

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2020

C O R A M

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

WRIT PETITION NO.11793 OF 2010

&

M.P.NO.1 OF 2010

V.M.Krishnamoorthy

...Petitioner

vs.

1. The Special Officer/Joint Registrar,
The Vellore District Consumer Co-operative Wholesale
Stores Ltd.,
Vellore.

2. The Joint Registrar of Co-operative Societies,
Vellore Region,
Vellore.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records on the file of the second Respondent relating to the order issued in Revision Petition Na.Ka.10/07 A2 dated 15.08.2007 confirming the orders passed in Na.Ka.No.322of 2006/ES, dated 19.06.2006 passed by the first Respondent and quash the same and direct the Respondent to reinstate the petitioner into service with all consequential service and monetary benefits.

For Petitioner : Mr.R.N.Amarnath

For Respondents : Mr.P.S.Sivashanmugasundaram for R1

Mr.L.P.Shanmugasundram, Spl.G.P. for R2

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O R D E R

By order dated 19.06.2006, the Petitioner was dismissed from service in relation to the charges which were communicated under charge memo dated 11.04.2001. The said order was challenged by way of a revision petition which came to be rejected by order dated 15.07.2007. The said order in revision is impugned herein.

2. I heard Mr.R.N.Amarnath, the learned counsel for the Petitioner, Mr.P.S.Sivashanmugasundaram, the learned counsel for Respondent 1, Mr.L.P.Shanmugasundaram, and the learned Special Government Pleader for Respondent 2.

3. The learned counsel for the Petitioner contended that a charge memo was issued on 18.06.2000 pursuant to an inspection on 09.08.2000. The charge pertains to the shortfall of Rs.37,519.55 in cash on account of the belated remittance thereof by the Petitioner. The Petitioner accepted the charge and paid the shortfall amount. By order dated 03.09.2001, the punishment of stoppage of increment for two years was imposed on the Petitioner. Meanwhile, on 11.04.2011, a second charge memo was issued to the Petitioner relating to the same period. By drawing reference to the two charge memos, the learned counsel for the Petitioner contended that the charges related to the same period and, therefore, a second charge memo should not have been issued to the Petitioner after he had admitted the charges under the first charge memo and was punished in respect thereof. In effect, his contention is that the Petitioner was prosecuted twice in respect of the same charges and that this vitiates the enquiry. By drawing reference to the original order of dismissal dated 19.06.2006, the learned counsel pointed out that the entire sum of Rs.1,77,870/- was repaid by the Petitioner with interest thereon. On that basis, he also contends that the punishment of dismissal is grossly disproportionate.

4. His next contention is that the disciplinary authority took into consideration both past and subsequent misconduct. With reference to the dismissal order at page Nos.19 and 20 of the typed set of papers, he pointed out that ten incidents were cited therein and that the alleged misconduct cited at Sl.Nos.8 to 10 are subsequent to the charge memo dated 11.04.2001. For all these reasons, he submits that the impugned order is liable to be set aside.

5. On the contrary, the learned counsel for the first Respondent submitted that the present challenge is liable to be rejected because the Petitioner has only challenged the order in revision and not the original order of dismissal. His second contention is that the impugned order in revision was passed on 18.08.2000 whereas the writ petition was filed in June 2010. Consequently, the petition is liable to be rejected on account of laches. The third contention is that the charges under the first and second charge memos are substantially different inasmuch as the first charge memo pertains to the shortfall of Rs.37,519.55 on account of the delay in remittance thereof by the Petitioner into the accounts of the first Respondent whereas the second charge pertains to the misappropriation of a sum of

Rs.1,77,870.90. As such, he submitted that the contention of the learned counsel for the Petitioner is untenable and be liable to be rejected.

6. The learned counsel for the second Respondent also reiterated the submissions made by the learned counsel for the first Respondent. In particular, he submitted that it is evident from the two charge memos that the charges are different and that the second charge relating to misappropriation is a more serious charge.

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

8. The principal question that arises for consideration is whether the impugned order dated 15.08.2007 warrants interference by this Court. The law on the subject is well settled and the scope of judicial review is largely limited to examining as to whether principles of natural justice were complied with and whether the order suffers from perversity. In the present case, the charge memo dated 11.04.2001 was admittedly received by the Petitioner and it is evident from the report of the enquiry officer that the Petitioner participated in the enquiry. In fact, the Petitioner did not cross-examine the management witnesses during the enquiry as is evident from the enquiry officer's report. In addition, as pointed out by the learned counsel for the Petitioner, the Petitioner admitted the misappropriation of a sum of Rs.1,77,870.90 and repaid the same along with interest. These facts are adverted to in the original order of dismissal dated 09.06.2006. The learned counsel for the Petitioner contended that the enquiry and the punishment meted out to the petitioner are vitiated because it is effectively two punishments for the same offence. Therefore, this contention should be tested.

9. Upon examining the first charge memo, it is evident that it consists of two charges and the first charge is based on the inspection conducted on 09.08.2000 during which a shortfall of Rs.37,519.55 was discovered, i.e. instead of Rs.47,351.05 only a sum of Rs.9,381.50 was available in cash on account of the non-remittance of a sum of Rs.37,519.55 by the Petitioner. The second charge memo dated 11.04.2001 discloses that it pertains to the accounts for the period from 01.08.2000 to 05.08.2000 and the charge is that the Petitioner misappropriated cash to the extent of Rs.1,77,870.90 over the said period. Therefore, upon examination of the two charges, it is evident that the charges

are different although they relate to the month of August 2000. In fact, in the order in revision, the authority has also concluded that it cannot be said that the charges are the same merely because they pertain to the same period.

10. This leads to the next contention of the learned counsel for the Petitioner to the effect that the Petitioner repaid the entire amount. In my view, the repayment of the amount is certainly not a defence to the charge which culminated in the order of dismissal. Ordinarily, it might have been a consideration as regards the nature of punishment. However, in this case, the charge is a serious charge of misappropriation of funds in the discharge of official duties and thereby causing loss to the first Respondent. Given the fact that the charges relate to an offence which pertains to the integrity of the employee, it certainly cannot be said that the punishment of dismissal is disproportionate. On this issue, the settled legal position is that the Court should interfere only if the punishment is so grossly disproportionate to the offence as to shock the conscience of the Court. On the facts of the case at hand, there is no reason to conclude that the punishment is disproportionate. The learned counsel for the petitioner also contended that past and future misconduct were taken into consideration by the disciplinary authority. While it is true that future misconduct should not have been taken into consideration, the disciplinary authority is certainly entitled to take into past misconduct particularly to decide on the nature of punishment. For reasons aforesaid, I do not find any reason to interfere with the impugned order.

11. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Special Officer/Joint Registrar,
The Vellore District Consumer Co-operative Wholesale
Stores Ltd.,
Vellore.

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2. The Joint Registrar of Co-operative Societies,
Vellore Region,
Vellore.

+1cc to Special Government Pleader (Co-Op) S.R.No.39051

Writ
Petition No.11793 of 2010 &
M.P.No.1 of 2010

AD (CO)
KKV/04/01/2021



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