



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.09.2020

DELIVERED ON : 03.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WP(MD).No.5540 of 2014 and
M.P(MD).Nos. 1 and 2 of 2014

R. Kurinji Chezhan

... Petitioner

Vs.

1.The Registrar,
Cooperative Societies,
Kilpauk, Chennai - 600 010

2.The Joint Registrar,
Cooperative Societies,
Sivagangai.

3.The Deputy Registrar,
Cooperative Societies,
Karaikudi, Sivagangai District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of punishment passed by the second respondent in Na.Ka.No.406 of 2010 PaTho, dated 30.04.2012 and the consequential impugned show cause notice of the first respondent in Na.Ka.No.6860/2012 ONa3, dated 18.02.2014, quash the same and consequently, direct the respondents herein to grant increment withheld, pay the enhanced pay with necessary revision payable to the petitioner within a reasonable time.

For petitioner : Mr. V.S. Kumaraguru

For Respondents : Mr. D. Muruganantham

Additional Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned order relating to the punishment imposed by the second respondent in Na.Ka.No.406 of 2010 PaTho, dated 30.04.2012 and the consequential impugned show cause notice of the first respondent in Na.Ka.No.6860/2012 ONa3, dated 18.02.2014, and consequently, direct the respondents herein to grant increment withheld, pay the enhancement pay with necessary revision payable to the petitioner within a reasonable time.



2. The petitioner challenging the order of punishment inflicted by the disciplinary authority and also challenging the show cause notice issued by the Appellate Authority for enhancement of punishment.

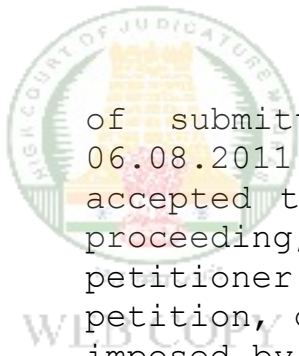
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3. The service matrix of the petitioner that are required for the case of the petitioner as follows:

(i) The petitioner herein has entered into Government Service on 06.12.1985 as Junior Inspector and then, on promotion he is holding the post of Selection Grade Senior Inspector of Cooperative Societies with effect from 01.09.1995. He was holding the post of Special Officer of the N.N.380, A. Velangudi Primary Agricultural Cooperative Credit Society from 20.07.2007. The Secretary and Clerk of the said Cooperative Society misappropriated a sum of Rs.40.24 Lakhs during the period from 2001 to 2004. Hence, the Deputy Registrar, Karaikudi ordered for a statutory enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 in his proceeding RC.4798/03 PACS, dated 03.02.2004. In the fact finding report, the enquiry officer had recommended for initiation of prosecution against the Secretary and Clerk of said cooperative Society, apart from taking severe disciplinary action and also recommended to initiate surcharge proceedings to recover the loss under Section 87 of the Tamil Nadu Cooperative Societies Act.

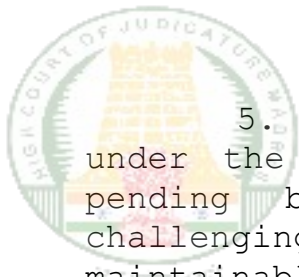
(ii) A Criminal case was registered against the Secretary and Clerk of said Society in C.C.No.2 of 2009 before the Judicial Magistrate - II, Sivagangagi and the delinquent was arrested on 09.06.2009. Hence, the Secretary and Clerk were placed under Suspension in view of the misappropriation. Surcharge order under Section 87 of Tamil Nadu Cooperative Societies Act, 1983 was passed for Rs.40.24 Lakhs and execution petition was also filed in E.P.No.267/2009-10. Since the Secretary was working under the Control of the petitioner he was instructed to take severe disciplinary action against the Secretary in the memo R.C.No. 4951/03 SF(2), dated 19.09.2008 of the third respondent.

(iii) The disciplinary action was initiated by the third respondent against the petitioner in charge memo, dated 11.01.2010 under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules by the third respondent. The petitioner received the charge memo on 02.03.2010 and as he did not submit his explanation, hence, an inquiry was ordered in disciplinary case by the competent authority viz., the second respondent. The inquiry has been conducted properly and the inquiry officer in his report, dated 24.01.2011 has held the charge as proved. A copy of the inquiry report was communicated to the petitioner and he availed the chance



of submitting his further representation in his Letter dated 06.08.2011. The second respondent after examining the case, accepted the increment with cumulative effect for one year in his proceeding, dated 30.04.2012. Aggrieved with the punishment, the petitioner has appealed before the first respondent, in his petition, dated 30.07.2012. The said petition against the punishment imposed by the second respondent in his proceeding dated 30.04.2012, the appellate authority viz., the first respondent, after examining the case with related documents, considered that the punishment imposed on the petitioner is meager for the proved charge, as the misappropriation took place is serious one. The first respondent decided to give an opportunity to the petitioner to submit his representation and issued notice, dated 30.04.2012, seeking his representation in this regard. The petitioner has received the notice on 10.03.2014 and submitted his reply on the same in his letter dated 19.03.2014. Before examining the same, the petitioner has once again filed the present Writ Petition.

4. After hearing the rival submissions and also perusing the records, this Court finds that this Court in W.P(MD).No.15973 of 2012 directed the first respondent to consider the appeal and pass appropriate orders on merits and in accordance with law within a period of eight weeks. Accordingly, the appellate authority viz., the first respondent herein examined the appeal, dated 30.07.2012 of the petitioner under Rule 23(1) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, which states that the appellate authority should consider whether the penalty is excessive, adequate or inadequate and pass order confirming, reducing, enhancing or setting aside the penalty considering the veracity of the case. The appellate authority came into conclusion that the penalty imposed on the second respondent was inadequate for the allegations framed against the petitioner and proposed to enhance the penalty as per the provisions contained under Section 23(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Hence to give him an opportunity to defend himself, a show cause notice was issued to the petitioner seeking his representation, dated 18.02.2014. The petitioner received the show cause notice on 10.03.2014 and submitted his reply in his letter dated 19.03.2014. Moreover, before disposing the appeal, the petitioner has filed the present petition seeking to quash the proceeding, dated 30.04.2012 of the second respondent. Hence, the appeal remains undisposed. The show cause notice is issued only based on the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and not with a predetermined mind. The petitioner can avail the opportunity to prove his innocence. The contention of the petitioner that he is compelled to give explanation cannot be accepted. He has given an opportunity to prove his innocence before the appellate authority.



5. Thus, this Court finds that when the appeal is provided under the statute and appeal is also so filed and the same is pending before the appellate authority, the Writ Petition challenging the order passed by the disciplinary authority is not maintainable. He has to pursue the remedy and wait for the order in the appellate authority.

6. Furthermore, the learned counsel appearing for the petitioner would contend that the show cause notice issued by the appellate authority is tainted with malafide.

7. I have perused the records and also the show cause notice issued by the respondent. The said show cause notice was issued only based upon the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and there is no indications or iota of evidence that the Appellate Authority is acting in pre-determined manner and hence, the show cause notice issued by the appellate authority for enhancement of punishment does not *per se* amounts to one malafidness on the part of the appellate authority. It is for the petitioner to submit his explanation that the Appellate Authority to pass appropriate orders in accordance with law.

8. In view of the decision of the Hon'ble Supreme Court reported in **2006(12) Scale (Union of India and another Vs. Kunisetty Satyanarayana)**, the appeal before the statutory authority and the challenge was made to the show cause notice for enhancement of punishment, which is prematured and hence, I do not find any merit on both the contentions raised by the petitioner counsel. This Writ Petition is devoid of merits and accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

9. However, the second respondent is directed to pass appropriate orders in the appeal filed by the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-

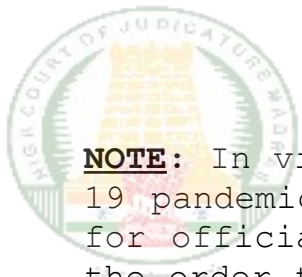
Assistant Registrar(RTI)

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Sub Assistant Registrar(CS)

Trp



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 Registrar,
Cooperative Societies,
Kilpauk, Chennai - 600 010

2.The Joint Registrar,
Cooperative Societies,
Sivagangai.

3.The Deputy Registrar,
Cooperative Societies,
Karaikudi, Sivagangai District.

+1 CC to M/s.V.S.KUMARAGURU, Advocate (SR-20901[F] dated 03/11/2020

ORDER MADE IN
WP(MD).No.5540 of 2014
03.11.2020

VR(CO)
TR(24.11.2020) 5P 5C