

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

WA.No.130 of 2019

S.Paulraj

Appellant/Petitioner

Vs

1.The Registrar of Cooperative Societies, Chennai-10

2.The State of Tamil Nadu by its Principal Secretary to
Government
Cooperation, Food and Consumer Protection Department
Fort St.George, Chennai-9

3.The Tamil Nadu Public Service Commission
by its Secretary, Chennai-9
Respondents

Prayer:- This Writ Appeal is filed, against the order dated, 02.01.2019, made in WP.No.3403 of 2017, by the learned Single Judge of this Court.

Prayer in WP No.3403/2017 : For the reasons stated in the accompanying affidavits it is prayed that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ or order or direction, calling for the records relating to G.O.(D) No.5 Coop, Food and Consumer protection (CE 2) Dept Dated 10.01.2017 of the 2nd respondent, along with the letter No.709/DCD-D-2/2016-1 dated 23.12.2016 of the 3rd respondent, quash both the and pass such other further orders as this Hon'ble Court may deem fit and proper and thus render justice.

For Appellant : Mr.S.Venkataraman

For Respondents : Mr.L.P.Shanmugasundram, SGP-RR1&2
No appearance-R3

JUDGEMENT

(Judgement of the Court was made by SUBRAMONIUM PRASAD, J.)

Aggrieved by the order, dated, 02.01.2019, made in WP.No.3403 of 2017, dismissing the Writ Petition, the Writ Petitioner has filed the instant Writ Appeal.

2. For the sake of convenience, the parties hereinafter are referred to as they were arrayed in the Writ Petition.

3. The Petitioner was working as a Joint Registrar of Cooperative Societies and he was due to retire on 30.6.2005. While he was in service, he was issued with a charge memo. The charges framed against the Petitioner are as follows:-

- 1.Thiru.S.Paulraj, Joint Registrar of Cooperative Societies, while working as Deputy Registrar of Cooperative Societies/Special Officer, Salem Agricultural Producers Cooperative Marketing Society Limited (SAPCMS), Salem, from 23.2.1991 to 07.11.1994, you have in collusion with one Thiru.K.Ramalingam, formerly Industrial Cooperative Officer/ Special Officer, the Salem District Steel furniture Manufacturers Service Industrial Cooperative Society Limited (SDSFMSICS), Salem, knowingly falsified the records of the Salem Agricultural Producers Cooperative Marketing Society Limited (SAPCMS), Salem, during the year 1994 in respect of supply of steel bureaus to various Village Fair Price Shops in Omalur and Mettur Taluks and made an exorbitant payment towards the cost of steel bureaus and thereby abetted some private individuals to derive pecuniary gain to an extent of Rs.1,49,520/- and caused equivalent loss to the Village Fair Price Shops.
- 2.Thiru.S.Paulraj, Joint Registrar of Cooperative Societies, while working as Deputy Registrar of Cooperative Societies/ Special Officer, Salem Agricultural Producers Cooperative Marketing Society Limited (SAPCMS), Salem knowingly falsified the records of SAPCMS during April, 1994 in respect of supply of 99 Tarpaulin to various Village Fair Price Shops in Omalur and Mettur Taluks, purchased Tarpaulin at an exorbitant rate and thereby caused loss to the funds of the Village Fair Price Shops to the extent of excess payment of Rs.1,18,305/-.

4. The Enquiry Officer, vide enquiry report, dated 02.06.2005, found that the charges framed against the Petitioner were partly proved. On the date of his retirement, i.e 30.06.2005, he was placed under suspension. He was later permitted to retire from service. The Disciplinary Authority, after a period of ten years, after the Enquiry Officer found that the charges were partly proved, by a letter dated 04.11.2015, called for explanation from the Petitioner, stating that the government have proposed to deviate from the findings of the Enquiry Officer, in respect of the charges partly proved. The said letter dated, 04.11.2015, is extracted as under:-

"1. In Government letter first cited, two charges were framed against you under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

2. In the letter second cited, you have submitted your explanation. Thiru.R.M.Jaganathan, Additional Registrar of Cooperative Societies/formerly Registrar of Cooperative Societies (Housing), Chennai was appointed as Common Inquiry Officer in this case and the Common Inquiry Officer has held that both the charges against you as 'Partly Proved' In the reference third cited, the Government called for your further explanation on the above findings of the Inquiry Officer and in the letter fourth cited, you have submitted your further explanation.

3. The Government, after examining the charges, the allegations thereunder, your explanation, the findings of the Inquiry Officer and your further explanation on the findings of the Common Inquiry Officer with related records, have deviated from the findings of the Common Inquiry Officer and have held that both the charges against you as 'proved' and for the proven charges the Government have proposed to impose a punishment of pension cut of Rs.300/- per month permanently from your pension and also to recover the monetary loss caused to the fair price shops to the extent of Rs.1,49,250/- plus Rs.1,18,305/- total Rs.2,67,555/- from your terminal benefits.

4. In this connection, your attention is invited to Rule 9 of the Tamil Nadu Pension Rules, 1978 and you are requested to state whether you accept the punishment proposed at paragraph 3 above or not, within 15 days on receipt of this letter. If your consent is not received within the stipulated time, it will be construed that you have no explanation to offer and the case will be finalised based on the

records available in this case.

5. The receipt of the letter may be acknowledged early."

5. The Petitioner has sent an explanation, dated 15.12.2015. Thereafter, the impugned order, dated 10.01.2017, came to be passed, imposing punishment of a pension cut of Rs.300/- p.m. for a period of ten years and for recovery of a sum of Rs.1,93,065/- being the monetary loss caused to the fair price shops. This order has been challenged in the present Writ Petition.

6. The learned Single Judge found that the procedure as laid down under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, has not been followed. He held that the letter dated, 4.11.2015 has been issued only calling for explanation from the Petitioner on the findings of the Enquiry Officer, without there being any indication that the government have proposed to deviate from the findings of the Enquiry Officer. The learned Single Judge has also found that the disciplinary authority was bound to put the delinquent Officer on notice and seek his explanation in respect of the proposed deviation and only after getting an explanation, it is open to the disciplinary authority to pass appropriate orders imposing penalty. The learned Single Judge held that the letter dated, 04.11.2015, imposing punishment of pension cut of Rs.300/- p.m. for a period of ten years and also for recovery of monetary loss to an extent of Rs2,67,555/- is not sustainable. The learned Single Judge, while allowing the Writ Petition, has remitted back the matter to the 2nd Respondent to proceed afresh. It is this order that is under challenge in this Writ Appeal by the Employee.

7. Heard the learned counsel for the Petitioner and perused the materials placed on record.

8. The material placed on record discloses that the Enquiry Officer found that the two charges framed against the Petitioner were partly proved. The Appellate Authority has not followed the procedure for deviating from the report of the Enquiry Officer. The letter, in and by which, it was stated that the government have proposed to deviate from the findings of the Enquiry Officer, dated 04.11.2015, does not conform. Besides, there is an inordinate and unexplained delay of 10 years, which is fatal to further proceedings. Further, the facts of the case establish that the disciplinary authority has decided to deviate from the findings of the Enquiry Officer. It is the subjective satisfaction of the disciplinary authority, which is irrelevant. Any other Officer cannot be permitted to take a view deviating from the findings of the Enquiry Officer after a period of ten

years. The Petitioner cannot be subjected to continuation of the proceedings now after more than 13 years from the date of his retirement. In view of the inordinate and unexplained delay of 10 years on the part of the disciplinary authority to take a view different from that of the Enquiry Officer, further proceedings against the Petitioner cannot be sustained.

9. In the result, this Writ Appeal is allowed, as prayed for. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

Srcm

To:

- 1.The Registrar of Cooperative Societies, Chennai-10
- 2.The State of Tamil Nadu by its Principal Secretary to Government
Cooperation, Food and Consumer Protection Department
Fort St.George, Chennai-9
- 3.The Tamil Nadu Public Service Commission, by its Secretary,
Chennai-9

+1cc to Mr.S.Venkkataraman, Advocate SR.No.4373

+1cc to Government Pleader SR.No.5074

WA.No.130 of 2019

SJ(CO)
GMY(27/02/2019)