

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2019

CORAM

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.29805 of 2013

And

M.P.No.1 of 2013

K.Chandrasekaran ... Petitioner
Vs.

1.The Tamilnadu Co-operative State
Agricultural and Rural Development Bank Ltd.,
Rep. by its Chairman
No.181, Luz Church Road,
Mylapore, Chennai - 4.

2.Thiru.M.Mohan ... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent in No.Pa.Pe.-Ko.370/Editor-2013 dated 15.07.2013 quash the same.

For Petitioner : Mr.M.S.Palaniswami
for Mr.V.Ravichandran

For Respondents : Mr.B.Nedunchezhiyan for R1

No Appearance for R2

सत्यमेव जयते
O R D E R

The petitioner has filed this writ petition seeking issuance of writ of certiorari calling for the records of the first respondent in No.Pa.Pe.-Ko.370/Editor-2013, dated 15.07.2013 and to quash the same.

2.The petitioner was appointed as Assistant Editor in Tamil Nadu Co-operative State Land Development Bank Limited on 18.12.1985. His job was to look after the applications etc. of the Co-operative Bank. Later he was promoted as Editor. The work of an Editor is described as under:

1. Overall incharge of the Section.
2. Scheming and budgeting the contents of the journal
3. Evaluating the technical strategy for highlighting the salient features of the diversified materials.
4. Arranging materials from various sources, like Information and Public Relations Department, Department of Agriculture, Agricultural University, ICAR and IARI, New Delhi and other competent experts.
5. Liaison with press and other mass media.
6. Arranging for interview with our farmer beneficiaries for publishing success stories.
7. Providing points and scripts for radio talks by top executive of the Bank.
8. Preparing matters for purpose of advertisement and publicity of the Bank.
9. Any other items of work that may be assigned to him by his superiors."

3. A charge memo was issued to the petitioner on 02.05.2013. Three charges were framed against the petitioner. The charges read as under:-

"Charge No.1:

It has been notified by the Registrar of Cooperative Societies by Circular No.1/09.Rc.no.116516/08 SF4 dated 21.02.2009 that the serious flaws and malpractices if any, notified in the Inspections conducted under Section 83 of the Primary Cooperative Agricultural and Rural Development Banks are required to be reported to the Regional Joint-Registrar within 10 days from the date of receipt. But during 2010-11, the official has failed to take necessary action within the stipulated time on the Reports of Inspections under Section 83 conducted in 103 Primary Banks and thus neglected his duties and responsibilities.

Charge No.2:

The Official was responsible for not initiating suitable action on the Reports of Inspections under section 83 wherein it was

reported that huge funds kept unutilised in the Primary Banks to avoid interest losses.

Charge No.3:

The Official is responsible for defeating the very motive of Inspections by not initiating remedial action on Reports thus rendering the time and labour invested on Inspections as useless."

4.The petitioner gave his reply stating that the charges framed against him are un-connected to the work to be done by an Editor and therefore these charges could not be levelled against the petitioner. The petitioner gave a detailed representation on 13.05.2013.

5.The Tamil Nadu Co-operative State Land Development Bank by order dated 15.07.2013, only based on his representation, held that the charges have been proved and awarded the following punishment:

"1.It is hereby ordered that his Annual Increment with all allowances thereof be withheld for three (3) consequent years.

2.Based on Charge 3, it is ordered that the Travelling Allowances of all the Inspecting Officers should be collected from the salary and allowances of the official, for wasting the labour of the Inspecting Officers by not initiating action on their Reports."

It is this order which is under challenge in the instant writ petition.

6.The learned counsel appearing for the petitioner has strenuously urged that the order impugned in the writ petition is in violation of the principles of natural justice in as much as the petitioner was not afforded a reasonable opportunity to defend himself. He would submit that the petitioner is entitled to oral hearing by the disciplinary Authority.

7.The petitioner would rely on Chapter VI of the Bylaws and Special Bylaws of the Tamil Nadu Co-operative State Land Development Bank Limited. Clause 28 and Clause 30 of the Bylaws read as under:

"28.KINDS OF PENALTIES:

The following penalties may, for good

and sufficient reasons, for the violation of any of the provisions of the bylaws and special bylaws and for the misconduct illustrated in the regulations and as hereinafter provided be imposed upon every employee namely:-

- (i) Censure
- (ii) Fine in the case of employees on whom such penalty be imposed.
- (iii) Withholding of increments with or without cumulative effect.
- (iv) Withholding of promotion
- (v) Suspension by way of punishment
- (vi) Reduction to a lower rank in the seniority list or to a lower post or to a lower state in a time scale.
- (vii) Recovery from the pay of the whole or part of any pecuniary loss caused to the bank by negligence or breach of orders.
- (viii) Compulsory retirement
- (ix) Removal from service
- (x) Dismissal from service.

30. IMPOSITION OF PENALTIES:

No penalty shall be imposed on any employee unless he has been given a reasonable opportunity of making any representation that he may desire to make, and such representation, if any, shall be taken into consideration before orders are passed.

Provided that where it is proposed to impose any of the major penalties specified in items (v) to (x) in Special bylaw 28, a domestic enquiry shall be conducted and the employee concerned shall be afforded an opportunity to defend himself.

Provided further that nothing contained in this clause and in the first proviso thereto shall apply in the case of removal of an employee under section 77 of the Act.

2. Every order imposing penalty shall be communicated to the employee concerned in writing stating the grounds on which the penalty has been imposed.

3. Every penalty of fine imposed under

this Special Bylaw shall be in accordance with the provisions of section 35 of the Tamil nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947) and the rules relating thereto, and for the said purpose the reference to the "prescribed authority" occurring in the said section 35 shall be construed as a reference to the Registrar. However, no penalty by way of fine shall be imposed on any paid officer or servants of the Society above the clerical or equivalent cadre of staff.

4.The punishing authority shall follow such procedures as may be prescribed in the regulations framed by the board with the approval of the Registrar for imposing any penalty under this special bylaw."

8.The learned counsel appearing for the petitioner would submit that since major penalty has been imposed on the petitioner it was incumbent on the Bank to afford him a personal hearing. He would say that Clause 30 of the Bye-laws specifies two distinct procedures. One for imposing minor penalty and the other for imposing major penalty. He would state that since the major penalty has been imposed reasonable opportunity to defend himself would take in its ambit right to personal hearing.

9.The petitioner would place reliance on a judgment of this Court dated 28.02.2017 in W.P.No.4034 of 2017 (K.S.Asam Vs. the State of Tamil Nadu), wherein, while interpreting Section 36 of the Tamil Nadu Co-operative Societies Act, this Court held that not affording an opportunity of personal hearing under Section 36(2) of the Tamil Nadu Co-operative Societies Act is in total violation of the principles of natural justice. Section 36 of the Tamil Nadu Co-operative Societies Act reads as under:

'36.Disqualification and removal.--(1) Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 it appears that a person who is, or was, a member of a board has mis-appropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or of gross

or persistent negligence in connection with the conduct and management of, or gross mismanagement of the affairs of the society, the Registrar may, without prejudice to any other action that may be taken against such member by order in writing, disqualify him permanently from holding in future any office in any registered society. The Registrar shall, if such person holds office of member of the board, also by the same order remove him from that office.

(2) No person shall be disqualified or removed under sub-section (1) without being given an opportunity of making his representations. A copy of the order disqualify or removing him shall be communicated to him.'

10.A perusal of Section 36(2) of the Tamil Nadu Co-operative Societies Act would show that it is more or less similar to proviso to Clause 30 of the Bylaws of the Tamil Nadu Co-operative State Land Development Bank Limited and the judgment dated 28.02.2017 in W.P.No.4034 of 2017 will be applicable to the facts of the case. The impugned order herein therefore has to be set aside and the matter has to be remanded back to the Managing Director of the Tamil Nadu Co-operative State Land Development Bank Limited.

11.The Managing Director is directed to afford a personal hearing to the petitioner and pass orders and decide the issue as expeditiously as possible, keeping in view of the fact that the petitioner is due to reach his age of superannuation, preferably within a period of 10 weeks within the receipt of a copy of this order.

12.The writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Chairman, Tamilnadu Co-operative State
Agricultural and Rural Development Bank Ltd.,
No.181, Luz Church Road,
Mylapore, Chennai - 4.

+1 cc to Mr.B.Nedunchezhiyan, Advocate Sr.No.19956

+1 cc to Mr.V.Ravichandran, Advocate Sr.No.19954

W.P.No.29805 of 2013

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RSI (CO)
CSL/03.04.2019



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