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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.15977 of 2010

K.R.Sivaraj

.. Petitioner

Vs.

1.The Joint Registrar of Co-operative
Societies
Erode Region, Erode
Erode District.

2.The Joint Registrar/Special Officer
Erode District Central Co-operative
Bank Limited
Bhavani main road
Erode-3.

.. Respondents

Prayer: Writ Petition is 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 2nd respondent in his proceedings Na.Ka.No.00908/2005-2006/E-5, dated 04.10.2005 which was confirmed by the 1st respondent in his proceedings Na.Ka.No.16076/2005/B-4, dated 04.12.2006 and quash the same and consequently, direct the respondents to reinstate the petitioner into service with all backwages and attendant benefits.

For Petitioner : Mr.C.Prakasam

For R1 : Ms.T.Girija
Government Advocate (Co-op.)

For R2 : Mr.Udhayasuriyan for
Mr.S.Saravanan

O R D E R

Writ Petition is filed for issuance of a writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 2nd respondent in his proceedings in Na.Ka.No.00908/2005-2006/E-5, dated 04.10.2005, which was confirmed by the 1st respondent in his proceedings in



Na.Ka.No.16076/2005/B-4, dated 04.12.2006, quash the same and consequently, direct the respondents to reinstate the petitioner into service with all backwages and attendant benefits.

2. According to the petitioner, he was appointed as Sub staff in the 2nd respondent Bank on 29.07.1985 and subsequently, promoted as Junior Assistant during 1993. While he was working as Assistant, he applied leave from 25.04.2005 to 24.06.2005. The 2nd respondent issued charge memo dated 23.05.2005 to the petitioner alleging that the petitioner unauthorisedly absented from work and due to that, the work of the 2nd respondent/Central Co-operative Bank was affected. The petitioner did not submit his explanation and domestic enquiry was ordered. The petitioner participated in the enquiry. The Enquiry Officer after conclusion of enquiry, submitted his report holding that the charges levelled against the petitioner were proved. The 2nd respondent issued 2nd show cause notice dated 17.09.2005 enclosing a copy of the domestic enquiry report. The petitioner submitted his explanation dated 27.09.2005. Not being satisfied with the explanation submitted by the petitioner, the 2nd respondent, by the order dated 04.10.2005 dismissed the petitioner from service. The statutory revision filed by the petitioner before the 1st respondent was also dismissed by the order dated 04.12.2006. Hence, the present writ petition.

3. The learned counsel appearing for the petitioner contended that the respondents traveled beyond the charge memo and on extraneous consideration, passed the impugned orders of dismissing the petitioner from service and rejecting the revision filed by the petitioner. The respondents failed to consider that in case of one Suresh Kumar, who absented himself for a long time, without any leave application, he was reinstated into service, while the petitioner was discriminated and prayed for allowing the writ petition.

4. Mr. Udhayasuriyan, the learned counsel representing Mr. S. Saravanan, the learned counsel appearing for the 2nd respondent contended that there is an alternate remedy available under Section 154 of the Tamil Nadu Co-operative Societies Act and the writ petition has to be dismissed in view of the alternate remedy and prayed for dismissal of the writ petition.

5. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent and perused the materials available on record.

6. From the impugned order of dismissal passed by the 2nd respondent, it is seen that the 2nd respondent has taken into consideration the news item published in Dinamalar Daily, dated



13.04.2005, wherein it has been stated that the petitioner participated in the function on 12.04.2005 conducted in the name of his wife and thereby, failed to discharge his duties and the petitioner acted in violation of Rule 149 and 7(b) of Tamil Nadu Co-operative Societies Rules and Rule 9(c), the special by-laws relating to service conditions of the employees of Erode District Central Co-operative Bank. From the impugned order of dismissal, it is seen that the news item relied on by the 2nd respondent is dated 13.04.2005. The charge memo is dated 23.05.2005. The 2nd respondent has not mentioned anything about the news item and the alleged participation of the petitioner on 12.04.2005 in the charge memo dated 23.05.2005 issued to the petitioner. Further, the 2nd respondent has mentioned three punishments dated 29.08.2005, 22.09.2005 and 03.10.2005 for stoppage of increment for one year, two years and two years respectively. These punishments were imposed after issuance of charge memo and after conclusion of domestic enquiry. All these punishments were within one month prior to the date of order of dismissal. The 2nd respondent has not placed any material to show as to whether any enquiry was conducted for any misconduct committed by the petitioner. The 1st respondent has failed to consider that the 2nd respondent has taken into consideration the news item published in Tamil Daily while imposing punishment, which was not the charge levelled against the petitioner. The respondents have also failed to consider and give a finding with regard to contention of the petitioner about the discrimination. From the materials available on record, it is seen that the petitioner has taken long leave on number of occasions. In view of the same, the petitioner is not entitled to any backwages. At the time of filing writ petition, the petitioner was aged 54 years and now attained the age of superannuation.

7. Considering all the above facts in its entirety, the punishment of dismissal is disproportionate to the charges levelled against the petitioner. The 2nd respondent has passed the impugned order taking into consideration the extraneous material without framing any charge and without giving any opportunity to the petitioner to defend the same. For the above reason, the impugned orders passed by the respondents are set aside with a direction to the respondents to notionally reinstated the petitioner into service with continuity of service and all other attendant, monetary benefits, retirement-cum-pensionary benefits and terminal benefits and treat the period from the date of dismissal till the date of superannuation as period of duty, however without backwages. The whole exercise shall be completed within a period of three months from the date of receipt of a copy of this order.



8. With the above direction, the writ petition stands allowed. No costs.

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Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

kj

To

1.The Joint Registrar of Co-operative
Societies
Erode Region, Erode
Erode District.

2.The Joint Registrar/Special Officer
Erode District Central Co-operative
Bank Limited
Bhavani main road
Erode-3.

+1 cc to M/s.C.Prakasam, Advocate, S.R.No.57911

+1 cc to M/s.S.Saravanan, Advocate, S.R.No.57546

+1 cc to the Special Government Pleader(CO-OP), S.R.No.58546

W.P.No.15977 of 2010

BP(CO)
SSM(29/08/2019)