

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.A.No.1487 of 2018
and
C.M.P.No.11740 of 2018

1. The Joint Registrar of Co-operative Societies,
Office of the Joint Registrar of Co-operative Societies,
Master Plan Complex, Collectorate, Villupuram.
2. The Registrar of Co-operative Societies,
N.V.N. Maligai, Kilpauk,
Chennai - 600 010. ... Appellants/Respondents

-vs-

K. Karthikeyan ... Respondent/Petitioner

PRAYER:-

Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order of the Learned Judge made in W.P. No. 23201 of 2017 dated 28.11.2017.

W.P.No.23201 of 2017:-

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of writ of Certiorarified Mandamus, calling for the records relating to the 1st respondent orders made in Rc.No.3149/2008/EM dated 11.8.2017 and that of the consequential order made in Rc.No.3149/2008/EM dated 28.8.2017 to quash the same and to consequently direct the respondents to permit the petitioner to retire peacefully with all accrued service benefits thereto. (Prayer amended as per order of Court made in WMP.No.25353 of 2018 in WP.No.23201 of 2017 dated 02.11.2017)

For Appellants :Mr.S.T.S.Moorthy,
Additional Advocate General
assisted by Mr.L.P.Shanmugasundaram,
Special Government Pleader

For Respondent :Mr.L.Chandrakumar

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 28.11.2017 in W.P. No. 23201 of 2017 passed by the Learned Judge of this Court. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. The chronological sequence of events leading to the filing of this Writ Appeal are given below:-

- (i) The Petitioner, who is in the services of the Co-operation Department of the Government of Tamil Nadu, while working in the post of Junior Inspector was posted as Special Officer of Perumbakkam Primary Agricultural Co-operative Bank (hereinafter referred to as the 'Co-operative Society' for short) during the period from 13.05.1985 to 28.03.1989.
- (ii) In an inquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, it was reported that there was dereliction of duty on the part of the Petitioner in supervising the affairs of that Co-operative Society as the Petitioner had failed to take cognizance of the misappropriation of funds committed by the Secretary of that Co-operative Society, viz., M. Vajjiravel by not accounting for the amounts collected by him towards issue of shares from the borrowers under the relevant rules.
- (iii) In pursuance thereof, disciplinary action was initiated against the Petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as the 'Rules' for short) and the First Respondent, as Disciplinary Authority by proceedings Na. Ka. No. 2498/2000 'Pa Aa' dated 28.03.2001, on finding that charges were proved against the Petitioner, imposed a punishment of withholding the increment for one year without cumulative effect without affecting his pensionary benefits and excluding the leave period.
- (iv) The Petitioner was also simultaneously proceeded by way of criminal prosecution for the same charges in C.C. No. 265 of 2003 before the Judicial Magistrate-I, Villupuram, who had convicted the Petitioner on the basis of his admission after recording evidence by the prosecution, but had extended the benefit under Section 4 of the Probation of Offenders Act, 1958, to the Petitioner with an observation that his conviction shall not affect his service rights.
- (v) In pursuance of the aforesaid conviction by the Criminal Court, proceedings in Rc. No. 3149/2008/EM dated 11.08.2017 under Section 17(c) (i) (1) of the Rules were

initiated by the First Respondent and the Petitioner submitted his written representation dated 18.08.2017 for the same.

- (vi) The Petitioner also challenged the show cause notice in Rc. No. 3149/2008/EM dated 11.08.2017 in W.P. No. 23201 of 2017 before this Court.
- (vii) Shortly after the filing of the Writ Petition, the First Respondent by order Rc. No. 3149/2008/EM dated 28.08.2017 held that the written representation dated 18.08.2017 submitted by the Petitioner had been duly considered and it was decided to impose a penalty of dismissal from service on the Petitioner specified under clause (8) of Rule 8 of the Rules with immediate effect.
- (viii) The Learned Judge, who heard the Writ Petition, by order dated 28.11.2017 relying on the Judgment in D. Narayanan -vs- District Revenue Officer [(2009) 4 MLJ 708], held that the case of the Petitioner has to be reconsidered by the competent authorities and accordingly the punishment imposed on the Petitioner in proceedings Rc. No. 3149/2008/EM dated 11.08.2017 was quashed and the matter was remitted back to the Respondents for re-consideration and passing orders within 12 weeks from the date of receipt of copy of that order.

Aggrieved thereby, the Respondents have preferred this appeal.

3. We have heard Mr. S.T.S. Moorthy, Learned Additional Advocate General appearing for the Respondents, Mr. L. Chandrakumar, Learned Counsel appearing for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

4. The Learned Additional Advocate General appearing for the Respondents vehemently contended that though the Criminal Court held that in view of the benefit extended to the Petitioner under Section 4 of the Probation of Offenders Act, 1958, the conviction could not affect the service rights by virtue of Section 12 of that Act as there was no legal impediment for the First Respondent to invoke Rule 17(c)(i)(1) of the Rules. In support thereof, he relied on the decision of the Division Bench of this Court in Director of Sericulture -vs- S. Panneerselvam [(2008) 4 TLNJ 122 (Civil)], which in turn followed the decisions of the Hon'ble Supreme Court of India in Divisional Personnel Officer, Southern Railway -vs- T.R. Chellappan [(1976) 3 SCC 190], Aitha Chander Rao -vs- State of Andhra Pradesh [1981 (Supp) SCC 17], Union of India -vs- Bakshi Ram [(1990) 2 SCC 426], Additional D.I.G. of Police -vs- P.R.K. Mohan [(1997) 11 SCC 571], Harichand -vs- Director of School Education [(1998) 2 SCC 383], Punjab Water Supply Sewerage Board -vs- Ram Sajivan [(2007) 9 SCC 86] and Southern Railway Officers Association -vs- Union of India [(2009) 9 SCC 24], and sought to justify the

penalty of dismissal from service imposed on the Petitioner and set aside the order passed by the Writ Court.

5. Per contra, Learned Counsel appearing for the Petitioner submitted that when the Criminal Court had specifically held that by virtue of the benefit extended to the Petitioner under the Probation of Offenders Act, 1958, the conviction by that Court shall not affect his service rights under Section 12 of that Act, it was not permissible to the Respondents to rely on the same and impose the extreme penalty of dismissal from service just before the Petitioner was about to retire from service on attaining the age of superannuation. He further pointed out that the second penalty based on the same cause of action would amount to double jeopardy, apart from the fact that it suffers from the vice of non-application of mind and violation of principles of natural justice inasmuch as there was no consideration of the explanation submitted by the Petitioner though that order mentions that the same had been considered.

6. There is force in the submission made by the Learned Additional Advocate General appearing on behalf of the Respondents that the benefit extended to the Petitioner under Section 4 of the Probation of Offenders Act, 1958, would not enable him to claim immunity from disciplinary proceedings for the conviction on the same charges, which have been proved in criminal prosecution in view of the aforesaid decision cited by him. However, we find that inasmuch as the Petitioner had already been imposed with penalty of withholding of increment for one year without cumulative effect by proceedings Rc. No. 3149/2008/EM dated 11.08.2017 by the First Respondent, which had been given effect, it was not permissible in law for the same Disciplinary Authority, to impose a higher punishment of dismissal from service by invoking Rule 17(c)(i)(1) of the Rules. We are fortified in taking this view by the decision of the Hon'ble Supreme Court of India in Lt. Governor -vs- HC Narinder Singh [(2004) 13 SCC 342], in which it has been categorically held that the second penalty based on the same cause of action would amount to double jeopardy and cannot be sustained.

7. The Division Bench of this Court in D. Narayanan -vs- District Revenue Officer [(2009) 4 MLJ 708] referred in the order under appeal, has held as follows:-

" 26. A question may crop up that even after a person is subjected to some insignificant punishment in a departmental enquiry, he may be imprisoned after

being convicted in a criminal case based on similar set of allegations and, in such circumstances, whether it would be in the interest of administration to allow such person to continue in service. We do not think that the State or the department is remediless in such a situation. If a person, on account of his conviction is imprisoned and remains absent from service, he can always be penalised for remaining absent from duty. Even otherwise, a departmental authority or the State Government for that matter can always review the punishment by following the procedure contemplated under relevant service rules by altering the initial punishment to some higher punishment.

27. In the present case, the disciplinary authority himself has imposed the second punishment on the basis of the very same allegation of temporary misappropriation. Such order of the disciplinary authority cannot be considered as an exercise of power of review of punishment, inasmuch as such punishment has been imposed beyond the period of limitation contemplated under the relevant service rules."

8. It requires to be noticed here that the proceedings impugned in the Writ Petition were not in the exercise of powers of revision conferred on a higher authority under Rule 36 of the Rules or by the power of review by the State Government under Rule 37 of the Rules, but was an action taken by the First Respondent as Disciplinary Authority on the same cause of action imposing a higher punishment after the lapse of a long period of time from when the earlier punishment of withholding the increment imposed by that authority had already been implemented and attained finality.

9. Since the present appeal has been preferred by the Respondents and not by the Petitioner, we deem it appropriate to make it clear that the direction issued by the Learned Judge to the Respondents to reconsider the matter by the Competent Authority after having quashed the order impugned in the Writ Petition, would have to be read as liberty granted to the Competent Authority to take such action as may be permissible in accordance with law and that the observations made in that regard shall not be construed as any expression of opinion by this Court on the merits of the matter.

10.In fine, the Writ Appeal is dismissed with the aforesaid clarification of the order dated 28.11.2017 in W.P. No. 23201 of 2017 passed by the Writ Court. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Joint Registrar of Co-operative Societies,
Office of the Joint Registrar of Co-operative Societies,
Master Plan Complex, Collectorate,
Villupuram.
2. The Registrar of Co-operative Societies,
N.V.N. Maligai, Kilpauk,
Chennai - 600 010.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.27264

W.A.No.1487 of 2018

KAN(CO)
CS/11/04/2019

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