

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.12967 of 2010

K.S.Aga John
S/o.Sunna Sahib

... Petitioner

vs.

1. The Registrar of Co-operative Societies,
Chennai - 10.
2. The Joint Registrar of Co-operative Societies,
Dharmapuri Region,
Dharmapuri.
3. The Deputy Registrar of Co-operative Societies,
Dharmapuri. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 26.02.2010 made in Na.Ka.110373/08 DP 3 passed by the 1st respondent herein, confirming the order dated 08.07.2008 made in Na.Ka.5564/05 DP passed by the 2nd respondent herein, quash the same and consequently direct the respondents herein to give all consequential benefits to the Petitioner.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.L.P.Shanmugasundaram,
Special Government Pleader

ORDER

Petitioner has come up with this Writ Petition challenging the impugned order dated 26.02.2010 passed by the 1st Respondent herein vide Na.Ka.110373/08 DP 3, confirming the order dated 08.07.2008 passed by the 2nd Respondent vide Na.Ka.5564/05 DP.

2. According to the Petitioner, he was appointed as Junior Inspector of Co-operative Societies in the year 1974. In the year 1977, he was promoted to the post of Senior

Inspector of Co-operative Societies and in 1982, he was promoted to the post of Co-operative Sub-Registrar. His promotion to the post of Deputy Registrar is pending since 2006. However, the Petitioner was posted in the cadre of Co-operative Sub-Registrar/Special Officer in Uthangarai Primary Agriculture and Rural Development Bank in the year 1994 and he was holding additional charge as the Special Officer for PACB Societies including Eggoor PACB from June 1994 till 16.03.1996.

3. It is the case of the petitioner that, in view of his additional charge for five more Societies, he was not in a position to control the day-to-day affairs of the Societies. As, the Petitioner came to know about the irregularities in the affairs of the five Societies, he sent a communication dated 25.01.1996 to the 3rd respondent herein to initiate necessary enquiry under Section 81 of the Tamilnadu Co-operative Societies Act, 1983 so as to enquire into the misdeeds committed by the Clerk and Secretary, who were not in a position to give proper accounts for the jewel loans and other loan related records. The grievance of the Petitioner is that, the Enquiry Officer has not even enquired him, even though, he made a request to the 3rd Respondent to initiate enquiry under Section 81 of the Act. However, the Enquiry Officer has given a Report in respect of the irregularities for the period between 1993 and May 1994 unmindful of the fact that, the Petitioner was not in charge of the Society during that period.

4. Pursuant to the said Report dated 09.10.2002, the 3rd Respondent issued a Charge Memo under Rule 17(b) of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules asking the Petitioner to submit his explanation within 15 days as to the irregularities said to have been committed by him along with other employees of Eggoor PACB Ltd., No.310. The Petitioner submitted his detailed explanation on 24.03.2006 to the Charge Memo dated 18.05.2005. Not satisfied with the same, the 3rd Respondent initiated departmental proceedings against the Petitioner and the Enquiry Officer's Report was filed on 31.07.2007.

5. Thereafter, the 2nd Respondent passed an order dated 08.07.2008 vide Na.Ka.No.5564/05 DP imposing punishment of stoppage of increment for six months with cumulative effect. Aggrieved by the same, the Petitioner filed an Appeal Petition dated 09.09.2008 before the 1st Respondent/Appellate Authority. However, the said Appeal came to be dismissed by the 1st Respondent by an order dated 26.02.2010, which is impugned in this Writ Petition.

6. In the counter filed by the 2nd respondent, it is stated that, the Enquiry Officer found the Petitioner

negligent and charges framed against him were held to be proved. According to the 2nd Respondent, charges levelled against the Petitioner are serious in nature and action has been initiated under Rule 17(b) of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules. However, punishment of stoppage of increment for a period of six months with cumulative effect was imposed on the Petitioner, when the loss caused to the Co-operative Society was estimated at Rs.8,50,000/-.

7. Heard the learned counsel for the parties and perused the material documents available on record.

8. It is seen that, the Petitioner in his explanation to the charges has sought for production of 15 documents to submit his further explanation. According to the Petitioner, documents demanded by him were not produced and hence, proceedings issued against him under Section 81 of the Co-operative Societies Act are arbitrary. On a reading of page 44 of the Typed Set of Papers, it is clear that, the Petitioner has not sought for production of specific documents, but, he has merely sought for production of documents.

9. Though, much could be stated against the Petitioner on merits, as the incident is of the year 1994, Charge Memo has been issued under Rule 17(b) of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules on 18.05.2005, nearly after ten years, and enquiry has been conducted and punishment of stoppage of increment for a period of six months with cumulative effect has been imposed. Challenging the same, the Petitioner preferred an Appeal on 09.09.2008. The Appellate Authority rejected the said Appeal on 26.02.2010 on the ground that, the Petitioner has not named the witnesses to be examined and has not sought for production of specific documents.

10. Without going into the aspect of charges levelled against the Petitioner, only on the ground that, proceedings against the Petitioner have been initiated belatedly in the year 2005 for the incident said to have taken place in 1994-1995, and in the light of the judgment of the Apex Court rendered in the case of M.V. Bijlani v. Union of India reported in (2006) 5 SCC 88, this Court interferes with the impugned order dated 26.02.2010 passed by the 1st Respondent herein and the same is set aside. Consequently, all the benefits that have been deprived to the Petitioner are directed to be extended to him within a period of three months from the date of receipt of a copy of this order.

11. Before parting with the order, this Court expresses its deep dissatisfaction over the conduct of the Respondents in not initiating proceedings well within time, thereby, the Respondents have made this Court to be a silent spectator for the illegality committed by the Petitioner. The inaction on the part of the Respondents in sleeping over the matter for ten long years has forced this Court to interfere with the punishment imposed on the Petitioner. Truly speaking, the Officers, who are responsible for initiation of proceedings immediately, are to be blamed and ought to be proceeded against, irrespective of the fact that, there will be delay in this case to adopt such course. This Court emphasizes that, the interference with the charge sheet and punishment does not mean that, the Petitioner is a clean-handed person and a clean chit has been given in favour of the Petitioner.

The Writ Petition is allowed with the above direction and observation. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

To:

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- 3.The Deputy Registrar of Co-operative Societies,
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CB(12/10/2020)

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