

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.20989 of 2005

S. Sundararajan,
Co-operative Sub Registrar (Retd),
No.44, Venkatachala Gounder Street,
Rathinapuri, Coimbatore

.. Petitioner

-vs-

1. Govt. of Tamilnadu,
represented by its Secretary,
Co-operation, Food and
Consumer Protection Department,
Secreteriat, Chennai-9.
2. Registrar of Co-operatives,
No.170, Periyar E.V.R. High Road,
Kilpauk, Chennai - 10.
3. Joint Registrar of Co-operatives,
Dharmapuri Region,
Dharmapuri.

.. Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records connected with the impugned order of punishment passed by the 1st respondent in G.O. (2D) No.49 dated 30.4.2002 and consequential order of the 2nd respondent, his Proc.Na.Ka.No.83056/2003 PA U 3 dated 11.5.2004 and quash the same and consequently direct the respondents to pay interest for the belated payment, his pensionary benefits.

For Petitioner : Mr. R. Rengaramanujam
For Respondents : Mr. L.P. Shanmugasundaram
Special Govt. Pleader (Co-op)
for R1 to R3

O R D E R

The petitioner while serving as a Co-operative Sub Registrar in Dharmapuri Region, a charge memo was framed under section 17 (b) of Tamilnadu Civil Services (Disciplinary Appeal) Rules. The delinquent has submitted his explanation to the charges and an enquiry was conducted. During the enquiry, the Enquiry Officer has held that the charges were not proved. However the Disciplinary Authority by impugned order vide G.O.2D.No.49, Cooperative, Food Consumption Protection Department dated 30.4.2002 differing with the findings of the Enquiry Officer, held the charges proved and imposed a punishment of Rs.200/- cut in pension for a period of six months

and on clarification, the Registrar of Cooperative Society has clarified that it will affect the commutation of pension of the petitioner. This order of punishment as well as the consequential order of the 2nd respondent is challenged before this Court.

2. Learned counsel appearing for the petitioner would vehemently contend that the very framing of charges is illegal and that he has not committed any mis-conduct as stated by petitioner and the charges on the face of it are not maintainable. Even though on enquiry, the Enquiry Officer has found the charges were not proved, the 1st respondent Disciplinary Authority without recording any reasons differed with the findings of the Enquiry Officer and held the charges proved. It is incumbent on the Disciplinary Authority to record his reasons as to why he differs with the finding and disclose the materials on which he arrives at a conclusion that charge is proved. As far as the non recording of reasons by the Disciplinary Authority vitiate the punishment order. Further a simple punishment of recovery of Rs.200/- per month for six months cannot be treated as cut in pension and therefore the order of the 2nd respondent who is a Subordinate Authority to the 1st respondent is not sustainable. The 2nd respondent has no powers to clarify the orders of his superior authorities. Therefore the consequential order is also liable to be set aside.

3. Per contra, learned Government Pleader appearing for the respondents would reiterate his stand as found in the impugned Government Order and would contend that full pension sanctioned to the petitioner was Rs.4,475/- from 1.1.1999 to 24.7.2002 and the reduced pension would be Rs.2565/- after commutation from 30.4.2002 to 29.10.2002, i.e., after inflicting the cut in pension to the tune of Rs.200/- per month for six months. In effect, the allowed commuted pension would be Rs.1,94,530/-, that is how the 2nd respondent has clarified in view of the letter issued by the Government vide letter No.113767 pension/92-6/Finance (Pension) Department dated 7.10.1992. Therefore the order impugned is very much legal and valid and does not require any interference.

4. I have considered the submissions of both parties.

5. The basic principles in service jurisprudence is audi alteram partem. The other side should be heard before being condemned. For that purpose the opportunity of hearing is mandatory. Opportunity includes informing the person of the grounds for arriving at a conclusion by recording reasons. If the reasons are not recorded, it will amount to violation of principles of natural justice. A perusal of the impugned order dated 30.4.2002 passed by the 1st respondent simply states that even though the enquiry officer held the charges not proved,

the Disciplinary Authority differs from it and held the charge proved. In that process, not even a single reason is recorded in the impugned order. Only because the authority happens to be the disciplinary authority, he cannot, on his own whims and fancies, differ with the finding of the Enquiry Officer. As contended by the learned counsel for the petitioner, he must record his reasons as to why he differs with the findings of the Enquiry Officer and what are the materials which lead him to take a contrary decision.

6. In the absence of any reasons adduced by the disciplinary authority for differing the finding of the Enquiry Officer, it amounts to violation of principles of natural justice and arbitrary exercise of power. In the instant case, the disciplinary authority on two charges, simply stated that he is not accepting the finding of the Enquiry Officer and without adducing any reasons held the charges proved. Therefore, the impugned order is clearly violative of principles of natural justice and arbitrary and illegal. Hence I have no hesitation to set aside the impugned order dated 30.4.2002 and thereby the consequential order also stands set aside.

7. In fine, the writ petition stands allowed. No costs.

8. It is submitted by the learned counsel for the petitioner that the pension has been withheld for the past four years. In view of the order passed by this Court, the respondents are directed to release the pension within a period of twelve weeks from the date of receipt of a copy of this order, failing which, the respondents shall pay interest at the rate of 7.5% per annum from the due date till the date of payment.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

msr

To

1. The Secretary,
Co-operation, Food and
Consumer Protection Department,
Secreteriat, Chennai-9.
2. Registrar of Co-operatives,
No.170, Periyar E.V.R. High Road,
Kilpauk, Chennai - 10.
3. Joint Registrar of Co-operatives,
Dharmapuri Region, Dharmapuri.

+1 cc to Government Pleader co op Sr.No. 102496

+1cc to Mr.R.Rangaramanujam , Advocate SR.No.102099

W.P.No.20989 of 2005

A.SK(28/01/2020)