

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.26833 of 2013

and

M.P.No.1 of 2013

N.Shanmugam

.. Petitioner

Vs.

1. The Joint Registrar of Coop. Societies,
Erode Region, Erode, Erode District.
2. The Deputy Registrar of Coop. Societies,
Gobichettipalayam Circle, Gobichettipalayam,
Erode District.
3. The Special Officer,
(Now the President),
K.1372, Periyur Primary Agricultural
Coop. Credit Society, Periyur Post,
Sathiyamangalam - 638402,
Erode District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.6686/06/B1, dated 26.02.2008 and quash the same and consequently direct the respondents to disburse the petitioner's terminal benefits by calculating from last drawn wages and concluded settlement arrived U/s.18(1) Settlement to the tune of Rs.14.15 lakhs as balance amount to the petitioner.

For Petitioner : Mr.C.Prakasam,

For Respondents 1 and 2: Ms.T.Girija
Additional Government Pleader

For Respondent 3 : Ms.T.P.Savitha

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O R D E R

Writ petition has been filed challenging the order passed by the first respondent imposing a penalty of Rs.1,000/-, on the petitioner.

2. The petitioner was working as the Secretary in the third respondent Cooperative Society. In the year 2006, disciplinary proceedings were initiated against the petitioner levelling as many as eight charges viz., Charge No.1 is that he failed to recover a sum of Rs.1026.65, from one M/s.Indian Chemical Company, Salem; Charge No.2 is that as against the provisions of the Sub Rule 4, higher contribution was made to the Employees' Provident Fund without amending the Sub Rule and thereby failed to do his duty; Charge No.3 is that he granted contribution to the Employees' Provident Fund from the funds as against the Sub Rule and contrary to it part of final amount of Rs.1,11,600/- has been given; Charge No.4 is that the investment made at the Life Insurance Corporation on the policy documents to avail loan on it by the bank employees without obtaining permission from the administration, on his own accord, he made provision to avail loan by returning the insurance documents; Charge No.5 is that while sanctioning loan by the bank, who avail more than Rs.1,00,000/-, such members, should execute a mortgage deed pertaining to their immovable property in favour of the Bank, which is a prevailing condition, but contrary to it, he sanctioned the loan; Charge No.6 is that the loan sanctioned to the members of the bank of Rs.34,45,412/- have defaulted in the payment of installments and he failed to take steps to collect the said loan amount; Charge No.7 is that he has not taken appropriate legal action for collection of long outstanding dues to the bank under 36 items; and Charge No.8 is that without following G.O.No.131, Cooperatives, Food and Consumer Protection Department, dated 04.06.1999, relating to fixation of pay scale of the employees, he arbitrarily fixed the salary and thereby caused loss to the Society to the tune of Rs.11,95,020/-.

3. After obtaining an explanation from the petitioner, enquiry was conducted, and after enquiry, the Enquiry Officer has held Charge Nos.1, 6 and 7 were not proved and the remaining five charges viz., Charge Nos.2,3,4,5 and 8 were proved. In the meantime, the petitioner attained the age of superannuation and he was permitted to retire subject to the disciplinary proceedings initiated against him. The Disciplinary Authority after furnishing a copy of the Enquiry Officer's report sought further explanation from the petitioner and thereafter, held that the above said charges are proved and imposed a punishment of payment of fine of Rs.1,000/-. Now, challenging the said

punishment, present writ petition has been filed.

4. Mr.C.Prakasam, the learned counsel appearing for the petitioner would contend that there is no charge of any misappropriation and the charges levelled against him are not serious in nature, however, punishment of fine has been imposed. The learned counsel further submitted that the petitioner has fixed the salary to the employees as per Section 18(1) Settlement arrived at between the parties and it cannot be found fault with. That apart, now the Society has withheld more than Rs.5,00,000/- from his retirement benefits for the loss alleged to have been caused to the Society. The learned counsel has further submitted that Enquiry was also not properly conducted and no appropriate opportunity was given to the petitioner to defend his case.

5. Per contra, the learned counsel appearing for the respondents would contend that there is an alternative remedy by way of appeal under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 is available and further a revision is also permitted to the Government, but without availing the said alternative remedy, the petitioner has directly approached this Court.

6. The learned counsel appearing for the respondents has further contended that admittedly the petitioner has done several acts in violation of the Bye laws and G.Os, wrongful deposit of the GPF amount and also without following the G.O.131, dated 04.06.1999, he has revised the salary of the employees thereby caused huge loss to the Society.

7. The learned counsel appearing for the respondents has further contended that the Enquiry Officer after giving appropriate opportunity, considering the entire materials, has held that out of eight charges, five charges were proved and the Disciplinary Authority also after following the procedure contemplated has imposed a very minor punishment of payment of fine of Rs.1,000/- and there is no illegality in the same.

8. I have considered the rival submissions.

9. The petitioner was working as the Secretary of the respondent Society and as many as eight charges were levelled against him. Out of which, five charges viz., Charge Nos.2,3,4,5 and 8 were held proved. So far as the second charge regarding payment of employees contributory Provident Fund is concerned, instead of 10%, he has paid 12%. For that charge, the petitioner has admitted that without following the circular issued by the

Registrar he wrongly paid at the rate of 12%, hence, as the petitioner has accepted the same, the charge has been held proved.

10. So far as Charge No.3 is concerned, he sought for amendment to the bye-laws regarding withdrawal of the amount from the provident fund while anticipation of the amendment, amount has been disbursed. However, subsequently the Registrar refused to amend the bye-law and he repaid the amount. This charge has also been admitted by the petitioner and hence the Enquiry Officer has held that the said charge has been proved.

11. So far as Charge No.4 is concerned, in respect of three employees, he cancelled the assignment of the LIC policy and permitted the said employees to avail loan without obtaining administrative permission from the higher authorities and handed over the insurance documents. For that the petitioner has given an explanation that he was not aware of the procedure and based on his admission, the Enquiry Officer has held that the said charge is also proved.

12. The next charge No.5 relates to granting of loan of more than Rs.1,00,000/- without obtaining proper mortgage / security and the same has also been admitted by the petitioner and he has further stated that the amount has been repaid by the concerned person. The Enquiry Officer has held that the said charge has been proved as the petitioner has admitted it.

13. So far as Charge No.8 is concerned, as against G.O.No.131, dated 04.06.1999, the petitioner has revised the salary of the employees and thereby caused loss to the Society to the tune of Rs.11,95,020/-. The explanation given by the petitioner is that based on the Settlement arrived at between the Management and Trade Union under Section 18(1) of the Industrial Disputes Act, he revised the salary of the employees. But the Enquiry Officer has held that as against G.O.No.131, dated 04.06.1999, and the consequent circular issued by the Registrar dated 04.02.2004, the salary has been revised and hence held that the said charge is also proved.

14. However, with regard to the Charge No.8, the learned counsel appearing for the petitioner has submitted that the Circular issued by the Registrar has been stayed by this Court and therefore the petitioner has revised the salary as per the Settlement arrived at between the parties under Section 18(1) of the Industrial Disputes Act and hence there is no irregularity committed by the petitioner. According to the learned counsel, now a sum of more than Rs.5,00,000/- has been withheld from the petitioner's retirement benefits and the same may be refunded to

the petitioner. So far as this charge is concerned, there is some dispute regarding the act of the petitioner in revising the salary as per Section 18(1) settlement is valid or not and further, if the petitioner has any grievance over the same, it is open for him to workout his remedy for withdrawal of the said amount.

15. So far as the other charges are concerned, the petitioner has himself admitted that it was due to his inadvertence and the Enquiry Officer has held the charges are proved.

16. Considering all the above circumstances, the Disciplinary Authority imposed a very minor punishment of payment of fine of Rs.1,000/-. I do not find any illegality or irregularity in the same and I do not find any merit in this writ petition.

17. In the result, the writ petition is dismissed however with liberty to the petitioner to workout his remedy for withdrawal of the terminal benefits amount in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

kk

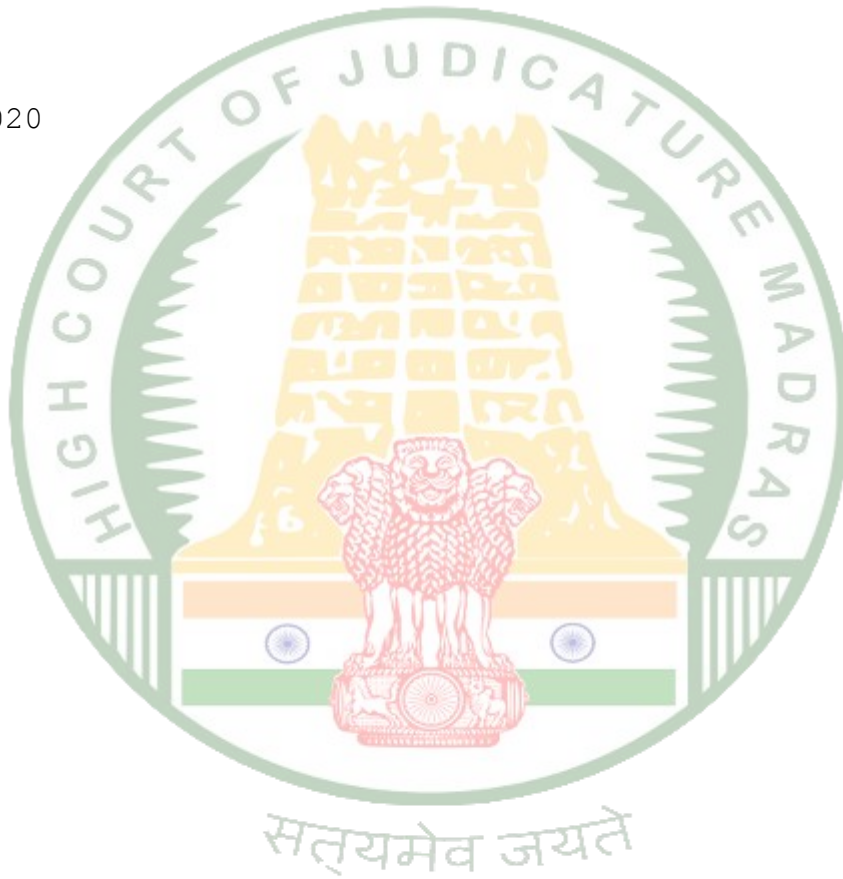
To

1. The Joint Registrar of Coop. Societies,
Erode Region, Erode, Erode District.
2. The Deputy Registrar of Coop. Societies,
Gobichettipalayam Circle, Gobichettipalayam,
Erode District.
3. The Special Officer,
(Now the President),
K.1372, Periyur Primary Agricultural
Coop. Credit Society, Periyur Post,
Sathiyamangalam - 638402,
Erode District.

+1 cc to M/s.Savitha Advocate sr22508
+1 cc to Mr.Prakasam Advocate sr22626
+1 cc to the Special Government Pleader sr23183

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