

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.11.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.11761 of 2010

P.Thiyagarajan

..Petitioner

.vs.

1. The Secretary to Government,
Co-operation, Food and
Consumer Protection Department,
Fort St. George, Chennai-600 009.
2. The Registrar of Co-operative Societies,
Kilpauk, Chennai-600 010.
3. The Joint Registrar of Co-operative Societies,
Thanjavur Region, Thanjavur.
4. The Deputy Registrar of Co-operative Societies,
Pattukottai,
Thanjavur District.

..Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records in pursuant to the Impugned Order of Punishment issued by the 3rd Respondent in proceeding Na.Ka.No.7902/2005K dated 25.01.2006 and the Appellate Orders passed by the 2nd Respondent in proceeding Na.Ka.22601/070.Na.3 dated 10.07.2008 and the order of the 1st Respondent in G.O.(D) No.352 Co-operation, Food and Consumer Protection (CL-1) Department dated 30.11.2009 and quash all these orders.

For Petitioner : Mr.Prem Narayan

For Respondents: Mr.Rajendran for
Mr.L.P.Shanmugasundaram

O R D E R

I heard Mr.Prem Narayan, the learned counsel for the Petitioner and Mr.Rajendran, the learned counsel for the Respondents 2 to 4.

2. In this writ petition, the appellate order dated 30.11.2009 confirming the order of the second Respondent dated 10.07.2008 which in turn, confirmed the order of the original authority dated 25.01.2006 is challenged.

3. By the impugned order, the punishment of stoppage of three increments with cumulative effect was confirmed. The Petitioner was appointed as a Special Officer of the Thiruvonam Panchayat Union Employees Co-operative Thrift Society and worked in that capacity from 06.09.2001 to 11.09.2002. In relation to the alleged violation of Section 23(1)(g) of the Tamil Nadu Co-operative Societies Act, 1983, by admitting persons who are not entitled to be members of the Society and extending loans to such persons, a charge memo was issued to the Petitioner on 24.06.2005. Upon consideration of the charge memo and the explanation dated 09.09.2005 and 16.01.2006, the disciplinary authority imposed the punishment of stoppage of three increments with cumulative effect by order dated 25.01.2006. This order was confirmed by the appellate authority namely, the second Respondent by order dated 10.07.2008 and the appeal against the appellate order was rejected by the impugned order dated 30.11.2009. The present writ petition is filed in these facts and circumstances.

4. The learned counsel for the Petitioner submits that the Petitioner admitted the persons whose names are set out at page No.5 of the typed set of papers, as members, on account of the fact that they were on deputation with the Commissioner of Panchayat Union, Thiruvonam. Therefore, upon a reasonable interpretation of by-law No.5(1)(A) of the said Society, the Petitioner admitted the said persons as members. With regard to the loans that were extended to the said persons, he submits that no loss was caused to the Society inasmuch as the said loans were duly repaid. In the facts and circumstances, he submits that the punishment that was imposed on the Petitioner is grossly disproportionate to the gravity of the offence. As a consequence of this punishment, he submits that the Petitioner's pension benefits are affected. Therefore, he submits that the punishment is liable to be modified in the interest of justice. In addition, he submits that neither the appellate order dated 10.07.2008 nor the order of the Government dated 30.11.2009, adverted to the explanation provided by the Petitioner in respect of the charges. In effect, he contends that such orders

are unreasoned orders and are consequently liable to be interfered with.

5. On the contrary, the learned counsel for the Respondents submits that the Petitioner violated Section 23(1)(g) of the Tamil Nadu Co-operative Societies Act read with bylaw No.5(1)(A) of the relevant bylaws. While admitting the persons whose names were mentioned in the charge memo, he points out that the Petitioner also admitted himself as a member and granted loans to these four persons including himself. As such, he submits that the Petitioner is guilty of a grave offence which brought the Society into disrepute. Consequently, he contends that the punishment of stoppage of three increments with cumulative effect is proportionate to the offence. Hence, the impugned order is not liable to be interfered with.

6. I considered the submissions of the learned counsel for the respective parties and examined the materials on record.

7. The settled legal position is that this Court does not sit in appeal over orders passed in disciplinary proceedings. The scope of judicial review is largely limited to examining whether the process adopted by the disciplinary authority and the appellate authority was in compliance with principles of natural justice, whether the impugned orders are perverse and whether the punishment is so grossly disproportionate as to shock the conscience of the Court. Upon examining the order dated 25.01.2006 of the third Respondent, I find that the explanation of the Petitioner has been taken into consideration and the said order cannot be described as an unreasoned order. Likewise, the order of the appellate order dated 10.07.2008 also cannot be construed as an unreasoned order. It also cannot be said that the Petitioner was not provided with an opportunity to respond to the charge memo. As such, I conclude that the principles of natural justice were complied with and that the impugned orders are not perverse.

8. This leads to the question as to whether the punishment is grossly disproportionate to the offence. In cases, such as in the case of Mahindra and Mahindra Ltd., vs. N.B.Narawade (2005) 3 SCC 134, the Hon'ble Supreme Court concluded that judicial review of punishment is limited in scope and should be exercised only in cases where the punishment is so grossly disproportionate as to shock the conscience of the Court. The second charge against the Petitioner is that he admitted persons who are not entitled to be members as members of the Society and proceeded to extend loans to such persons, including himself. In light of these admitted facts, the punishment of stoppage of three increments with cumulative effect cannot be considered as grossly disproportionate. Accordingly, I am of

the view that the Petitioner has failed to make out a case to interfere with the impugned orders.

9. Accordingly, this writ petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
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3. The Joint Registrar of Co-operative Societies,
Thanjavur Region, Thanjavur.
4. The Deputy Registrar of Co-operative Societies,
Pattukottai,
Thanjavur District.

+lcc to Mr.R.Prem Narayanan, Advocate, S.R.No.38575
+lcc to the Government Pleader, S.R.No.38406

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