



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 10.12.2019

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**W.P (MD)No.3635 of 2014**

**and**

**M.P. (MD) .No.1 of 2014**

WEB COPY

G.Lakshmanaraj

... Petitioner

Vs.

1.The Joint Registrar of Cooperative Societies,  
Trichy.

2.The Deputy Registrar of Cooperative Societies,  
Trichy Region,  
Trichy.

3.The Special Officer / The President,  
R.1604, Ariyamangalam Primary Agricultural  
Cooperative Credit Society Ltd.,  
Ariyamangalam,  
Trichy.

... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records relating to the order passed by the 1<sup>st</sup> respondent in Na.Ka.No.5813/2012/Sa.Pa., dated 12.11.2013 and quash the same as illegal.

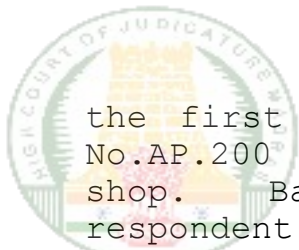
For petitioner : Mr.M.Sridharan

For respondents : Mr.D.Muruganantham,  
Addl. Government Pleader

**ORDER**

This writ petition has been filed by the petitioner challenging the order dated 12.11.2013, whereby and whereunder the first respondent/ Revisional Authority has dismissed the petitioner from service.

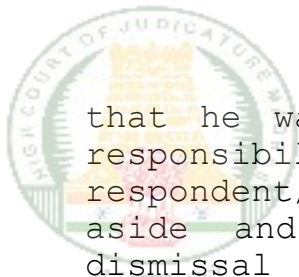
2.The learned counsel for the petitioner submitted that the petitioner is a disabled person and he was appointed as a Salesman in a PDS shop on 21.12.1987 through Employment Exchange. Then, the petitioner was promoted as a Clerk on 21.03.2009 and he was also appointed as Secretary in charge of the 3<sup>rd</sup> respondent Society from 21.03.2009. On 04.07.2011, a team of officials at the instance of



the first respondent, has conducted inspection in the PDS shop No.AP.200 (Ariyamangalam) to verify the Kerosene supply of the said shop. Based on the inspection report, on 27.07.2011 the 2<sup>nd</sup> respondent lodged a complaint before the Inspector of Police, Food Cell (C.S.C.I.D), Trichy, Accordingly, an FIR was registered in Crime No.625 of 2011 on 04.08.2011 and the petitioner was remanded to judicial custody on the same day. Due to registration of FIR, the 3<sup>rd</sup> respondent suspended the petitioner from service on 11.08.2011. Thereafter, a charge memo was issued by the third respondent on 13.09.2011, in which six charges were framed against the petitioner. The petitioner submitted his reply on 15.10.2011. After a domestic enquiry, the enquiry officer has submitted his report on 20.12.2011 stating that all the charges are proved against the petitioner. The petitioner has submitted his reply to the Enquiry Officer's report on 11.02.2012. Without considering the explanation submitted by the petitioner, on 25.06.2012 the third respondent has imposed a punishment of stoppage of increment for five years with cumulative effect. Thereafter, the petitioner was reinstated into service on 29.06.2012 as Clerk in the very same Society. Aggrieved by the punishment order dated 25.06.2012, the petitioner has filed a revision before the first respondent, for which the third respondent has filed his counter on 13.12.2012. The petitioner has submitted his reply to the counter on 25.02.2013. But, the first respondent / Revisional Authority, without considering the reply submitted by the petitioner, has dismissed the petitioner from service with effect from 12.11.2013.

3.The learned counsel for the petitioner further submitted that the first respondent has taken up *suo moto* revision under Section 153 of the Cooperative Societies Act for the main accused (salesman) by name Mr.S.Shankar and imposed a punishment of stoppage of increment for a period of seven years with cumulative effect and regularized the suspension period as eligible leave by his proceedings in R.C.No.4287/2012/S.A.P.A. dated 18.06.2013. Similarly, another accused by name Mr.T.Moorthynathan was also imposed with the same punishment by the first respondent, by his proceedings in RC.No.4112/2012/Sa.Pa. Dated 18.06.2013. But, the petitioner / Secretary, who has no direct involvement in the incident and alleged to have failed to supervise the incident, is punished with increment cut for five years by the disciplinary authority, but the revisional authority has arbitrarily and without issuing any show cause notice, has *suo motu* enhanced the punishment to dismissal from service. Thus, he prayed to set aside the impugned order and to reduce the punishment.

4. The learned Additional Government Pleader appearing for the respondents vehemently submitted that the Inspection Officer in his report has stated that all the employees of the 3<sup>rd</sup> respondent / Society, including the petitioner, who was acting as Secretary of the Society, are jointly and equally responsible for the event that occurred in the Kerosene Bunk. Hence, the petitioner by contending



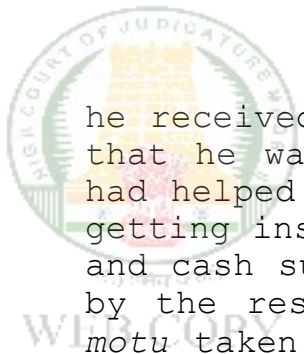
that he was only acting as Secretary in-charge cannot shirk his responsibility and escape from the liability. The first respondent/revisional authority has power to reduce, modify, set aside and enhance the punishment imposed. The punishment of dismissal from service awarded to the petitioner is in accordance with the nature of offence. Therefore, the impugned order need not be interfered with. Thus, he prayed to dismiss this writ petition.

5. Heard the learned counsel for both sides and perused the materials available on record.

6. Admittedly, though the petitioner was promoted to the post of Clerk in the 3<sup>rd</sup> respondent / Society, he was overburdened by giving additional charge to the post of Secretary of the 3<sup>rd</sup> respondent / Society. The charges against the petitioner are that he has failed to inspect the illegal sale of Kerosene made by the salesmen by creating bogus bills and thereby he assisted them. According to the petitioner, he was not informed about arrival of Kerosene and sale of the same and after getting instruction from the Special Officer through phone only, he received the cash and bills given by the salesman and there is also no loss to the society. The Enquiry Officer held that the petitioner has failed to inspect and verify the bills and thereby, he committed dereliction of duty and thus, all the charges are proved. The disciplinary authority has imposed a punishment of stoppage of increment for five years with cumulative effect. Aggrieved by the said order, the petitioner has filed a revision before the first respondent. The first respondent has not only dismissed the revision but also enhanced the punishment imposed by the disciplinary authority *suo motu* to dismissal from service and accordingly, dismissed the petitioner from service.

7. In this case, when the petitioner filed the revision for reduction / dismissal of punishment already imposed by the disciplinary authority, the first respondent / revisional authority has *suo motu* enhanced the punishment without issuing show cause notice to the petitioner. This Court is of the considered view that *suo motu* revision exercised by the first respondent under Section 153 of the Tamil Nadu Cooperatives Society Act, without giving any notice to the petitioner is *per se* illegal and cannot be sustained in law at all. If the first respondent had issued show cause notice stating the reasons on which he wanted to enhance the punishment, the petitioner would have an opportunity to defend his case effectively. Therefore, this Court is inclined to set aside the impugned order passed by the first respondent.

8. Now, let us discuss the punishment imposed by the disciplinary authority. It is not in dispute that if the petitioner had done his duty properly, the illegal sale of Kerosene could have been thwarted. The petitioner, at the most, can be stated to have committed "dereliction of duty. At the same time, merely because



he received bills submitted by the salesmen, it cannot be concluded that he was in collusion with the accused person (salesmen) or he had helped them. The explanation of the petitioner that only after getting instruction from the higher officials, he received the bills and cash submitted by the salesman has not been properly considered by the respondents. It is seen that the first respondent has *suo motu* taken up revision for the main accused (salesmen) and imposed them a punishment of stoppage of increment for a period of seven years with cumulative effect and also regularised their suspension period as eligible leave by his proceedings dated 18.06.2013. But, the petitioner, who was physically disabled person and who was in additional charge of Secretary, was imposed with a punishment of stoppage of increment for five years with cumulative effect by the disciplinary authority. The punishment imposed on the petitioner is disproportionate to the charges levelled against him. Considering the fact that the petitioner was in charge to the post of Secretary and considering his physical disablement, the punishment imposed on the main accused (salesmen) and also considering the fact that there is no loss to the society, this Court is of the view that the imposition of punishment of stoppage of increment for two years without cumulative effect would be sufficient.

9. At this juncture, it is represented by the learned counsel for the petitioner that the petitioner had already attained the age of superannuation.

10. In view of the above, the impugned order passed by the first respondent is set aside and the punishment imposed on the petitioner is reduced to stoppage of increment for two years without cumulative effect. The respondents are directed to allow the petitioner to retire from service on the date of superannuation, as if he has continued in service with all monetary and consequential benefits within a period of 12 weeks from the date of receipt of a copy of this order.

11. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

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/ /2020

Sub Assistant Registrar (CS)

gcg



To

1.The Joint Registrar of Cooperative Societies,  
Trichy.

2.The Deputy Registrar of Cooperative Societies,  
Trichy Region,  
Trichy.

+1 CC to Mr.M.SRIDHARAN, Advocate ( SR-104273[F] dated 10/12/2019 )

+1 CC to SPL.GP ( SR-104497[F] dated 11/12/2019 )

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10.12.2019

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