



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.02.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD) No.9508 of 2014 and

MP.(MD) No.1 of 2014

R.Rajendran

...Petitioner

Vs

1. The State of Tamil Nadu,
Rep by its Secretary to Government,
Co-Operation Food & Consumer Protection Department,
Secretariat,
Chennai - 9.

2. The Registrar of Co-Operative Societies,
O/o, the Registrar of Co-Operative Societies,
No.170, NVN Maligai,
EVR Periyar High Road,
Kilpauk,
Chennai.

3. The Regional Joint Registrar
O/o the Joint Registrar of Co-Operative Societies
Virudhunagar Region
Virudhunagar District

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned order passed by the first respondent in his proceedings in G.O.(D) No.269 dated 25.11.2013 confirming the order passed by the second respondent in his proceedings in Na.Ka.116587/2011 Xel, dated 10.10.2012 and quash the same as illegal.

For Petitioner : Mr. C.Venkatesh Kumar

For Respondents : Mr.Muruganandham

Additional Government Pleader

ORDER

This writ petition is filed to call for the records relating to the impugned order passed by the first respondent in his proceedings in G.O.(D) No.269 dated 25.11.2013 confirming the order passed by the second respondent in his proceedings in Na.Ka.116587/2011 Xel, dated 10.10.2012 and quash the same as illegal.

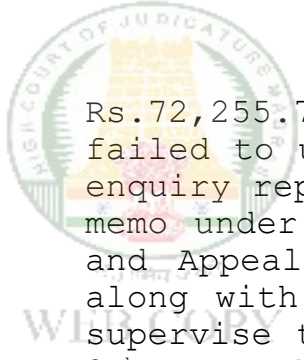
2. The petitioner would state that he was initially appointed as Junior Inspector of Co-Operative Societies on 11.03.1979 in the office of the Deputy Registrar of Co-Operative Societies. Thereafter, he was promoted as Senior Inspector during 1982, Co-operative Sub-Registrar during 1993 and Deputy Registrar/Managing Director, Ramanathapuram District Consumer Co-operative whole sale Stores Ltd, Ramanathapuram District. While the



petitioner was working as Deputy Registrar of Co-operative Societies at Ramanathapuram District, the third respondent has issued a charge memo dated 21.11.2011 under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 alleging that during his tenure as Co-Operative Sub-Registrar and holding the posts of Special Officer of six other Co-operative Societies for a period of six months from 28.01.2004 to 27.07.2004, he failed to monitor the irregularities committed by one M. Thamorthamoorthy, Secretary of Chettykuruchi Primary Agricultural Co-operative Bank. The petitioner submitted his explanation stating that in addition to his original post of Co-Operative Sub-Registrar, he was in-charge of six other posts namely, Chetipatti PACB, Chinna Vallikulam PACB, Puliyanur PACB, Malaipatti PACB, Chettikurichi PACB and Pandalgudi Primary Co-Operative Stores, for a period of six months from 28.01.2004 to 27.07.2004 and therefore, it was not possible for him to monitor the entire records maintained by the bank and it is the duty of the Secretary of the concerned bank to monitor such irregularity. However, without considering his explanation in proper perspective, the second respondent/Disciplinary Authority by impugned order dated 10.10.2012 imposed the punishment of stoppage of increment for one year and six months without cumulative effect, against which, the petitioner preferred appeal before the 1st respondent/Appellate Authority on 26.11.2012 and the 1st respondent without considering any of the grounds of appeal, rejected the appeal, by passing a cryptic order without even assigning any reason. Therefore, challenging the order passed by the respondents 1 & 2, the petitioner has filed this Writ Petition.

3. The learned counsel for the petitioner would submit that for the incident occurred during 2004, the petitioner was issued with a charge memo during 2011, after a lapse of seven years. The charge against the petitioner is not the case of misappropriation or bribe, whereas it is the case of lack of supervision. The respondents failed to consider the fact that the petitioner was in-charge of six other posts excluding his original post. The learned counsel would further submit that in identical case, the punishment imposed against one R.Govindan, Sub Registrar, Co-Operative Societies was set aside by issuing G.O.No.5 Co-Operative Food and Consumer Protection Department dated 27.01.1997. It is further stated that neither the disciplinary authority nor the appellate authority has considered the explanation of the petitioner and the appellate authority has merely dismissed the appeal preferred by the petitioner without considering the grounds of appeal and without even assigning any reason. Thus, he would pray for setting aside the impugned orders.

4. The respondents have filed counter affidavit. The learned Additional Government Pleader appearing for the respondents would state that when the petitioner was working as Special Officer in R.K.22 Chettykurichi Primary Agricultural Co-operative Bank in Ramanathapuram District, misappropriation to the tune of



Rs.72,255.70/- took place in the above society and the petitioner failed to unearth the above irregularity which came to light in the enquiry report. Accordingly, the petitioner was issued with a charge memo under rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. After considering the petitioner's explanation along with relevant records, finding that the petitioner failed to supervise the accounts of the society during the relevant time, the 2nd respondent imposed the punishment of stoppage of increment for one year and six months without cumulative effect. The appeal filed by the petitioner before the 1st respondent against the above punishment was also rightly rejected after considering the view of the TNPSC which has opined that the punishment is commensurate with the gravity of charges. Thus, he would pray that the interference of this Court is not necessary.

5. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader for the respondents.

6. It is an admitted fact that the incident occurred in 2004. The petitioner was issued with the charge memo after 7 years for failing supervision. While issuing the charge memo, the 3rd respondent had even failed to see that the petitioner was in-charge of six other banks in addition to his original post of Co-operative Sub Registrar for a minimum period of six months and for that, a charge memo has been issued after a period of nearly 7 years. Even in the identical case, punishment imposed against one R.Govindan, Co-operative Sub Registrar, who stood on the same footing, was set aside by G.O.No.5, Co-operative Food and Consumer Protection Department, dated 27.01.1997, whereas, the appeal by this petitioner was rejected mechanically simply stating that there is no ground for allowing the appeal which reflects total non application of mind. The delay in initiation of disciplinary proceedings without assigning any reason would cause serious prejudice to the petitioner. Reason is the soul of the order and 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

7. 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 stoppage of increment for one year and six months without cumulative effect, without considering the explanations and assigning any valid reasons for such conclusion. Therefore, the order passed by the 2nd respondent and the order passed by the 1st respondent confirming the order passed by the 2nd respondent are liable to be set aside.

8. 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.

9. The above referred cases are squarely applicable to the present case on hand. Therefore, I am inclined to interfere with the impugned orders. Accordingly, impugned order passed by the first respondent in his proceedings in G.O.(D) No.269 dated 25.11.2013 confirming the order passed by the second respondent in his proceedings in Na.Ka.116587/2011 Xel, dated 10.10.2012 are hereby set aside and the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSII)

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/ /2020

Sub Assistant Registrar (CS)



To

1. The Secretary to Government,
The State of Tamil Nadu,
Co-Operation Food & Consumer Protection Department,
Secretariat,
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O/o, the Registrar of Co-Operative Societies,
No.170, NVN Maligai,
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Chennai.

3. The Regional Joint Registrar
O/o the Joint Registrar of Co-Operative Societies
Virudhunagar Region
Virudhunagar District

+1 CC to M/s.SPL.GP (SR-4758[F] dated 05/02/2020)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-4830[F] dated
05/02/2020)

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MP.(MD)No.1 of 2014
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