



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **07.01.2020**

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.12758 of 2011

N.Raman

.. Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies,
Tiruchirapalli - 620 020.

2.The Special Officer,
M.M.360, Muthappudayampatty Primary
Agricultural Co-operative Bank Limited,
Muthappudayampatty,
Manapparai Taluk,
Tiruchirapalli District.

.. Respondents

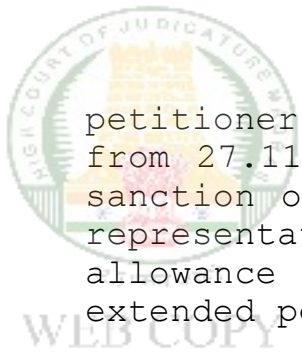
PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the orders in (1) Pro.No.1/2008 dated 21.05.2009 passed by the second respondent (2) Pro.No.Ka.No.14805/2009/Sa.Pa. dated 21.09.2010 passed by the first respondent (3) the order in Review Petition No.10411/2010/Sa.Pa. dated 14.03.2011 passed by the first respondent and to quash the said orders and to issue consequential direction to the respondents to reinstate the petitioner in service with consequential benefits.

For petitioner : Mr.M.Ravi
For respondents : Mr.S.Dhayalan,
Government Advocate

ORDER

This writ petition has been filed by the petitioner challenging the orders dismissing the petitioner from service passed by the second respondent and confirmed by the first respondent in the Revision as well as Review applications and for consequential direction to reinstate him in service with consequential benefits.

2.0. The case of the petitioner is that on 01.08.1998 he was appointed as Night Watchman in the respondent Society by the elected Board of Directors and he was given regular time scale of pay from 01.04.2001 in the said post. As per the oral instruction of the Board of Directors, the petitioner was attending to the duties of Clerk, in addition to his duties as Watchman in the night and was writing all the documents and maintaining the registers, without any additional remuneration. While so, on 27.01.2006 then Special Officer of the society has placed the



petitioner under suspension for a period of three months ie., from 27.11.2006 to 26.02.2007 alleging some irregularities in the sanction of agricultural and consumer loans. Even after repeated representations, the respondents have not given subsistence allowance to the petitioner. However, the suspension order was extended periodically till 26.08.2007.

2.1. In the meantime, the petitioner was issued with a charge memo on 26.06.2007 alleging two charges to the effect that the Secretary of the Society by name R.Vekatachalam had misappropriated a sum of Rs.33,480/- and Rs.1,30,000/- by making wrong entries in the records and the petitioner has abetted the then Secretary for making such wrong entries. The petitioner has submitted his explanation on 06.07.2007. After about seven months, the second respondent has rejected the said explanation as not acceptable and appointed the enquiry officer on 29.07.2008. The enquiry officer has submitted his report dated 12.02.2009 stating that the charges are proved and then, the second respondent has sought for explanation from the petitioner by issuing show cause notice dated 03.04.2009. The petitioner gave his reply on 15.04.2009. On 21.05.2009, the second respondent has passed the impugned order dismissing the petitioner from service.

2.2. Aggrieved by the same, the petitioner has preferred a revision before the first respondent with a delay of one day. But, the first respondent dismissed the delay petition refusing to condone the delay of one day. Aggrieved by that order, the petitioner preferred W.P.(MD).No.11434 of 2009. This Court, by order dated 10.11.2009, directed the first respondent to take up the revision on file and dispose of the same on merits. By the impugned order dated 21.09.2010, the first respondent has confirmed the order passed by the second respondent. Thereafter, the petitioner filed a review petition before the first respondent. The first respondent, by the impugned order dated 14.03.2011, dismissed the same. Aggrieved by the above orders, the petitioner has filed this writ petition.

3. The learned counsel for the petitioner submitted that in the year 1998, the petitioner was appointed as Night Watchman and only as per the oral directions of the Board of the Directors of the Society, he worked as Clerk during day time, in addition to his Night Watchman duty and the petitioner was not given any remuneration for his additional duty. The petitioner was forced to do additional duty as Clerk by the then Board of Directors and the Secretary of the Society is the sanctioning authority for the loans. For the irregularities committed by the Secretary, he has been made scapegoat with the charge of abetment and awarded extreme punishment of dismissal from service without any evidence. But, the Secretary, who committed irregularities, was permitted



to retire peacefully, after adjusting the terminal benefits payable to him towards loss sustained by the society, thereby the petitioner has been discriminated. He would further submit that the petitioner has not been given any subsistence allowance during the period of his suspension. He would further submit that the respondents have dismissed the petitioner from service holding that his appointment was illegal. After about the petitioner's eight years of service, the respondents have taken such stand without any opportunity to the petitioner. Thus, he prayed to allow this writ petition.

4. The learned Government Advocate appearing for the respondents submitted that the appointment of the petitioner as Night Watchman was irregular one and it was objected by the officials of Cooperative Audit Department and the petitioner was attending to the duties of the Clerk without any authority. The petitioner had prepared loan documents, by which the Secretary has committed irregularities and misappropriation. If the petitioner disowns his liability towards the irregularities, he could not have made entries relating to the loan documents. By doing the same, he cannot escape from the liability. He would further submit that the petitioner has not submitted certificates to the effect that he has not been employed anywhere and also he has been residing in the Head Quarters. Therefore, he has not been given Subsistence Allowance. The respondents after considering the totality of the facts and circumstances had dismissed the petitioner from service and the same was confirmed by the revisional authority and therefore, the impugned orders need not be interfered with. Thus, he prayed to dismiss this writ petition.

5. Heard the learned counsel for both sides and perused the records carefully.

6. Admittedly, it is not in dispute that the petitioner was appointed as Night Watchman in the Society on 01.08.1998 and as such, he served in the said Post regularly till the date of his suspension ie., till 27.11.2006. The respondents have also paid salary to the petitioner for the said post. It is also not in dispute that the petitioner was unauthorisedly permitted to work as Clerk also in the Society and as such, he has been working in the Society as Clerk and maintaining the records without any additional remuneration, in addition to the work of Night Watchman. Though it is stated by the respondents that the appointment of the petitioner as Watchman was objected to from the very beginning by the officials of Audit Department, the fact remains that the petitioner was permitted to work as Night Watchman and paid salary for about eight years in the regular time scale of pay. Having permitted the petitioner to work as Watchman about eight years in the regular time scale of pay, now the



respondents cannot question his appointment. More over, the issue of appointment of the petitioner has been dragged by the respondents only in order to fortify their stand of imposing the punishment of dismissal from service, which cannot be accepted. Further, the petitioner was not given any opportunity in this regard. Therefore, the statement of the respondents that the appointment of the petitioner is illegal, cannot stand as a ground for imposing major punishment.

7. The charge against the petitioner is that he abetted the Secretary in creation of fabricated documents and based on the same, bogus loans have been sanctioned in the name of some of the members and thus, the Secretary has committed financial irregularities in the society. The Enquiry Officer has held that the petitioner has written/prepared all the documents relating to misappropriation and therefore, all the charges are proved. The petitioner did not deny about the preparation of the documents by him, but he has stated that only on the instructions of the then Secretary, he worked as Clerk and prepared those documents. Admittedly, the sanctioning authority for the loan is the then Secretary of the Society. Even according to the charges, the petitioner has not committed any misappropriation, it is only the then Secretary. The witnesses have also not stated anything against the petitioner. It is not the case of the respondents that the petitioner has forged the signature of the Secretary and sanctioned the bogus loans. It is also not the case of the respondents that the petitioner has induced any member to apply for any loan or he acted for any personal gain.

8. As stated earlier, the stand of the petitioner is that he prepared those documents only as per the directions of the then Secretary and that he was under the impression that his refusal to obey the order of the Secretary would amount to insubordination. The charges are related to the years 2001-2002. At that time, the petitioner could have been completed only two to three years of service. He was unauthorisedly forced to work as Clerk and to write and maintain the records by the Secretary. Therefore, the submission of the petitioner that he prepared those documents only as per the directions of the then Secretary without knowing the consequences, has some force. It is not the case of the respondents that the petitioner has personally gained by his act and it is only the then Secretary has attained gain by committing financial irregularities. According to the Enquiry Officer, the petitioner, who is a Night Watchman, ought not to have dealt with records and acted as Clerk, merely stating that the Secretary has directed him to additionally work as Clerk. The said finding of the Enquiry Officer cannot be accepted, because it is not the case of the respondents that the petitioner had worked as Night Watchman and also Clerk only during the relevant time of



misappropriation. The petitioner had worked as Watchman and Clerk till her suspension. During the audit inspection, the respondents could have prevented the petitioner from doing the work of Clerk. But, they have not done so. Having permitted him to work so, the petitioner cannot be found fault with.

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9. It is seen that the petitioner has raised various grounds in his explanation, revision as well as review. Some of them are that (a) he has not been furnished with report of the enquiry officer dated 24.01.2009; (b) he has been discriminated as the main accused, who misappropriated the amount, was permitted to retire with retirement benefits; (c) the Enquiry has been conducted in biased manner; etc. The second respondent has passed the impugned order only holding that the Enquiry Officer in his report has stated that the charges are proved beyond reasonable doubt and the explanation given by the petitioner is not acceptable. A bare perusal of the impugned order passed by the second respondent shows that the second respondent has not even considered the explanation given by the petitioner and rejected the same as not acceptable without assigning any reason. Though the petitioner has raised various grounds in the revision as well as in the review petition, the first respondent also has not considered the same and has passed the impugned orders confirming the order of the second respondent, without assigning any reason.

10. Reasoning is the soul of the order. The order which does not contain any reason for conclusion can be termed to be a non speaking order. The Hon'ble Supreme Court in the decision in **East Coast Railway and another vs. Mahadev Appa Rao and others**, reported in (2010) 7 SCC 678, has held in paragraph No.23 as follows:

"23.Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non application of mind by the authority making the order is only one of them. Every order passed by a Public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable."



11. In a decision in **N.S.Jayaraman & Sons Vs. the Government of India**, reported in **2010 (2) CWC 485**, a learned Single Judge of this Court has held that reasoning is the heartbeat of every conclusion and without any reasoning, the conclusion becomes defunct and that the rationale behind is that the affected party can know why the decision has gone against him and that one of the salutary requirements of natural justice is spelling out reasons for the order made. But, in the case on hand, the second respondent has imposed the punishment of dismissal from service without considering the explanations and assigning any valid reasons for such conclusion. Therefore, the order of the second respondent is liable to be set aside.

12. In the decision in **V.P.Suresh Kumar Vs. Deputy Inspector General of Police, Armed Police, Trichy and another**, reported in **(2011) 7 MLJ 1282**, a learned Single Judge of this Court has held that when an appeal has been preferred questioning the order of the original authority, the appellate authority is expected to pass a speaking order dealing with the grounds raised in the appeal and that an order passed without dealing with grounds raised by delinquent before an appellate authority is nothing but a non speaking order and is liable to be set aside. In the case on hand, the first respondent has not considered all the grounds raised by the petitioner in the revision as well as in the review and dismissed the revision as well as review without assigning any valid reasons.

13. Apart from the above, the Secretary, who compelled/permitted the petitioner to additionally work as Clerk and alleged to have been misappropriated the funds of the society by bogus loan sanctions, was permitted to retire peacefully with retirement benefits, after deducting the loss amount. As rightly stated by the petitioner, he, being a last grade servant, was made as scapegoat and discriminated by imposing major punishment of dismissal from service. When the respondents decided to make the main accused ie., the Secretary, scot free from the charges, they could have relieved the petitioner also from the charges or at least imposed lesser punishment. But, they have not done so.

14. In the decision in **N.Nandagopalan Vs. Secretary to Government**, reported in **(2006) 3 M.L.J. 191**, a learned Single Judge of this Court has held that if several employees are involved in the same incident, the employer has no discretion to proceed against some of the employees only and absolve the others.

15. In the case in **Rajendra Yadav vs. State of Madhya Pradesh**, reported in **(2013) 3 SCC 73**, the Hon'ble Supreme Court

<https://hcrs.hcprts.gov.in/hcrs/prices> paragraph No.12 as follows:



"12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate ie., lesser punishment for serious offences and stringent punishment for lesser offences.

16. The principles laid down in Rajendra Yadav case, cited supra, is squarely applicable to this case as in this case the Secretary, who had forced the petitioner to additionally work as Clerk and alleged to have committed misappropriation, was made scot-free without any disciplinary proceedings, whereas, the petitioner, who obeyed the order of the higher official, suffered with additional work and issued with a charge of abetment, was imposed with major punishment of dismissal from service. As there is clear a discrimination in initiating disciplinary proceedings and in imposing punishment, this Court is inclined to set aside the impugned orders and to order to reinstate him in service with full backwages.

17. In view of the above, the impugned orders are set aside. The respondents are directed to reinstate the petitioner with continuity of service and monetary benefits. The above exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

18. This Writ Petition stands disposed of accordingly.
No costs.

Sd/-

Assistant Registrar (CO)

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/ /2020

Sub Assistant Registrar (CS)



To

1.The Joint Registrar of Co-operative Societies,
Tiruchirapalli - 620 020.

2.The Special Officer,
M.M.360, Muthappudayampatty Primary
Agricultural Co-operative Bank Limited,
Muthappudayampatty,
Manapparai Taluk,
Tiruchirapalli District.

+1 CC to SPL.GP (SR-677[F] dated 08/01/2020)

Order made in
W.P (MD) No.12758 of 2011
07.01.2020

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