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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.17686 of 2008

P.Ramadoss

..Petitioner

vs.

1.The Joint Registrar of Coop Societies,
Vellore Region, Vellore-632 009.

2.The Chakramallur Primary Agrl. Coop Bank,
Chakramallur Post, Vellore District
by its Special Officer.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order dated 02.05.2008 of the 1st respondent made in Revision Petition Na.Ka.2093/07 A2 - Revision Petition No.18 of 2006 A2, quash the same and consequently direct the respondents to reinstate the petitioner in service with all attendant benefits, as if the petitioner was in service.

For Petitioner : Mr.S.Venkataraman

For Respondent : Mr.T.Arunkumar,
Additional Government Pleader for R1
Mr.C.K.Chandrasekar for R2

O R D E R

The petitioner, challenging the impugned order of the first respondent dated 02.05.2008, in and by which the first respondent has dismissed the revision petition filed by the petitioner and thereby upheld the order of dismissal passed by the second respondent, has filed this writ petition.

2. The case of the petitioner is that he was employed as Bill Clerk in the second respondent Cooperative Society and was looking after the sale of fertilizers. The respondent has alleged certain irregularities against the petitioner with regard to sale of Urea and he was suspended from service on 07.07.2004 and a charge memo was issued on 01.09.2004, framing four charges against the petitioner, alleging that he has committed irregularities in the sale of Urea and caused loss to the Society to the tune of Rs.11,14,625/-. An enquiry officer was appointed and during the enquiry proceedings, the



petitioner made a request to furnish copies of documents and also to furnish the details of witnesses examined on behalf of the respondent Society. According to the petitioner, the Enquiry Officer had permitted the petitioner to peruse some of the documents, but had not submitted copies of the same. Based on the report of the Enquiry Officer, a Show Cause Notice dated 21.01.2006 was issued and challenging the same, the petitioner has filed W.P.No.10936 of 2006 before this Court alleging that the Enquiry Officer has not furnished the documents to the petitioner. This Court, vide order dated 19.07.2006, had disposed of the said writ petition with a direction to the petitioner to submit his explanation with the available records and also gave liberty to the petitioner to raise the issue with regard to denial of documents, if any adverse final order is passed, in appropriate proceedings.

3. In pursuant to the order passed by this Court dated 19.07.2006 in W.P.No.10936 of 2006, the petitioner has submitted his explanation to the Show Cause Notice and without considering the same in proper perspective, the second respondent has passed the final order dated 21.08.2006, dismissing the petitioner from service. Assailing the said order of the second respondent, the petitioner preferred a revision dated 23.08.2006 before the first respondent under Section 153 of the Cooperative Societies Act, 1983, wherein the petitioner has specifically raised the plea that non-furnishing of documents would vitiate the entire proceedings and further made an objection that due to compulsion, he was made to give the undertaking letter to the respondent Society that he has agreed to settle the aforesaid dues of Rs.11,14,625/-, towards the loss caused to the society. Pending the Revision Petition, the second respondent has served a memo dated 01.11.2007 to the petitioner to peruse the documents in the office, for which the petitioner has submitted his objections and without considering the aforesaid grounds raised by the petitioner, the first respondent/revisional authority has passed the impugned order dated 02.05.2008, dismissing the revision petition filed by the petitioner by upholding the order of dismissal passed by the original authority /second respondent. Challenging the same, the present writ petition has been filed.

4. Mr.S.Venkataraman, learned counsel appearing for the petitioner would contend that though this Court, vide order dated 19.07.2006 made in W.P.No.10936 of 2006, has permitted the petitioner to raise the ground of non-production of documents in appropriate proceedings and the petitioner having raised the same as substantial ground in the revision petition filed before the first respondent, without considering the same, the first respondent/revisional authority has passed a cryptic non-speaking order and therefore, on that ground, prays that the impugned order is liable to be set aside.



5. Mr.C.K.Chandrasekar, learned counsel appearing for the second respondent has raised various objections to the contentions of the learned counsel for the petitioner and according to the second respondent, the petitioner now cannot raise the ground before the revisional authority with regard to non-furnishing of document to effectively adjudicate the entire proceedings and further contended that the petitioner has voluntarily gave the undertaking before the authority agreeing to pay the amount of Rs.11,14,625/-, towards total loss caused to the second respondent society by the petitioner and therefore, the revisional authority has rightly rejected the revision petition filed by the petitioner and prays for dismissal of this writ petition. The learned counsel for the second respondent has not disputed the fact that the impugned order passed by the first respondent/revisional authority is a non-speaking order.

6. Mr.T.Arunkumar, learned Additional Government Pleader appearing for the first respondent would submit that the petitioner has filed the revision petition before the first respondent, wherein he has raised all the objections and the first respondent, after carefully examining the documents and considering the submissions/objections, has passed the impugned order, upholding the order of dismissal passed by the second respondent/original authority and therefore, the impugned order is perfectly valid and does not warrant any interference.

7. I have anxiously considered the submissions made by both sides and perused the materials available on record.

8. The point for consideration is whether the impugned order passed by the first respondent/revisional authority, without considering the grounds raised by the petitioner is perfectly valid in law?

9. The grievance of the petitioner is that though he has raised several grounds in the revision petition, the first respondent / revisional authority without considering the said grounds in proper perspective, has passed a cryptic non-speaking order and there is also a violation of principles of natural justice on account of non-furnishing the documents to effectively adjudicate the matter before the second respondent/original authority. The petitioner has also disputed the undertaking letter said to have been given by the petitioner, but the revisional authority/first respondent without verifying the original records, has simply rejected the revision petition by a cryptic and non-speaking order.

10. The Hon'ble Supreme Court and this Court on various decisions held that the Appellate Authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him/her in the appeal. Following various decisions of the Hon'ble



Supreme Court, this Court, in the case of N.Sivakumaran Vs. The State of Tamil Nadu, Rep. By the Secretary to Government, Chennai & Others, reported in (2009) 1 MLJ 701 had held as follows;

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"32. In the case of an appeal against the order of imposing any penalty under Rules 8 or 9, the appellate authority shall consider as to whether (1) the facts on which the order was passed have been established, (2) the facts established offered sufficient ground for taking action and (3) the penalty is excessive, adequate or inadequate and passed orders confirming, enhancing, reducing or setting aside the penalty or committed remitting the case to the authority of which imposed the penalty, with such direction as it may be deemed fit in the circumstances of the case. Clause ii of Rule 23 (1) states that any error or defect in the procedural violation in imposing penalty may be disregarded by the appellate authority if such authority considers for the reason to be recorded in writing that the error or defect was not material and had neither caused injustice to the person concerned or affect the decision of the case. Powers of the appellate authority are circumscribed by a specific statutory provision which sets out the parameters to be examined by such authority. Unless the appellate authority examines the said aspects and assign brief reasons, mere extracting the views of the Tamil Nadu Public Service Commission does not satisfy the requirements of the statutory rule and that would not amount to giving of reasons. Besides looking into the factual aspects, the appellate authority is also enjoined with the duty to examine whether there is any procedural defect or violation or error in imposing the penalty and Clause (ii) of Rule 23(1) and discard any error or defect or procedural violation in imposing the penalty, if the authority finds that such error or defect or violation is not material or injustice to the person concerned or affect the decision. A penalty suffered by a government servant affects his service and monetary benefits and casts a stigma in his career. It is well known that penalty suffered by a government servant is counted for promotion to higher posts. Right to consider for promotion has been recognized as a statutory right and therefore, when the authority is vested with the jurisdiction of testing the correctness of penalty, circumscribed by certain parameters , it is imperative that such authority has to



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scrupulously follow the parameters set out in the rule. All the more, if the government servant is inflicted with a major penalty of removal or dismissal or compulsory retirement, whereby he is deprived of his right to earn through employment, the protection given under Article 311(2) of the Constitution of India, supported by statutory rules, the procedure to be followed and the factors to be taken into account by the disciplinary and appellate authorities cannot be simply disregarded by such authorities to the detriment of the employee. The Supreme Court in *Delhi Transport Corporation v. DTC. Mazdoor Congress* reported in 1991 Supp. (1) SCC 609, held that, "The right to life includes right of livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right of work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

The right to public employment and its concomitant right to livelihood receive their succour and nourishment under the canopy of the protective umbrella of Articles 14, 16(1), 19(1)(g) and 21. Different articles in the chapter on Fundamental Rights and the Directive Principles in Part IV of the Constitution must be read as an integral and incorporeal whole with possible overlapping with the subject matter of what is to be protected by its various provisions particularly the Fundamental Rights. When the provisions of an Act or Regulations or Rules are assailed as arbitrary, unjust, unreasonable, unconstitutional, public law element makes it incumbent to consider the validity thereof on the anvil of interplay of Articles 14, 16(1), 19(1)(g) and 21 and of the inevitable effect of the impugned provisions on the rights of a citizen and to find whether they are constitutionally valid. The right to a public employment is a constitutional right under Article 16(1). All matters relating to employment include the right to continue in service till the employee reaches superannuation or his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the



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Constitution or the rules made under proviso to Article 309 of the Constitution or the statutory provision or the rules, regulations or instructions having statutory flavour made thereunder. But the relevant provisions must be conformable to the rights guaranteed in Parts III and IV of the Constitution. Article 21 guarantees the right to live which includes right to livelihood, the deprivation thereof must be in accordance with the procedure prescribed by law conformable to the mandates of Articles 14 and 21 as to be fair, just and reasonable but not fanciful, oppressive or at vagary."

33. When the appellate authority fails to exercise his statutory duty, which affects the fundamental right of a person and if such authority disposes of an appeal, disregard to the manner circumscribed under the rules and fails to assign brief reasons, indicating his mind, it amounts to denial of justice. Prejudice is per-se evident and therefore, even if the employee has not raised the question of non-consideration of his appeal in accordance with the statutory rules in the Writ Petition. Considering the deprivation of his right to livelihood, guaranteed under Article 21 of the Constitution of India, scuttling his right of his appeal being considered in the manner as provided in the statutory rules would be contrary to the spirit of the Constitutional Guarantee, viz., the right to life with dignity, which can be achieved through the income derived from his employment, the fundamental source. One should not forget that judiciary is the last resort of an aggrieved person and it is not enough that justice should be done and it must also be seen to be done. Useful reference can be made to a decision of the Supreme Court in State of W.B v. Anwar Ali Sarkar reported in AIR 1952 SC 75, and relevant portion in the judgment is extracted hereunder:

"It may be that justice would be fully done by following the new procedure. It may even be that it would be more truly done. But it would not be satisfactorily done, satisfactory that is to say, not from the point of view that the governments who prosecute, but satisfactory in the view of the ordinary reasonable man, the man in the street. It is not enough that justice should be done. Justice must also be seen to be done and a sense of satisfaction and confidence in it engendered."



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order reveals that after extracting the summary of facts, at Paragraph 8 of the order, the appellate authority has merely stated that "the opinion of the Tamil Nadu Public Service Commission has been independently and carefully considered. The punishment of removal awarded by the Principal Commissioner and Commissioner for Revenue Administration is not excessive and therefore, the Government had decided to reject the appeal and accordingly, rejected the same." Thus it is manifestly clear that the appellate authority has passed a cryptic order and that there is a failure to consider the parameters set out in rule 23(1) of the said Rules. contention raised by the delinquent officer. In the interest of justice, the delinquent officer is entitled to know atleast the mind of the appellate authority in dismissing his appeal. No doubt, detailed reasons are not required to be given, but some brief reasons should be indicated in the order affirming the views of the disciplinary authority. As observed in Alexander Machinery (Dudley) Ltd., v. Crabtree [1974 ICR 120 (NIRC)], reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx, it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision.

35. The subjective satisfaction of the appellate authority is conspicuously absent regarding rule 23(1)(a) (b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. The order does not reflect active application of the mind of the appellate authority and to put it in the words of the Apex Court, it is 'lifeless', except examining the quantum of penalty.

36. In view of the above, the impugned order of punishment is set aside and the Writ Petition is partly allowed. The matter is remitted back to the appellate authority to consider all the parameters in Rule 23 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules and to pass an order on merits, within a period of four weeks from the date of receipt of a copy of this order. No costs."

11. In another case C.Devendhiran Vs. The Deputy Inspector General of Police, Villupuram Range (W.P.No. 150 of 2015) reported in 2020 (2) WLR 332, wherein I had an occasion



to deal with the same issue in detail and held that the order passed by the appellate authority is a cryptic/non-speaking order. The relevant portion of the order is extracted hereunder;

"13. The Learned Senior Counsel for the Writ Petitioner has relied upon the decision reported in 1989 writ law reporter 274 considered rule 6(1) of TNPSS (D&A) Rules and it has been held as follows at para 3 and 4 of the said judgment.

"The rule enjoins the concerned authority to consider the three aspects set out therein specifically. Unless the appellate authority considers them it cannot be said that it has carried out its duties properly. The Supreme Court had occasion to discuss a similar question under R.27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Dealing with the word 'consider' used in the said rule, the Supreme Court observed that the word 'consider' implies due application of mind-vide R.P.Bhatt v. Union of India. The following paragraph in the above judgment of the Supreme court can be usefully referred to with advantage-

"The word 'consider' in R.27(2) implies 'due application of mind'. It is clear upon the terms of R.27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) Whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) Whether the penalty imposed is adequate and thereafter pass orders confirming, enhancing etc, the penalty, or may remit back the case to the authority which imposed the same. R27(2) casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were unwarranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (2) of R.27 (2) viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the



present case. There being non-compliance with the requirements of R.27(2) of the Rules the impugned order passed by the Director General is liable to be set aside."

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14. In another judgment of this Court in the case of K.Kandasamy Vs. Deputy I.G. of police, reported in 2006 (4) MLJ 1382 in para 7, this Court has held as follows :-

"It is seen from the aforesaid portion of the impugned order that the Appellate Authority did not deal with any of the grounds of appeal raised by the petitioner. A departmental appeal is a continuation of the original proceedings. It is needless to point out that the last opportunity available for a delinquent, to canvass his case on merits, is at the appellate stage. After the appeal, a delinquent loses his right to challenge any disciplinary proceedings on merits, since the scope of interference on a revision or on a writ petition is very limited. Therefore, the rules themselves contemplate Appellate Authorities to go into the factual details and consider all the grounds of appeal before deciding an appeal. Unfortunately, the first respondent has chosen to dismiss the appeal by a non-speaking order and hence, the Appellate Authority's order is liable to be set aside."

15. It is also pertinent to refer the Judgment of the Hon'ble Supreme Court in Narinder Mohan Arya Vs. United India Insurance Company Ltd, reported in 2006(4) SCC 713, wherein the Hon'ble Supreme Court has held that even when an Appellate Authority agrees with the findings of the Disciplinary Authority in a departmental enquiry, it should give reasons so as to enable the Writ Court to ascertain there was an application of the mind as required by the relevant rules. The relevant portion is extracted hereunder;

"33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules."

16. In view of the decisions cited supra and Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, it is clear that the appellate authority is the final fact finding authority and he is expected to assess the evidences available on record by due application of



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mind and also record the reasons even though not elaborately, but indicating as to how the appellate authority has satisfied himself with the reasons given by the disciplinary authority. When Rule 6 (1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules mandates that the appellate authority should consider all those materials, in the instant case, no such finding has been given by the appellate authority except simply saying that he has perused some documents and came to the conclusion that the punishment awarded by the 1st respondent is not an excessive and rejected the same.

17. Considering the facts and circumstances of the case and also the decisions rendered by the Hon'ble Supreme Court and this Court cited supra, this Court with no hesitation, has come to the conclusion that the second respondent/ appellate authority has passed a cryptic order/non-speaking order without considering the issues that were raised by the petitioner in his Appeal. As rightly pointed out by the learned senior counsel for the petitioner, the order of the appellate authority/ 2nd respondent is not in conformity with the rule 6 (1) of TNPSS (D&A) Rules.

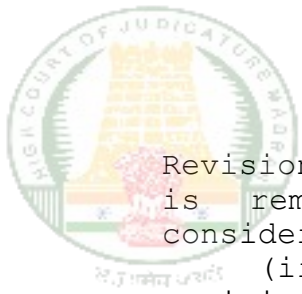
18. In fine, the impugned order in RC. No.047950/AP1(2)/2000, dated 03.07.2010 passed by the second respondent in respect of P.R. No. 67/ 2009 is quashed and the matter is remitted to second respondent to consider afresh and to pass orders thereon, on merits and in accordance with law, within a period of twelve (12) weeks from the date of receipt of the copy of this order.

19. With the above observations and directions, this writ petition is disposed of. No costs."

12. In view of the well settled legal position as laid down in the decisions cited supra, the Appellate Authority, while dealing with cases under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983, is required to consider the grounds raised by the appellant/petitioner and should pass a speaking order. In the case on hand, a perusal of the impugned order passed by the first respondent/ revisional authority clearly reveals that reasons have not been assigned and on that ground, this Court has no hesitation to hold that the impugned order is liable to be set aside and the matter may be remitted back to the first respondent/revisional authority for fresh consideration.

13. For the aforesaid reasons, this Court is inclined to pass the following order:

(i) The impugned order of the first respondent dated 02.05.2008 made in Revision Petition Na.Ka.2093/07 A2 -



Revision Petition No.18 of 2006 A2 is set aside and the matter is remitted back to the first respondent for fresh consideration.

(ii) The first respondent is directed to consider the revision petition filed by the petitioner on its own merits, after affording opportunity to the petitioner as well as the second respondent and pass appropriate orders, preferably within a period of twelve weeks from the date of receipt of a copy of this order.

(iii) The petitioner shall also cooperate for hearing before the first respondent/revisional authority.

14. With the above directions, this Writ Petition stands partly allowed. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

Jvm

To

1.The Joint Registrar of Coop Societies,
Vellore Region, Vellore-632 009.

2.The Special Officer,
The Chakramallur Primary Agrl. Coop Bank,
Chakramallur Post, Vellore District.

+1cc to Mr.S.Venkataraman, Advocate SR. No.61124

+1cc to the Government Pleader SR. No.61527

W.P.No.17686 of 2008

KSM (CO)

PR (07/12/2021)