IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.17304 of 2009

N.N.Subramanian ... Petitioner

Vs

1. The Managing Director
representing the Executive Committee,
National Agricultural Co-operative Marketing
Federation of India Limited (NAFED),
Sidhartha Enclave,
Ashram Chowk, Ring Road,
New Delhi-110 014.

2. The Additional Managing Director (Personnel),
National Agricultural Co-operative Marketing
Federation of India Limited (NAFED),
Sidhartha Enclave,
Ashram Chowk, Ring Road,
New Delhi-110 014. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 21.7.2009 under Ref:HO/ADL/382/2009-10 of the 1st respondent herein and quash the same and consequently, direct the 1st respondent herein to forthwith release the retirement benefits due and payable to the petitioner herein.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel
for M/s.AL.Ganthimathi

For Respondents: Mr.D.Vijayakumar

O R D E R

Challenging the order dated 21.7.2009 under Ref:HO/ADL/382/2009-10 of the 1st respondent, to quash the same and for further direction, directing the 1st respondent herein to forthwith release the retirement benefits due and payable to the petitioner herein, the present Writ Petition has been filed.

2. Learned Counsel appearing for the petitioner submitted that the petitioner joined the services of the Respondent Federation on 28.6.1980 and after getting various promotions, lastly, he was working as Branch Manager in the Branch of the Respondent Federation at Chennai effectively and the branch had also awarded the appreciation Certificate for generating the maximum revenue over and above the budgeted estimate for the year 2005-2006. Apart from that, Cash Incentive had also been awarded for achieving the profit over and above the budgeted level in the export of onion.

3. The learned Counsel for the petitioner further submitted that while so, an Official Memorandum dated 22.06.2007 was served on the petitioner by the 2nd respondent alleging certain irregularities committed by the petitioner while entering into an agreement with M/s.Raja Edible Private Limited, Chennai as the Super Stockist for marketing of various edible oils under NAFED Brands in the State of Tamil Nadu except Chennai and Kancheepuram Districts, which have resulted into blockage of funds of the Federation. The petitioner has given his reply on 23.7.2007. However, without being satisfied with his explanation, the 1st respondent herein issued a Memorandum of Charges dated 15.10.2007 containing six charges, proposing to hold a Departmental enquiry against him in accordance with the provisions of Rule 10 of NAFED Conduct, Discipline and Appeal Rules, 1994 and the petitioner was asked to submit his written statement of his defence within 15 days from the date of receipt of the said Memorandum. Accordingly, the petitioner sent his defence statement on 5.11.2007 denying all the charges in detail, more particularly, stating that for the lapses committed by the then Manager (F&A), he was put to irreparable mental agony. Therefore requested to drop further action against him. However, without satisfying with the same, the 1st respondent has appointed an Enquiry Officer to conduct an enquiry in October, 2007.

4. The learned Counsel for the petitioner also submitted that in the meanwhile, the petitioner attained the age of superannuation and by an order dated 14.01.2008, he was allowed to retire from services of the Federation w.e.f. 31.01.2008 A.N. And thus, he ceased to be an employee of the Federation w.e.f. 31.01.2008 A.N. and he was accordingly relieved of the duties. After his retirement, he was paid his own share of Provident Fund along with the Employer's Share and interest due thereon. The Enquiry Officer after concluding the enquiry submitted a report that the petitioner is at fault to the extent that he relied upon the Manager (F&A) for the verification of Bank Guarantee and if that would have carefully been done, this cheating would have been avoided. It further proceeded that the

last three years ascending turnover and the profitability of Chennai Office was registered under the captaincy of the petitioner. The laxity on the part of the Manager (F&S) by not properly verifying the Bank Guarantee and other credentials of the party does not form part of Branch Manager's responsibilities, particularly, when the Head of the Accounts Wing hold almost similar rank. Finally, the Enquiry Officer concluded that he finds no reasons to impose any penalty on the petitioner.

5. Now the grievance of the petitioner is that ignoring the report of the Enquiry Officer, the 1st respondent herein issued a Notice dated 24.12.2008 stating that the Executive Committee of the respondent Federation disagreeing with the report of the Enquiry Officer come to a conclusion that the petitioner has committed irregularities/misconduct which according to the Staff Regulation and CDA Rules of the Federation applicable to him, warrant imposition of penalty. Accordingly, the Executive Committee has resolved that the petitioner deserves to be awarded with the penalty of forfeiture of all his retirement dues except Provident Fund under the rules and as such, he was directed to show cause as to why the penalty under the CDA Rules of NAFED ought not to have been imposed on him for the misconduct proved against him in the departmental enquiry. Though the petitioner has given his explanation for the same, by letter dated 21.07.2009, the 1st respondent herein passed an order forfeiting all his retirement benefits due and payable to him except Provident Fund under the Rules alleging that the Executive Committee in its meeting held on 10.07.2009 resolved that he may be awarded with such penalty.

6. The learned Counsel for the petitioner also submitted that when the petitioner was allowed to retire from the services of the respondent Federation on 31.1.2008 A.N., the employer-employee relationship between the respondent Federation and the petitioner ceases to exist and as such, the entire proceedings of the respondents and the final order of the 1st respondent is without any jurisdiction and against the principles of natural justice. Hence, the same is liable to be set aside.

7. A detailed Counter Affidavit has been filed by the respondents.

8. Mr.D.Vijayakumar, learned Counsel for the respondents submitted that the Government of India Rules stipulates that retiring employees is not entitled to retirement gratuity until conclusion of the proceedings. Since at the time of retirement of the petitioner, departmental proceedings were pending against him, as per the orders of the Competent Authority, he has paid his own share of Provident Fund along with the employer's share

and interest due thereon. Besides, the Government of India Rules further stipulates that departmental proceedings initiated while in service, but not concluded, will be continued after official's retirement and concluded.

9. Continuing his arguments, the learned Counsel for the respondents further submitted that after carefully considering the Enquiry Officer's Report by the Disciplinary Authority viz. The Executive Committee of NAFED in their meeting held on 10.07.2009 resolved that the petitioner be awarded with the penalty of forfeiture of all the retirement benefits except Provident Fund. Though the Rule 18 of the Conduct, Discipline and Appeal Rules of NAFED provides that an employee may appeal against an order imposing upon him any of the penalties specified therein, however, the petitioner did not prefer appeal to the Appellate Authority, namely, NAFED and straight away approached this Court. Therefore, the Writ Petition is not at all maintainable, he pleaded.

10. It is seen that the petitioner joined the service of the respondents Federation on 28.06.1980 and he got various promotions from time to time. When the petitioner was working as Branch Manager at Chennai, one M/s.Raja Edible Private Ltd. Chennai was appointed as the Super Stockist for marketing of various edible oils under NAFED brands in the State of Tamil Nadu, excepting Chennai and Kancheepuram Districts. While so, the Office Memorandum dated 22.06.2007, was served on the petitioner by the second respondent alleging that during the month of November 2006, a proposal for appointment of M/s.Raja Edibles Private Ltd. was sent to Head Office by the Branch Manager, Chennai and in the said business transaction, several lapses were found against the petitioner that resulted in blockage of funds of the Federation. On receipt of the said Memorandum, the petitioner gave his reply on 23.07.2007. However, the Manager (F&A) confirmed with the Branch Manager, State Bank of India, Satara Branch with regard to the bank guarantee on 18.01.2007, has delivered 229 tins of Groundnut oil and 100 tins of Sunflower Oil at Koyambedu and the respondent department also received payment for the said delivery. Moreover, the respondent department also received approval from the Head Office, but, M/s.Raja Edibles Pvt. Ltd., who was introduced by M/s.Elango Oils with whom the respondents did business during 2006-07, wrongly made an arrangement for a fake bank guarantee.

11. However, not satisfied with the petitioner's explanation, the first respondent issued a Memorandum of Charges dated 15.10.2007 proposing to hold a departmental enquiry directing the petitioner to submit his explanation within 15 days from the date of receipt of the said Memorandum. On receipt

of the same, the petitioner made his defence statement on 05.11.2007 denying all the charges making it clear that as per business procedure, the Branch Level Committee is empowered to appoint a super stockist, but, the petitioner wanted the approval of Head Office and hence, the proposal was sent to Head Office on 28.11.2006 through E-mail and the same was approved by the Head Office on 09.01.2007. Thereafter, the petitioner also apprised the General Manager (CMD) that they are entering into the agreement with M/s.Raja Edibles Pvt. Ltd. on 06.12.2006 for the purpose of getting Bank Guarantee and the agreement would be revised after getting the final approval from the Head Office and the same was agreed and the GM (CMD) advised to go ahead. Since the petitioner was on tour to Mumbai on 16.01.2007 and 17.01.2007 to attend the Managing Director's Business Review Meeting and the said Manager (F&A), Mr.Somasundaram informed the petitioner over phone that on 16.01.2007, he has received the bank guarantee for Rs.99 lakhs and on 18.01.2007 when the petitioner came to the office, the bank guarantee was also shown to him and it was also informed by the Manager (F&A) that he confirmed the issuance of Bank Guarantee with Mr.Patil, the Senior Manager, State Bank of India, Satara Branch. Since the Bank Guarantee was confirmed over phone, the delivery of products started on 18.01.2007.

12. In the meanwhile, the enquiry officer started the enquiry in October 2007 and the petitioner also attained the age of superannuation and by an order dated 14.01.2008, the petitioner was allowed to retire from service by the Federation with effect from 31.01.2008. It is relevant to extract Office Memorandum as under:

> 'It is notified that on attaining the age of superannuation, Shri N.N.Subramanian, Manager, Chennai Branch is due to retire from the services of the Federation w.e.f. 31.01.2008 (A/N). He will, therefore, cease to be an employee of the Federation w.e.f. 31.01.2008 (A/N) and will be relieved of the duties on the last working day of the said month. He will be paid his own share of Provident Fund along with employer's share and interest due thereon only.
>
> 2.In the meantime GM (F&A)/GM (Library), Manager (Gen.Admin.), Branch Manager CMD, Azadpur, Delhi Branch and Chennai Branch are requested to send a report whether anything is recoverable/payable in respect of Shri N.N.Subramanian, at their end. In case nothing is outstanding a “NO DEMAND CERTIFICATE” may please be sent to Personnel Section in HO at the earliest but not later than 29.01.2008, failing which it will be presumed that nothing is outstanding against Shri N.N.Subramanian, and his dues will be settled accordingly.'

The Office Memorandum clearly shows that the petitioner ceased to be an employee of the Federation with effect from 31.01.2008 Afternoon and relieved from the duties on the last working day of the said month. After the petitioner reaching the age of superannuation on 31.01.2008, the respondents have come forward to pass an order retaining the petitioner for the purpose of completion of enquiry pending against him. As there was no Master and Servant or Employer and Employee relationship between the petitioner and the Federation after the petitioner was allowed to retire from service, the continuation of further departmental proceeding has no legal sanctity. Even in the counter affidavit filed by the respondents, nowhere the respondents have stated that they have passed an order retaining the petitioner in service to continue the departmental proceedings.

13. At the outset, a perusal of the Official Memorandum dated 14.01.2008 of the 1st respondent shows that the petitioner will be relieved of the duties on the last working day of the said month on 31.01.2008, i.e the petitioner is deemed to have been relieved from service on reaching the age of superannuation on 31.01.2008 from the service of the Federation. This apart, the Enquiry Officer, who has gone into all the allegations against the petitioner and two others, has also given a finding in favour of the petitioner stating that he does not find any reasons to impose any penalty on Sri. NN Subramanian, Ex-Manager-SZ-Chennai. The relevant portion of the report of the Enquiry Officer is given as under :

> ''Shri NN Subramanian, Manager-SZ (since retd.) is at fault to the extent that he relied upon Manager (FA) for the verification of BG and if that would have been carefully done, this cheating would have been avoided. The last three years ascending turnover and profitability of Chennai Branch was registered under the captaincy of Sh NN Subramanian. Laxity on the part of Manager (FA) Sh G Somasundram by not properly verifying the BG and other credentials of the party does not form part of BM's responsibility particularly when the head of the accounts wing hold almost similar rank. As such, I find no reasons to impose any penalty on Sh NN Subramanian, ex-Manager-SZ-Chennai. With this, I conclude this report.''

14. Therefore, when the Enquiry Officer has rightly come to a conclusion that no punishment will be imposed against the petitioner, since no allegation has been proved against him and as I have mentioned above, when there is no relationship of Master and Servant or Employer and Employee between the petitioner and the Federation on the date of passing the impugned order as the petitioner is ceased to be an employee of the

respondent Federation w.e.f. 31.01.2008 A.N. for the simple reason that the respondent has not passed any order retaining the petitioner in service, the departmental Proceedings against the petitioner has no legal basis.

15. In view of all the above, the impugned order of the 1st respondent is liable to be set aside. Accordingly, the same is set aside and the respondents are directed to release all the retirement benefits due to the petitioner within a period of four weeks from the date of receipt of a copy of this Order.

16. With the above observation and direction, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

tsi/vga

To

1. The Managing Director
for Executive Committee,
National Agricultural Co-operative Marketing
Federation of India Limited (NAFED),
Sidhartha Enclave,
Ashram Chowk, Ring Road,
New Delhi-110 014.

2. The Additional Managing Director (Personnel),
National Agricultural Co-operative Marketing
Federation of India Limited (NAFED),
Sidhartha Enclave,
Ashram Chowk, Ring Road,
New Delhi-110 014.

+1cc to Mr.A.L.Gandhimathi, Advocate, S.R.No. 23423
+1cc to Mr.D.Vijaya Kumar, Advocate, S.R.No. 23335

W.P.No.17304 of 2009

BR(CO)
GN(03/05/2019)