



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A(MD)No.872 of 2020
and
C.M.P. (MD)No.4797 of 2020

The Special Officer / The President,
R.1604, Ariyamangalam Primary Agricultural
Co-Operative Credit Society Limited,
Ariyamangalam, Trichy. ... Appellant / Respondent No.3

-Vs-

1.G.Lakshmanaraj ... 1st Respondent / Writ Petitioner

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

3.The Deputy Registrar of Co-operative Societies,
Trichy Circle, Trichy District. ... Respondents 2 and 3 /
Respondents 1 and 2

Prayer: Writ Appeal - filed under Clause 15 of the Letters Patent Act, against the order dated 10.12.2019 made in W.P.(MD)No.3635 of 2014 on the file of this Court.

Prayer in WP(MD). 3635/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of certiorari calling for the records relating to the impugned order passed by the 1st respondent in Na.Ka.No.5813/2012/Sa.Pa dated 12.11.2013 and quash the same as illegal.

For Appellant : Mr.D.Sadiq Raja

For R1 : Mr.M.Sridharan

For R2 and R3 : Mr.M.Muthugeethaiyan,
Special Government Pleader.



JUDGMENT

[Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.,**]

By consent, this Writ Appeal is taken up for final disposal at the stage of admission itself.

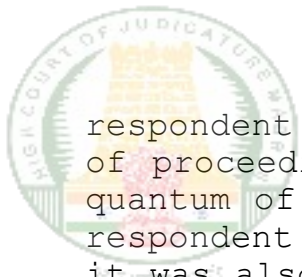
2.The third respondent in W.P.(MD)No.3635 of 2014 is the appellant herein.

3.The first respondent / writ petitioner made a challenge to the order / proceedings of the second respondent herein / first respondent in the Writ Petition namely, Joint Registrar of Co-operative Societies, Trichy, in and by which, enhancement of punishment awarded by the disciplinary authority from stoppage of increment for 5 years with cumulative effect to one of dismissal from service. The learned single Judge in the impugned order dated 10.12.2019 passed in W.P.(MD)No.3635 of 2014 has set aside the order, taking into consideration of the fact that the first respondent / writ petitioner had attained the age of superannuation, thought fit to modify the punishment to one of stoppage of increment for two years without cumulative effect and aggrieved by the same, the present Writ Appeal is filed by the third respondent in the Writ Petition.

4.The facts leading to the filing of this case have been narrated in detail and in extension in the impugned order, which is a subject matter of challenge in this Writ Appeal. Therefore, for the sake of brevity, it is not repeated.

5.The learned counsel appearing for the appellant / third respondent in the Writ Petition would submit that the contents of the charge memo are grave in nature and the first respondent / writ petitioner being the Secretary of appellant society was in a position of trust and confidence and with regard to the mislead and misconduct on the part of the salesman, he did not give proper and effective supervision, which ultimately let to the loss and taking into consideration of the fact, the revisional authority, namely, second respondent herein had thought fit that he will increase the quantum of punishment from that of stoppage of increment for 5 years with cumulative effect to one of dismissal from service. The learned single Judge admittedly, did not find fault with the procedure adopted in enhancing the punishment and however, chose to interfere with the quantum of punishment without assigning any acceptable reasons and hence, prayed for interference.

6.Per contra, the learned counsel appearing for the first respondent / writ petitioner has drawn the attention of this Court to the impugned order dated 12.11.2013 passed by the second



respondent in this Writ Appeal would submit that during the course of proceedings, a communication was given as to the enhancement of quantum of punishment and only after receipt of the same, the first respondent / writ petitioner became aware of the same and in fact, it was also urged as one of the points in the Writ Petition and the same has been recorded in Paragraph No.7 of the impugned order and in furtherance, taking into consideration of the fact that the petitioner had also attained the age of superannuation, the learned Judge has thought fit to reduce the punishment.

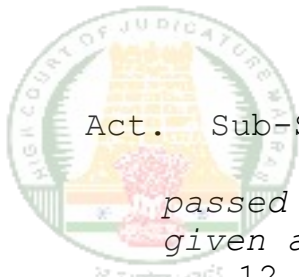
7.It is also brought to the notice of this Court by the learned counsel appearing for the first respondent / writ petitioner that insofar as the criminal prosecution launched against the first respondent / writ petitioner for the alleged offences under Sections 7(1)(a)(ii) of EC Act, 1955 and 6(3) and 14(1)(a) of TNSC (RCDS) Order, 1982 is concerned, a Quash Petition in CrI.O.P.(MD)No.24078 of 2015 was filed on the file of this Court and vide order dated 31.10.2018, the said criminal prosecution launched against the first respondent / writ petitioner has been quashed and further, pointed out that insofar as the other accused is concerned, they faced the trial and they are also acquitted and no further challenge has been made to the said order of acquittal and hence, prays for dismissal of this Writ Appeal.

8.This Court has carefully considered the rival submissions made by the learned counsel on either side and perused the materials available on record.

9.The disciplinary authority, after conclusion of the enquiry, has thought fit to award punishment of postponement of increment for 5 years with cumulative effect upon the first respondent / writ petitioner and aggrieved by the same, he preferred a revision under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the said Act') before the second respondent and the second respondent vide proceedings dated 12.11.2013, confirmed the findings recorded by the disciplinary authority and having found the quantum of punishment is not commensurate with the delinquency of misconduct on the part of the first respondent / writ petitioner, thought fit to enhance the same to one of dismissal from service.

10.A perusal of the said order would disclose that during the course of proceedings, no opportunity whatsoever has been provided to the first respondent / writ petitioner in the form of show cause, as to why the punishment awarded by the disciplinary authority is to be enhanced.

11.In the considered opinion of this Court, the said lapse on behalf of the second respondent is not only in violation of principles of natural justice, but also Section 153(2) of the said



Act. Sub-Section 2 of 153 of the said Act reads as follows:-

"153...(2)No order prejudicial to any person shall be passed under Sub-Section (1) unless such person has been given an opportunity of making his representation."

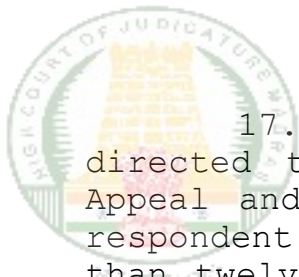
12.Admittedly, the said mandate has been given a go-by by the revisional authority, namely, second respondent in this Writ Appeal. This Court can also take note of the subsequent event in the light of the quashing order passed by this Court dated 31.10.2018 made in Crl.O.P.(MD)No.24078 of 2018 in respect of the criminal prosecution launched against him on the file of Judicial Magistrate No.6, Trichy. No materials have been placed as to whether any further application is preferred against the said order dated 31.10.2018. The learned single Judge while quashing the criminal prosecution against the first respondent / writ petitioner in Crl.O.P.(MD)No.24078 of 2015, had also taken note of the fact in respect of the co-accused in the Court of Judicial Magistrate No.6 in C.C.No.58 of 2016, had acquitted them and no further challenge has been made by preferring appeal against the said order of acquittal.

13.In the interregnum, the first respondent / writ petitioner had attained the age of superannuation. But for the order of dismissal passed by the second respondent / revisional authority, the learned Judge has taken note of the factual aspects as well as the rule position and reached the conclusion to interfere with the quantum of punishment.

14.The only infirmity appears to be as to the reduction of the punishment awarded by the disciplinary authority from that of stoppage of increment for 5 years with cumulative effect to one of stoppage of increment for two years without cumulative effect.

15.This Court has taken into consideration of the fact that the first respondent / writ petitioner being the primordial position of Secretary of the appellant society and also was in the position of trust and confidence, should have been bestowed some attention on the supervision and therefore, this Court is inclined to increase the quantum of punishment awarded by the learned Judge from stoppage of increment for two years without cumulative effect to stoppage of increment for 5 years without cumulative effect and also heard the learned counsel appearing for the first respondent / writ petitioner also. He has also submitted that this Court may pass appropriate orders in the light of the materials placed before this Court.

16.In the result, this Writ Appeal is partly allowed and the order of punishment passed in the impugned order dated 10.12.2019 in W.P.(MD)No.3635 of 2014 is modified and it is enhanced to stoppage of increment for 5 years without cumulative effect and except the said modification, rest of the impugned order passed in the Writ Petition stands confirmed.



17.The official respondents in the Writ Petition are directed to comply with the modified order passed in this Writ Appeal and confer benefits, if any, due and payable to the first respondent / writ petitioner as expeditiously as possible, not later than twelve (12) weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Joint Registrar of Co-operative Societies,
Trichy Region.

2.The Deputy Registrar of Co-operative Societies,
Trichy Circle, Trichy District.

+1 CC to M/s.M. SRIDHARAN, Advocate (SR-18588[F] dated 30/09/2020)

+1 CC to M/s.Special Govt.Pleader (SR-18708[F] dated 01/10/2020)

Judgment in
W.A(MD) No.872 of 2020
29.09.2020

Myr

SDS (09.10.2020) 5P-5C