IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.Nos.1272 & 1273 of 2016
and CMP Nos.16533 & 16534 of 2016

1. The Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation Limited,
"Aavin ILLam", Madhavaram Milk Colony,
Chennai 600 051.

2. The Joint Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation Limited,
No.29 & 30, Industrial Estate,
Ambattur, Chennai 600 098. ... Appellants
in both the Appeals

versus

S.Arumugam
Deputy Manager (Marketing((Retired)
Office of the General Manager (Marketing),
Tamil Nadu Co-operative Milk Producers
Federation Limited,
Corporate Office, Nandanam, Chennai 35. ... Respondent
in both the Appeals

Appeals filed against the common order passed by this Court dated 06.07.2016 passed in W.P.Nos.17852 and 17853 of 2016.

WP.NO.17552 & 17853/2016:

Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus Calling for the entire records which culminated in the proceedings bearing Ref.No. 10147/ Pers.IR.1/ 2010 dated 17.02.2016, 12771/pers.IR.1/2010 dated 12/02/2016 respectively of the 1st respondent which was served upon the petitioner on 02.03.2016 by confirming the order passed in Ref.No. 4364/E3/10 & 885/21/07 dated 28.10.2010 & 26/10/2010 respectively of the 2nd respondent quash both the orders and consequently direct the respondents to release the terminal benefits due and payable to the petitioner which were withheld by the respondents and/or recovered from the petitioner within a time to be stipulated by this Court.

For appellants in both the Appeals	: Mr.R.Bala Ramesh
For Respondent in both the Appeals	: Mr.L.Chandrakumar for M/s.S.Kumaresan

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The appellants challenge the common order of the learned Single Judge made in WP Nos.17852 and 17853 of 2016 dated 06.07.2016, in and by which, the learned Single Judge, while allowing the Writ Petition, filed by the respondent quashed the orders of punishment imposed on the respondent and directed the appellants to release the terminal benefits of the respondent which are with held by the appellants.

2. The short facts that led to the filing of the Writ Petitions are as follows:

The respondent was working as a Deputy Manager (Marketing) in the 1st appellant Federation was charge sheeted for certain delinquencies and the following charges were framed against him:

Charge No.1: that he had violated the instructions and guidelines by this office then and there and allowed the private dealers mentioned below to lift milk for Rs.11,89,404/- over and above the security deposit amount.

Charge No.2: that he had not collected the empty tubs then and there and a total number of 4683 tubs, amounting to Rs.5,40,886.50 is due at the rate of Rs.115.50 for each tub, for a long time.

Charge No.3: that he has not taken any efforts to make good of the loss and due to his inaction, the Federation incurred heavy loss to the extent of R.17,30,290.50.

3. An enquiry was conducted and the Enquiry Officer filed a Report on 30.06.2010 concluding that the charges were proved. The Disciplinary Authority by its proceedings dated 04.09.2010 imposed a punishment of withholding of annual increment without

cumulative effect for a period of three years. The Disciplinary Authority further directed withholding of the terminal benefits of the respondent until further orders.

4. The respondent was allowed to retire on 31.10.2010 upon attaining the age of superannuation. The monetary equivalent to the punishment of stoppage of increment without cumulative effect was directed to be recovered from his terminal benefits. The respondent unsuccessfully challenged the order imposing punishment, before the Appellate Authority, which dismissed his appeal on 17.12.2016. Aggrieved the respondent came forward with the above Writ Petition challenging the orders of the Appellate Authority.

5. The learned Single Judge who heard the Writ Petition had allowed the Writ Petition primarily on the ground that the Appellate Authority had not passed a speaking order and the order of the appellate Authority contained no reasons for confirming the order of the Disciplinary Authority. Aggrieved the appellant Federation is before us by way of this intra Court Appeal.

6. We have heard Mr.K.Bala Ramesh, learned counsel appearing for the appellants and Mr.L.Chandrakumar, learned counsel appearing for Mr.S.Kumaresan for the respondent.

7. Mr.K.Bala Ramesh, learned counsel appearing for the appellants would contend that the conduct of the respondent in supplying milk over and above the value of the security deposit to the dealers had caused financial loss to the appellant Federation is not in dispute. He would also point out that the Enquiry Officer has found all the charges to have been proved. He would further contend that the Appellate Authority had concurred with the findings of the Enquiry Officer regarding the fact that the charges stood proved. He would also contend that merely because the Appellate Authority had not given elaborate reasons for confirming the order of the Original Authority / Disciplinary Authority, the respondent cannot be allowed to go scot free inasmuch as the fact that there was a financial loss to the tune of Rs.17,30,290.50 stood uncontroverted.

8. Per Contra Mr.L.Chandrakumar, learned counsel appearing for the respondent would contend that the very charge memo was issued on the verge of retirement of the respondent and there were several procedural infirmities in the enquiry proceedings. He would however submit that the Appellate Authority ought to have gone into the contentions raised by the respondent in the

statutory appeal, according to him, the fact that the Appellate Authority had not considered the contentions raised by him in the statutory appeal and had mechanically confirmed the order of the Original Authority without even adverting to the issues raised in the Appeal would show total non application of mind on the part of the Appellate Authority and therefore, the order of the Appellate Authority was rightly set aside by the learned Single Judge.

9. We have perused the records and considered the rival submissions. Of course the order of the Appellate Authority, confirming the order of the Original Authority imposing the punishment is cryptic, to say the least. The purpose of providing a statutory appeal in cases involving Disciplinary proceedings itself is to give an opportunity to the delinquent employees to raise factual issues which had escaped the attention of the Disciplinary Authority. If the Appellate Authority which is empowered to go into factual aspects disposes of Appeals in a mechanical fashion, as has been done in this case, the very remedy of an appeal would be rendered otiose.

10. However, such failure on the part of the Appellate Authority cannot lead to the entire proceedings being quashed by this Court. The normal result should be to set aside the order of the Appellate Authority and the remit the matter to the Appellate Authority, for considering the same on merits afresh in accordance with law. We are constrained to deviate from the normal course because of the fact that the respondent had already retired from service, even in the year 2010 and almost 8 long years have lapsed since then. Therefore, we do not propose to remit the matter to the Appellate Authority for fresh consideration.

11. It is also on record that the appellant Federation has filed Civil Suits against the dealers and obtained decrees against them even during 2007. The counsel for the appellants would submit that execution proceedings are still pending. The charges that have been framed against the respondent would indicate that there has been a dereliction of duty on his part, which is resulted in a certain loss to the appellant Federation. The appellant Federation has obtained decrees in CS No.382 of 2004 and CS No.205 of 2004 against the dealers and if the decrees are executed, and monies are recovered that would offset the loss that has been caused to the Federation.

12. We are therefore constrained to take lenient view of the entire issue and confirm the punishment of stoppage of increment

alone setting aside the further order of the Disciplinary Authority directing withholding of the retirement benefits of the respondent. It is made clear that the respondent will not be entitled to any interest on his retirement benefits.

13. For the foregoing reasons, the Writ Appeal is partly allowed. The Judgment of the learned Single Judge is modified, the punishment of withholding the increment for the period of 3 years without cumulative effect is confirmed and the further direction of the Disciplinary Authority directing withholding retirement benefits of respondent alone is set aside. The appellants are directed to pay retirement benefits of the respondent within a period of twelve (12) weeks from the date of receipt of a copy of this order sans any interest. However considering facts and circumstances of the case, there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jv

To

+1cc to Mr.R.Bala Ramesh, Advocate sr.no.38500
+2cc to M/s.S.Kumaresan, Advocate sr.no.38400

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