

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.35537 of 2019
and
WMP Nos.36382 & 36385 of 2019

C.Navaneetha Krishnan

.. Petitioner

.v.

1.The Managing Director,
The Tamilnadu Handloom Weavers'
Co-operative Society Ltd.,
Co-optex Head Office,
Balasundaram Buildings,
No.350, Pantheon Road,
Egmore, Chennai-8.

2.The Regional Manager,
The Tamilnadu Handloom Weavers'
Co-operative Society Ltd.,
Coimbatore Region,
201-A, Dt.Alagesan Road,
Saibaba Mission Post,
Coimbatore 641 011.

3.The Assistant General Manager (Admn),
The Tamilnadu Handloom Weavers'
Co-operative Society Ltd.,
Balasundaram Buildings,
No.350, Pantheon Road,
Egmore, Chennai-8.

... Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the 3rd respondent with respect to the Transfer is concerned, dated 04.12.2019 made in RC.No.A/2139/2019/A3 and the consequential Relief Order of the 2nd respondent dated 09.12.2019 in Rc.No.3386/Admn/2019/A, (both the Orders received on 13.12.2019) and to quash the same.

For Petitioner : Mr.C.Prabakaran

For Respondents : Mrs.Shubharanjani Ananth
Special Government Pleader

O R D E R

This Writ Petition has been filed challenging the impugned order passed by the 3rd respondent dated 04.12.2019, transferring the petitioner to Vijayawada and the consequential relieving order passed by the 2nd dated 09.12.2019.

2.The case of the petitioner is that he was working as a Salesman in the respondent Society at Pollachi Showroom. The petitioner claims that he suffered a fracture in the backbone and as a result of which, he underwent a surgery and therefore he was not able to attend to the work. The petitioner had sought for leave right from the year 2018 onwards. In the meantime, the respondent Society rejected the leave application submitted by the petitioner and a Charge Memo came to be issued against the petitioner on 19.06.2019, on the ground that he has unauthorizedly absented himself. The petitioner was also suspended from service. Later, the suspension was revoked and the petitioner was transferred by virtue of the impugned order passed by the 3rd respondent to the Showroom at Vijayawada. This order and the consequent relieving order has become a subject matter of challenge in the present Writ Petition.

3.Mr.C.Prabakaran, learned counsel appearing on behalf of the petitioner submitted that the petitioner was suffering from back ailment and the same is evident from the Medical Certificate issued by the Medical Board on 15.12.2018. The learned counsel submitted that the petitioner is yet to recover and he is not even in a position to stand and work continuously. Therefore, the petitioner had sought for privilege leave. The learned counsel further submitted that the respondent Society had initiated disciplinary proceedings for unauthorized absence of the petitioner and kept him under suspension. The learned counsel submitted that the transfer order passed by the 3rd respondent is in the nature of a punishment and this was passed inspite of the respondent Society being aware of the fact that the petitioner is facing serious ailment. The learned counsel submitted that there are vacancies that are available at Coimbatore and the respondents can be directed to consider the request made by the petitioner to retain him in any of the Showrooms at Coimbatore.

4.Per contra, the learned counsel appearing on behalf of the respondent Society submitted that the petitioner was initially working as an Assistant Salesman and he was promoted as a Salesman with effect from 17.05.2017. The learned counsel submitted that the petitioner was transferred to Palakad Showroom, on the request made by the petitioner. However, the petitioner was not able to show any results and therefore, the sales turnover came down drastically and the Palakad Showroom itself was closed and it was merged along with a Showroom at Thrissur. The learned counsel further submitted that the petitioner was brought back to Pollachi Showroom on 15.06.2018 and from 16.06.2018 till date, the petitioner has worked only for one day.

5.The learned counsel further submitted that the petitioner had absented himself for more than a year and even the Medical Certificate that has been produced by the petitioner was given in December 2018 and there are absolutely no records to show that the petitioner continues to suffer with back pain till date. The learned counsel submitted that the respondent Society had no other go except to initiate departmental proceedings against the petitioner and therefore, a Charge Memo was issued to the petitioner on 19.06.2019. The petitioner was suspended from service and during the period of suspension, the petitioner was also paid subsistence allowance. Since, the respondent Society is already facing financial problems, the Society decided not to continue with the payment of subsistence allowance and rather decided to revoke the suspension and transfer the petitioner to the Showroom at Vijayawada. The learned counsel submitted that this order of transfer was passed for administrative reasons and it was not a punishment imposed against the petitioner. The learned counsel concluded her arguments by submitting that some time limit can be fixed for the completion of the disciplinary proceedings and in the meantime, the petitioner should be directed to join the Showroom at Vijayawada.

6.The 3rd respondent has filed a detailed counter affidavit by explaining of the entire facts of the case.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.It is clear from records as well as the submissions made by the learned counsel appearing on behalf of the respondents that the petitioner was working as a Salesman at a Showroom in Palakad and he was transferred to the said place on the request made by the petitioner. This Showroom faced dip in sales and therefore, it was merged with another Showroom at Thrissur. The petitioner was brought to the Pollachi Showroom

on 15.06.2018. It is rather shocking that the petitioner had worked only for one day after he was brought to Pollachi Showroom. The reason assigned by the petitioner is that the petitioner suffers from a back problem and the petitioner heavily relied upon the Medical Certificate that has been issued by the Medical Board that was constituted at Palakad. It is relevant to extract the findings of the Medical Board in this regard.

We the members o the Medical Board have examined Sri.Navaneethkrishnan, S/o.Late R. Chandran, Navaneeth House, Parassery (P.O), Kongad, Palakkad on 01/12/2018 and perused his medical records.

Examined his previous treatment records and clinical and radiological examinations he has/IVDP L4-5, L5-S1 and required rest for restoration of his health.

9.The above certificate was given by the Medical Board on 15.12.2018. The report given by the Medical Board does not suggest any serious injuries sustained by the petitioner. The petitioner has only suffered a back problem and he has a disc prolapse IVDP L4-5, L5-S1. After the Medical Certificate was issued by the Medical Board, it is not known as to what type of treatment was taken by the petitioner in order to treat the back problem. The petitioner was continuously absent and the same resulted in departmental proceedings being initiated by the Society against the petitioner for unauthorized absence. The petitioner gave his explanation for the Charge Memo issued by the respondents. The petitioner was also paid subsistence allowance during the period of suspension. The Society thought that instead of paying the petitioner without extracting any work, it would be better if the suspension is revoked and the petitioner is made to work from a Showroom which requires the services of a Salesman. The Society found that there was a requirement at the Showroom in Vijayawada. Therefore, by virtue of the impugned proceedings dated 04.12.2019, the suspension was revoked and the petitioner was transferred and posted at Vijayawada. The petitioner was also relieved from the Regional Office at Coimbatore on 09.12.2019, to enable him to join at the Vijayawada Office.

10.The petitioner has been receiving the salary even during his absence and he was already paid subsistence allowance at the time when he was kept under suspension. Therefore, the petitioner has never faced real financial hardship right through, even though, he had attended work for only one day, after he joined the Pollachi Showroom on 15.06.2018. The Society cannot afford to keep paying its employees monthly salary without extracting work. The last document that is

available before this Court which shows that the petitioner is having back problem is the Medical Certificate that was given by the Medical Board on 15.12.2018. Thereafter, there is no certificate available for coming to any conclusion with regard to the health status of the petitioner

11.The petitioner is expressing certain difficulties on the domestic front and is requesting this Court to give a direction to the respondents to consider retaining the petitioner in any of the Showrooms at Coimbatore. This Court cannot issue such positive directions to the respondents Society since the deployment of employees will depend upon the requirement at various places and it will be safer to leave it to the respondent Society to decide about the same.

12.This Court is not able to find any apparent illegality in the transfer Order passed by the 3rd respondent and the said Order has been passed purely on administrative grounds and in order to give an opportunity to the petitioner to get reinstated into service by revoking the suspension. This Court must take into consideration the financial difficulties faced by the Co-operative Societies and therefore, the Societies cannot afford to keep paying employees without the employees properly reporting for work.

13.In the result, this Court is not inclined to interfere with the impugned proceedings of the 2nd and 3rd respondents and the petitioner is directed to join the Regional Office at Vijayawada immediately and start reporting for work in the transferred place. Thereafter, the petitioner can always make a representation to the 3rd respondent requesting for transfer to Coimbatore and it is left open to the 3rd respondent to consider the same and pass appropriate orders. In the meantime, the 3rd respondent shall proceed further with the departmental proceedings initiated against the petitioner and complete the same within a period of three months from the date of receipt of copy of this order.

This Writ Petition is disposed of accordingly. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

KP

To

1.The Managing Director,
The Tamilnadu Handloom Weavers'
Co-operative Society Ltd.,
Co-optex Head Office,
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No.350, Pantheon Road,
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Egmore, Chennai-8.

+1cc to Mr.C.Prabakaran, Advocate, SR.No.6862.

+1cc to Mrs.Shubharanjani Ananth, Advocate, SR.No.6011.

SR(CO)
CSR: 10.03.2020

W.P.No.35537 of 2019

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