

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.3403 of 2017

S.Paulraj

...Petitioner

Vs

1.The Registrar of Cooperative Societies
Chennai - 600 010.

2.State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Cooperative, Food and Consumer
Protection Department,
Fort St George, Chennai -9.

3.The Tamil Nadu Public Service Commission,
Rep. by its Secretary
Frazer Bridge Road,
Chennai - 3.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to G.O.(D) No.5 Coop, Food and Consumer Protection (CE 2) Dept dated 10.01.2017 of the 2nd respondent, along with the letter No.709/DCD-D2/2016-1 dated 23.12.2016 of the 3rd respondent and to quash both.

For Petitioner : Mr.S.Venkataraman

For Respondents: Mr.L.P.Shanmuga Sundaram
Special Government Pleader (Coop)
for R1 and R2
Ms.C.N.G.Niraimathi for R3

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O R D E R

The petitioner is aggrieved against the order of the 2nd respondent dated 10.01.2017. The 2nd respondent, through the impugned order dated 10.01.2017 imposed punishment of pension cut of Rs.300/- per month for a period of ten years and for recovery of a sum of Rs.1,93,065/-, being the monetary loss caused to the fair price shops.

2. The following are the short facts which necessitated the petitioner to file the present writ petition.

The petitioner was working as a Joint Registrar of Co-operative Societies. He was due to retire on 30.06.2005. However, he was placed under suspension on 30.06.2005 pending enquiry to various charges. Thereafter, he was permitted to retire from service, pending disciplinary proceedings. While he was in service, four charges dated 12.10.1999, 25.01.2000, 13.07.2001 and 15.06.2005 were framed and served on him. He gave explanation denying the charges. An Enquiry Officer was appointed, who conducted the enquiry and filed a report. The Enquiry Officer found substantial charges were not proved. The Enquiry Officer's report was communicated to the petitioner on 21.06.2005. The petitioner was called upon to furnish his explanation. Accordingly, the petitioner filed his explanation on 12.07.2005. Thereafter, the 2nd respondent through communication dated 04.11.2015 informed the petitioner that the Government deviated from the report of the Enquiry Officer in respect of the charges found not proved and thus, called upon the petitioner to show cause why the punishment should not be imposed in respect of all charges as found in Paragraph No.3 of the said communication. The petitioner gave a detailed objection/ explanation on 15.12.2015. The petitioner has questioned the action of the 2nd respondent in proposing to impose the punishment, based on such deviated view, without giving an opportunity to the petitioner to explain on such deviation. However, the 2nd respondent proceeded to pass the impugned order of punishment.

3. The respondents filed a counter affidavit and opposed the writ petition. The crux of the contentions raised by the respondents is that the report of the Enquiry Officer and his findings are advisory in nature and are not binding on the disciplinary authority who can disagree with them and come to his own view based on assessment of the evidence forming part of the record of enquiry. Thus, it is contended by the respondent that the disciplinary authority, if disagrees with the findings of the Enquiry Officer on any article of charge, will only have to record his own findings. It is further stated in the counter affidavit at paragraph No.14 as follows:

"The disciplinary authority after such examination of the report of the inquiry or personal hearing, if he is of the opinion, on the basis of the evidence adduced during the inquiry, that any of the penalties specified in rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, should be imposed on the person charged, it shall, before making an order imposing such penalty, furnish to him a copy of the report of the inquiry or personal hearing or both, as the case may be,

together with the reasons for disagreement with findings of the Enquiry Officer and call upon him to submit his further representation, if any, within a reasonable time, not exceeding fifteen days.

The 2nd respondent has exercised the above rule provision in disagreeing within the report of the Enquiry Officer. Therefore, the orders issued by the 2nd respondent holds good."

4. Mr.S.Venkataraman, learned counsel for the petitioner submitted that the impugned punishment is not by following the mandatory procedures as the 2nd respondent failed to follow the principles of natural justice while deviating from the findings of the Enquiry Officer. In other words, it is his contention that the 2nd respondent has not put the petitioner on notice and sought for his explanation as to why such deviation from the enquiry report cannot be made. Thus, the learned counsel contended that the action of the 2nd respondent in deviating from the findings of the Enquiry Officer straightaway and imposing the punishment on the petitioner, based on such deviated view, is against the principles of natural justice.

5. Mr.L.P.Shanmughasundaram, learned Special Government Pleader appearing for the respondents 1 and 2 submitted that before passing the impugned order, the petitioner was issued with a notice on 04.11.2015 and therefore, the 2nd respondent has followed the principles of natural justice.

6. Heard both sides.

7. The petitioner is aggrieved against the order of punishment as stated supra. The petitioner was issued with charge memos and thereafter, an Enquiry Officer was appointed, who in turn, after conducting the enquiry, filed his report on 02.06.2005. In the said report, the Enquiry Officer has given findings in respect of Allegations 1 and 2 as follows:

"Findings on each article of charge:

Allegation: 1

The allegation against Thiru.S.Paulraj, Joint Registrar of Cooperative Societies while working as the Deputy Registrar/Special Officer of SAPCMS Limited, Salem from 23.12.1991 to 07.11.1994 made exorbitant payment in the purchase of 133 steel bureaus and abetted some private individuals to derive pecuniary gain to the extent of Rs.1,49,520/- was not maintainable due to the reasons that rate suggested in the evaluation report submitted by the Manager (Furniture & Foundry) TANSI Sale Centre Madurai vide his letter Rc.No. (125/M/F&F)/96, dated 20.09.96 was not supported by any material evidence in terms of

cost of components and on indication what so ever in the report whether the prevailing rate of the year 1994 to the components for the 1994 were taken for consideration while arriving the cost per steel bureau of size 15' x 15'. Hence there is no concrete proof to establish that the purchase of steel bureaus were purchased at an exorbitant rate by the SAPCMS during 19494 and I hold to this extent the allegation was not proved.

As far as creation of file relating to the purchase of 133 steel bureaus by the SAPCMS from SDSFMSICS Limited for making supply to the various link societies in 1994 is concerned, it is very much established through the assessment of records of evidence available that the processing of purchase file by SAPCMS in connections with the supply of steel bureaus to the link societies situated in Omalur and Mettur Taluks during 1994 are not in order and I hold that the allegation made against Thiru.S.Paulraj, Joint Registrar of Cooperative Societies is proved.

Allegation: 2

The allegation against Thiru.S.Paulraj, Joint Registrar of Cooperative Societies while was working as the Deputy Registrar/ Special Officer of SAPCMS Limited, Salem from 23.12.1991 to 07.11.1994 made exorbitant payment to the INDIAN TARPAULIN INDUSTRIES towards the purchase of 99 tarpaulin for making supply to the Village Fair Price Shops during April, 1994 were concerned, no material evidence was furnished to establish the rate at which the tarpaulin purchased from the INDIAN TARPAULIN INDUSTRIES was an exorbitant one. Moreover no comparative rates obtained from any other tarpaulin industries to assess the rate charged by INDIAN TARPAULIN INDUSTRIES towards the SAPCMS for the size 15' x 15' tarpaulin was higher. Further the estimated market rate of a 15' x 15' size tarpaulin was arrived only on the basis of the deposition obtained from the Managing Partner INDIAN TARPAULIN INDUSTRIES Madras but no material evidence were furnished in support of the assessment of the estimated market rate per 15' x 15' size tarpaulin as Rs.1500/-. Hence the deposition as stated above is not at all sufficient to be a proof to establish that the SAPCMS has made

exorbitant payment towards the purchase of 99 tarpaulins to make supply to the village fair price shops during 1994 and I hold that to this extent the allegation is not proved.

As far as the allegation made against Thiru.S.Paulraj, Joint Registrar of Cooperative Societies while working as deputy Registrar/Special Officer SAPCMS knowingly falsified the records of SAPCMS during April 1994 in respect of supply of 99 tarpaulin to various Village Fair Price Shops were concerned it was found that the file relating to the supply of tarpaulin was constructed on a single day. The file was not kept in order in respect of the tarpaulin transactions during April 1994 and the quotation obtained from the INDIAN TARPAULIN INDUSTRIES was a bogus one. Based on the above points, I hold the allegation made against Thiru.S.Paulraj, Joint Registrar of Cooperative Societies is proved."

The said report was communicated to the petitioner through letter dated 21.06.2005. Perusal of the said letter would show that the 2nd respondent has called upon the petitioner only to give further explanation on the findings of the Enquiry Officer, without there being any indication that the Government had proposed to deviate from any of those findings rendered by the Enquiry Officer. In other words, the said communication dated 21.06.2005 is a simple communication calling upon the petitioner to give his further representation on the findings of the Enquiry Officer and nothing else. Therefore, it is apparent that as on 21.06.2005, the Government had no intention to deviate from the findings of the Enquiry Officer. The petitioner filed his explanation to the Enquiry report on 12.07.2005. Thereafter, nothing had transpired for a period of ten years. While so, all of a sudden, a communication dated 04.11.2015 was issued to the petitioner stating that the Government, after examining the charges, allegation thereunder, explanation submitted by the petitioner, the findings of the Enquiry Officer and the petitioner's further explanation on the findings of the Enquiry Officer, has deviated from the findings of the enquiry officer and found that both the charges against the petitioner proved and for the proven charges, the Government has proposed to impose the punishment on the petitioner as stated supra. Thus, through the said communication, the petitioner was called upon to state as to whether he accepts the proposed punishment or not. The petitioner gave his objection on 15.12.2015 wherein he has clearly informed the 2nd respondent that such punishment cannot be imposed based on deviated view, without giving him an opportunity on the proposed deviation. However, the Government

passed the impugned order without considering the said objection.

8. Now, the question before this Court is whether the 2nd respondent has followed the procedure strictly in accordance with the principles of natural justice, while imposing the punishment on the petitioner, more particularly, when they have chosen to deviate from the findings rendered by the Enquiry Officer. I have already pointed out that the Enquiry Officer found part of charges as proved and part of charges as not proved. No doubt, it is open to the Disciplinary Authority to deviate from the findings of the Enquiry Officer. However, it is needless to say that if the Disciplinary Authority wants to deviate from the findings of the Enquiry Officer, certainly, such authority is bound to put the delinquent on notice and seek his explanation on the proposed deviation. Only after getting his explanation, it is open to the disciplinary authority to pass appropriate order, after considering such explanation. Such course of procedure alone will withstand the test on principles of natural justice. Otherwise, it would fail. The materials placed before this Court would show that no such notice was issued to the petitioner on the proposed deviation from the enquiry report. On the other hand, the very communication dated 04.11.2015 would, in clear and categorical terms, show that the Government has already taken a decision and deviated from the report of enquiry officer and consequently found that both the charges are proved against the petitioner. Therefore, it is evident that the 2nd respondent, before deviating from the findings of the Enquiry Officer, has not put the petitioner on notice and on the other hand, has straightaway made an exparte deviation and given a finding against the petitioner as if both the charges are proved. Thus, apparently the 2nd respondent has violated the principles of natural justice. The communication dated 04.11.2015 is only a notice calling upon the petitioner to show cause as to why the punishment based on the proven charges cannot be imposed and not a notice calling upon him to show cause as to why a deviated view can be made from the findings of the Enquiry Officer. In fact, in the counter affidavit filed by the respondent, it is clearly admitted by them about the procedure to be followed by the Disciplinary Authority, in case, if he wants to deviate from the findings of the Enquiry Officer. At Para 14 of the counter affidavit, it is stated as follows:

"The disciplinary authority after such examination of the report of the inquiry or personal hearing, if he is of the opinion, on the basis of the evidence adduced during the inquiry, that any of the penalties specified in rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, should be imposed on the person charged, it shall, before making an order imposing such penalty, furnish to him a copy of the report of the inquiry or

personal hearing or both, as the case may be, together with the reasons for disagreement with findings of the Inquiry Officer and call upon him to submit his further representation, if any, within a reasonable time, not exceeding fifteen days.

The 2nd respondent has exercised the above rule provision in disagreeing within the report of the Enquiry Officer. Therefore, the orders issued by the 2nd respondent holds good."

9. Admittedly, in the present case, the above said procedure has not been followed. Therefore, this Court is fully convinced that the impugned punishment imposed on the petitioner cannot be sustained based on the exparte deviated view taken by the Government without putting the petitioner on notice about such deviation. As this Court is inclined to interfere with the impugned order only on the above said procedural lapse, which goes to the root of the matter, this Court is not inclined to go into the merits of the charges and the findings rendered by the respondents against the petitioner. Therefore, the 2nd respondent shall have to follow the procedure afresh from the stage of issuing notice to the petitioner to seek explanation on the deviated view and proceed thereafter and pass fresh orders on merits in accordance with law, after getting explanation from him.

10. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently the matter is remitted back to the second respondent for reconsidering the matter afresh in the light of the observations and findings rendered supra. Since the charges were framed long ago, in order to avoid further delay, the petitioner shall treat the impugned order itself as the notice for proposed deviation of the second respondent on the findings of the Enquiry Officer. Consequently, the petitioner shall furnish his explanation to the proposed deviation, within a period of two weeks from the date of receipt of a copy of this order, by raising all the legal grounds available to him. On receipt of such explanation, the second respondent shall pass a fresh order on merits and in accordance with law within a period of six weeks, thereafter. No costs.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

vsi

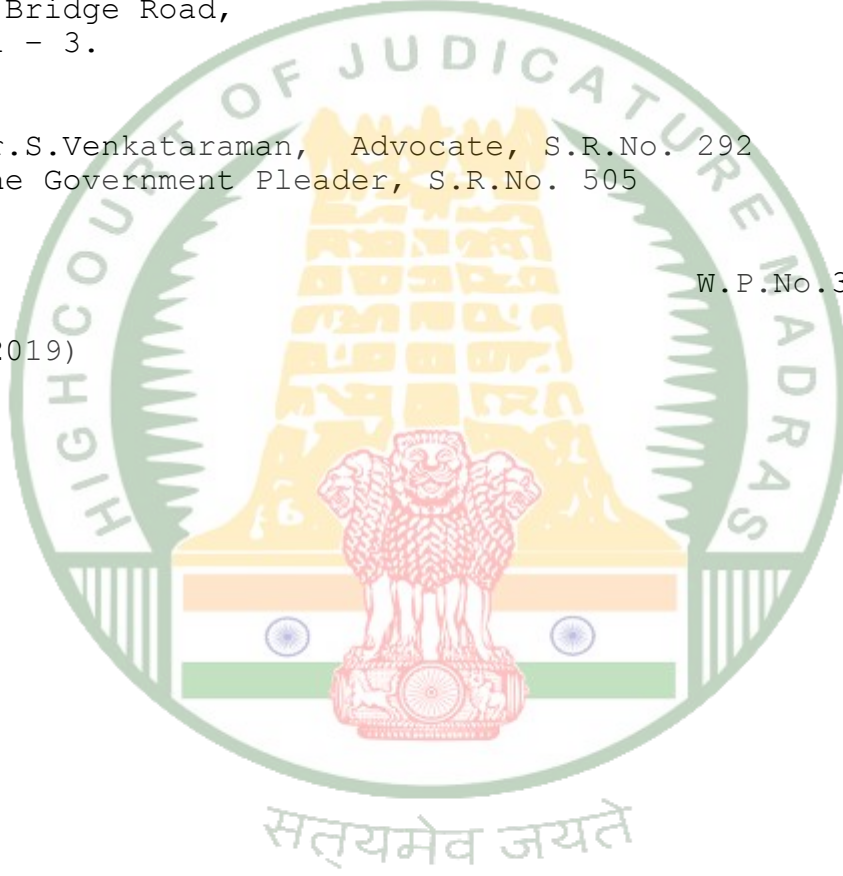
To

- 1.The Registrar of Cooperative Societies,
Chennai - 600 010.
- 2.The Principal Secretary to Government,
Cooperative, Food and Consumer Protection Department,
Fort St George, Chennai -9
- 3.The Secretary,
The Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai - 3.

+1cc to Mr.S.Venkataraman, Advocate, S.R.No. 292
+1cc to the Government Pleader, S.R.No. 505

W.P.No.3403 of 2017

SKV(CO)
GN(07/01/2019)



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