

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:25.02.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.11134 of 2011

R.Venu

...Petitioner

Vs.

1.The Government of Tamil Nadu,
rep.by its Secretary,
Co-operative, Food and Consumer
Protection Department,
Fort St.George,
Chennai-600 006

2.Registrar of Co-operative Societies,
Kilpauk,
Chennai-600 010

3.Joint Registrar,
Villupuram Region,
Villupuram

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus calling for the connected records from the first respondent and quash the order of the first respondent bearing A.B.(2D) No.121, Co-operative, Food and Consumer Protection Department, dated 25.11.2009, confirming the order of the 2nd respondent dated 23.04.2007 bearing R.C.No.37256 of 2005, D-A3 and the order of the 3rd respondent dated 23.06.2004, bearing Na.Ka.No.12225/2003, Pa.A as illegal, arbitrary and contrary to law and consequently direct the respondents to restore the increment and pay all arrears of increment.

For Petitioner .. Mr.Balan Haridas

For Respondents ... Mr.J.Ramesh,A.G.P.for R1
Mr.L.P.Shanmugasundaram,
Spl.G.P.for R3 and R3

ORDER

The petitioner, at the relevant point of time was working as a Special Officer at Vellimalai Lamp Co-operative Society. On 01.04.2003, he was issued with a Charge-memo under Rule 17-B of the Tamil Nadu Subordinate Service (Discipline and

Appeal) Rules. The Charge-memo contained six articles of charges, relating to the conduct of the petitioner that he failed to submit audit balance-sheet for years commencing from 1983-84 onwards until 1991-92. According to the charge memorandum, the petitioner has not taken steps to rectify the audit objection, being a Special Officer of the Society.

2. An enquiry was conducted to the charges against the petitioner and ultimately the Enquiry Officer submitted his findings that Charges 1, 2, 3, 5 and 6 have not been proved and Charge No.4 alone has been proved. The Enquiry Officer's finding has been accepted and in respect of the proved 4th Charge, an order was issued on 23.06.2004. The Disciplinary Authority imposed the punishment of 'Stoppage of increment for one year with cumulative effect'. Against the order passed by the Disciplinary Authority, an appeal was preferred on 21.10.2004. The second respondent/appellate authority, after a period of three years, rejected the appeal, by order dated 23.04.2007. A further appeal was preferred and the same was also rejected on 25.11.2009, confirming the order passed by the other respondent. In the said circumstances, the petitioner is before this Court assailing the order of penalty.

3. Mr. Balan Haridas, the learned counsel appearing for the petitioner would submit that the petitioner was appointed as a Special Officer only on 13.10.2001 and the allegations contained in the Charge Memorandum pertaining to the years commencing from 1983-84 and during those years, the petitioner was not in-charge of the Society at all and therefore, the very initiation of the disciplinary action against the petitioner was incorrect and without justification. Moreover, he would submit that there was a delay in initiating the disciplinary action against the petitioner, after a period of 16 years, for which there was no explanation forthcoming from the respondents. According to the learned counsel, the enormous delay in initiating the disciplinary action will constitute prejudice and therefore, the disciplinary action is liable to be rejected on that ground alone.

4. The learned counsel for the petitioner would further submit that even on merits, the petitioner was absolved on five charges out of six charges and the finding of the Enquiry Officer in regard to Charge No.4 cannot also stand the test of judicial scrutiny for the simple reason that the findings in respect of the other charges will hold good for Charge No.4 also, since all the six charges were identical in nature. The non-involvement of the petitioner in respect of the allegations, which relate to the year 1983 onwards was thoroughly established in the departmental enquiry, since admittedly the petitioner was appointed as Special Officer of the Society only in 2001, in which event, the same factor will hold good for Charge No.4 as

well. Unfortunately, the Enquiry Officer has given a wrong finding in respect of the said Charge without any specific material in support of the same.

5.The Disciplinary Authority, despite the findings of the Enquiry Officer in respect of five charges, has chosen to accept the finding in respect of Charge No.4 and imposed the penalty of 'Stoppage of increment with cumulative effect for a period of one year', which will have recurring adverse effect on the pay and the terminal benefits payable to the petitioner on his retirement.

6.Likewise, the Appellate Authority/second respondent herein and the Government have simply rejected the appeals filed by the petitioner without due examination of the issues and the orders passed by these respondents suffer from non-application of mind.

7.In any event, the Courts have held that a long and undue delay can be fatal to the initiation of the disciplinary action against a Government Servant and in this case, the delay is more than 15 years. Moreover, the admitted fact is that the petitioner was appointed as a Special Officer only in 2001 and in the absence of availability of the officer concerned, the petitioner was not able to rectify the audit objections. However, on suspension being revoked against the Secretary of the Society in 2003, with his co-operation, the audit objection had been rectified by the petitioner, even though he was originally not responsible for any discrepancies in the balance-sheet during the years 1983-84 onwards. Therefore, even on merits he had discharged his duties and hence the disciplinary action as initiated against him is liable to be set aside both on the grounds of maintainability and also on merits.

8.At this, the learned counsel appearing for the respondents 2 and 3 would submit that the petitioner was afforded a reasonable opportunity during the departmental enquiry and only on the basis of evidence, the Enquiry Officer found him guilty of Charge No.4. According to the learned counsel, the Disciplinary Authority as well as the other authorities have applied their mind and have chosen to dismiss the appeals filed by the petitioner and therefore, the orders passed by the respondents do not call for any interference by this Court.

9.Heard the learned counsels and perused the materials.

10.As submitted by the learned counsel for the petitioner, the petitioner was appointed as Special Officer only in 2001 and a Charge-sheet was issued in 2003 for certain discrepancies which happened in 1983-84 to 1991-92. Obviously the charge-sheet has been issued after a period of more than 15

years from the date of the discrepancies noticed by the audit and during the said period, admittedly, the petitioner was not employed as Special Officer in the Society. Even assuming that the petitioner ought to have carried out the rectification during his period of service as Special Officer, the same has been done by him after the reinstatement of the Secretary of the Society in 2003 and that was taken into consideration while the Enquiry Officer rendered his finding in regard to the unproved charges.

11. Even otherwise, as rightly contended by the learned counsel for the petitioner the findings of the Enquiry Officer in respect of Charge Nos. 1, 2, 3, 5 and 6 would hold equally good for Charge No. 4 as well and from the materials as disclosed, this Court is unable to see as to how the Enquiry Officer can find the Charge No. 4 established, without any specific supportive material. Therefore, the findings of the Enquiry Officer cannot be countenanced on facts and unfortunately, the Disciplinary Authority mechanically accepted the findings of the Enquiry Officer and imposed the impugned penalty on the petitioner.

12. The delay in initiating the disciplinary action against the petitioner was enormous, for which, no explanation was forthcoming from the respondents. The Courts have time and again held that the unexplained delay will constitute a great prejudice to the rights of the employee concerned in the matter of disciplinary action. In this case, there had been a delay of more than 15 years in initiating action against the petitioner and the delay by itself can be a reason for this Court to interfere with the disciplinary action initiated against him. Moreover, for the discrepancies, which had happened from the years 1983-84, how could the petitioner be saddled with the responsibility when he was appointed as a Special Officer only on 13.10.2001. Therefore, per se the initiation of disciplinary action against the petitioner appears to be on a mala fide consideration and therefore, this Court finds that such disciplinary action initiated by the 3rd respondent suffers from colourable exercise of power. As rightly contended by the learned counsel for the petitioner, this is a case of no evidence even otherwise and therefore, the finding of the Enquiry Officer in respect of Charge No. 4 will have to be interfered with, as such finding has not been supported by any materials whatsoever. In view of the fact that the findings of the same Enquiry Officer in respect of other Charges are in favour of the petitioner, such findings will hold good for Charge No. 4 also. Therefore, the Enquiry Officer's findings in respect of Charge No. 4 cannot be singled out for any exception, which ultimately invited the impugned penalty from the Disciplinary Authority and confirmed by the appellate Authorities.

13. Moreover, this Court finds that the Disciplinary Authority as well as the Appellate Authorities have not applied their mind to the findings of the Enquiry Officer and the evidentiary value that was placed for consideration before the Departmental enquiry. It appears that the Appellate Authorities have mechanically chosen to dispose of the appeals without proper and due examination of the issues on hand. Moreover, the Disciplinary Authority as well as the Appellate Authorities have not taken into consideration the crucial aspect of delay in initiating the disciplinary action against the petitioner and also the fact that the petitioner was appointed in 2001 and therefore, under no circumstances he can be held responsible for such discrepancies, which took place as early as in 1983-84 till 1991-92.

14. On the whole, this Court finds that the very initiation of disciplinary action against the petitioner is vitiated for the reason of unexplained delay and as such, the disciplinary action is liable to be set aside. Even otherwise, on merits, the petitioner has made out a case for grant of relief. Ultimately, the findings rendered by the Enquiry Officer in respect of Charge No.4 cannot be sustained both in law and on facts for the simple reason that the findings in respect of Charge Nos.1,2, 3, 5 and 6 will also hold good in favour of the 4th Charge as well. In such view of the matter, this Court is of the view that holding the petitioner as guilty of Charge No.4 cannot be sustained and hence, the impugned punishment by the Disciplinary Authority, as confirmed by the Appellate Authorities, cannot be countenanced in law.

15. In the above said circumstances, the impugned order passed by the first respondent, dated 25.11.2009, bearing No.A.B.(2D) No.121, Co-operative, Food and Consumer Protection Department, confirming the order of the 2nd respondent dated 23.04.2007 bearing R.C.No.37256 of 2005 D-A3 and the order of the 3rd respondent dated 23.06.2004 bearing Na.Ka.No.12225/2003, Pa.A, are hereby set aside and the writ petition stands allowed. It is made clear that in view of the impugned order being set aside, the petitioner is entitled to all other consequential attendant benefits. No costs.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

msh

To

1.The Secretary,
Co-operative, Food and Consumer
Protection Department,
Fort St.George,
Chennai-600 006

2.Registrar of Co-operative Societies,
Kilpauk,
Chennai-600 010

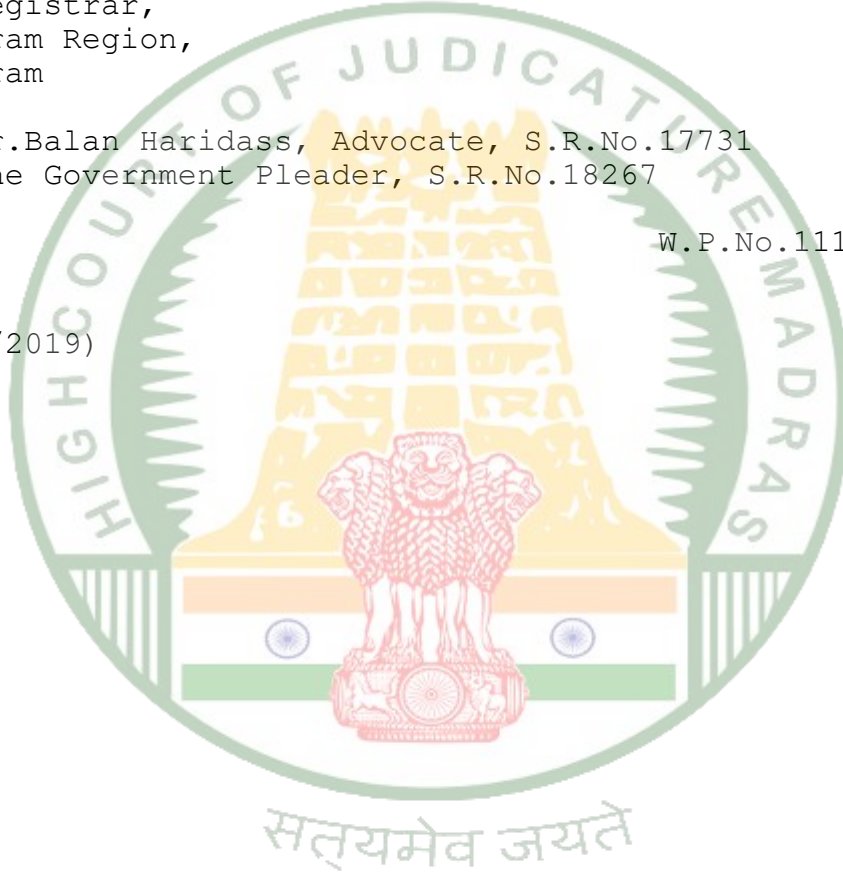
3.Joint Registrar,
Villupuram Region,
Villupuram

+1cc to Mr.Balan Haridass, Advocate, S.R.No.17731
+1cc to the Government Pleader, S.R.No.18267

W.P.No.11134 of 2011

GP(CO)

RRS (09/04/2019)



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