"Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.3765/11 Sa.Pa. - suo motu Revision No.1/2011, dated 30.09.2011 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits and other backwages."

2. The petitioner was appointed as Sales Man on 05.07.1985 in the second respondent Society. While discharging his duties as salesman, he was suspended from service by the second respondent on 15.05.2010. Thereafter, a charge memo was issued alleging that the petitioner was responsible for shortage of stocks in the fair price shop to the tune of Rs.13,084/-. A detailed explanation was submitted by the petitioner and having not satisfied, an enquiry was ordered. Without affording any reasonable opportunity to the petitioner, the enquiry was concluded and a report was submitted holding the charges were established. Thereafter, the second show cause notice was issued. In response to the second show cause notice, the petitioner has given a detailed explanation stating that no proper procedure was followed by the Tamil Nadu Civil Supplies Corporation when the gunny bags were unloaded and therefore, the petitioner was not responsible for any loss of stock quantity. However, the petitioner has agreed to make good the loss of Rs.13,084/- with an assurance that he would be left off with by the minor penalty. In these circumstances, the petitioner has paid the amount of Rs.13,084/-. Thereafter, the second respondent passed an order on 07.04.2011, imposing the punishment of one year stoppage of increment with cumulative effect. Thereafter, when the petitioner was waiting for reinstatement in service, he received a notice from the first respondent on 05.09.2011, directing him to appear before him on 14.09.2011. Accordingly, the petitioner appeared on 14.09.2011, however, no enquiry was conducted. Subsequently, vide proceedings Na.Ka.No.3765/11 Sa.Pa.Suo-moto revision No.1/2011, dated 30.09.2011, the first respondent passed an order by modifying the earlier punishment of stoppage of increment of one year into one of dismissal from service. The order passed by the first respondent, dismissing the petitioner from service is put to challenge in the present writ petition.

3. Upon notice, Mr.L.P.Shanmugasundaram, the learned Special Government Pleader entered appearance on behalf of the respondents and filed a counter affidavit.

4. In the counter affidavit, it is stated that the petitioner accepted the charges and remitted the amount misappropriated by him and therefore, the original punishment imposed on the petitioner was not commensurate with gravity of the misconduct alleged against the petitioner and hence, the first respondent by exercising the power vested with him under Section 153(1) of the Tamil Nadu Cooperative Societies Act modified the penalty as one of dismissal from service. Therefore, such punishment, which was awarded to the petitioner cannot be faulted, since the charge against the petitioner was

very serious in nature.

5. On the other hand, the learned counsel for the petitioner would submit that the petitioner had accepted the fact of quantity of loss and remitted the amount only based on the assurance given by the authorities that he would be finally let off with a minor penalty with continuation of employment. Believing the assurance, the petitioner immediately remitted the amount. Although the second respondent initially passed the penalty of stoppage of increment with cumulative effect by proceedings dated 07.04.2011, without any valid reasons, the same is subsequently modified by the first respondent one of dismissal from service. In fact, while imposing the severe penalty of dismissing from service, no proper opportunity was given to the petitioner or any change in circumstances was there for modifying the penalty by the first respondent. The petitioner also offered payment of Rs.13,084/- towards loss caused to the Society, although he claimed that he was not responsible for the same and also suffered stoppage of increment with cumulative effect. Therefore, imposing penalty of dismissal from service was excessive penalty which is rather disproportionate to the gravity of misconduct alleged to have been committed by the petitioner in the instant case. In any case, the power that is vested with the authority under Section 153 of the Tamil Nadu Cooperative Societies Act, cannot be exercised arbitrarily.

6. This Court finds force in the contention of the learned counsel for the petitioner that the punishment imposed by the first respondent in the instant case is thoroughly unjustified and disproportionate and the same cannot be either countenanced in law or on facts. When the petitioner was already imposed with a penalty of stoppage of increment with cumulative effect by the original authority, without any valid reason, it is not open to the first respondent to modify the penalty, adverse to the interest to the employee, particularly the punishment of dismissal from service, which is extremely severe and excessive. In the instant case, as rightly contended by the learned counsel for the petitioner that though the power vested with the authority under the provisions of the Co-operative Societies Act, the power cannot be exercised in a whimsical manner. In the instant case, the Authority, the first respondent herein has exercised his power rather arbitrarily and unreasonably. Therefore, the same cannot be sustained in law.

7. For the above said reasons, the writ petition is allowed and the impugned order of dismissal from service in proceedings Na.Ka.3765/11 Sa.Pa. - suo motu, Revision No.1/2011, dated 30.09.2011, by the first respondent is hereby set aside. While setting aside the impugned order by the first respondent dated 30.09.2011, the original punishment imposed on the petitioner, viz., stoppage of increment for one year with cumulative effect on 07.04.2011 stands restored. The learned counsel for the petitioner would submit that the petitioner had attained the age of superannuation in 2015. Therefore, the the first respondent is directed to reinstate the petitioner notionally with effect from the date of dismissal from service and he shall be paid all attendant benefits. The respondents shall comply with the above direction, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Registrar of Co-op. Societies,
Perambalur Region,
Perambalur.
2. The Special Officer,
T.Palur Primary Agricultural Co-op. Credit Society,
Palur, Udyarpalayam Taluk,
Perambalur District.

+1 cc to the Govt pleader sr 27738

+1 cc to Mr.L.P.Shanmugasundaram Advocate sr 27211

+1 cc to Mr.C.Prakasam Advocate sr 27026

W.P.No.29921 of 2011

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aa10/05/2015