



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

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THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.Nos. 28761 & 28762 of 2005

and

M.P.Nos. 31421 to 31423 of 2005

B.Moorthy

..Petitioner in both WPs

Vs

1. The Registrar of Co-operative Societies
Kilpauk, Chennai.

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

3. The Deputy Registrar of
Co-operative Societies,
Tirupathur Circle,
Vellore District.

..Respondents in both WPs

Prayer in W.P. No. 28761 of 2005 : writ petition is filed under Article 226 of Constitution of India for Writ of Certiorarified Mandamus, calling for the records of the first respondent in pursuant to the order passed in Na.Ka.No.158733/04/O.No.3, dated 15.06.2005 confirming the order passed by the second respondent in Na.Ka.No. 11612/03/Aa.1 dated 28.05.2004 and quash the same.

Prayer in W.P. No. 28762 of 2005 : writ petition is filed under Article 226 of Constitution of India for Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent relating to the orders passed in Na.ka.No. 99066/2005/O.Na.3, dated 03.08.2005 confirming the orders passed by the 2nd respondent in ref.No. 4276/2004/A1, dated 29.01.2005 and quash the same.

For Petitioner : Mr.Meganathan
(in both WPs) For Mr.G.Sankaran

For Respondents : Mr.S.Arumugam, GA
(in both WPs)



COMMON ORDER

The learned counsel for the petitioner has submitted that the writ petitioner was initially appointed as Senior Inspector in the year 1979 in the Co-operative Department. The Government has issued order in G.O.Ms.No.86, Co-operation, Food and Consumers Protection Department, dated 12.03.2001 with regard to irregular appointments within the Co-operative Societies. The said G.O was challenged before this Court in W.A.Nos.2501 and 2502 of 2001 etc., batch cases wherein this Court has passed an order directing all the Co-operative Societies to adopt special bye-law as amended and further directed the Deputy Registrars concerned to take appropriate action to regularise into service of the person who are falling within the cadre strength or to terminate the service of the employees who are falling outside the cadre strength after due notice to them. The said order of this Court was confirmed by the Hon'ble Supreme Court.

2. The learned counsel for the petitioner has further submitted that the petitioner was posted as Special Officer of Mittur Primary Agricultural Co-operative Bank, Vaniyambadi Taluk on 27.06.2002 and within a period of three months, again the petitioner was transferred to another Primary Agricultural Co-operative Bank. While he was working in Mittur Primary Agricultural Cooperative Bank, two staff members viz., P.Rajamanickam and K.Mahendran who were employed as Packers came to be terminated by proceedings dated 29.09.2001. The said order of termination was challenged before this Court and this Court by an interim order directed Society to reinstate them into service. Accordingly they were reinstated into service.

3. The learned counsel for the petitioner has submitted that subsequently, the State Government has passed an order in G.O. No. 238 Co-operation, Food and Consumer Protection Department dated 19.10.2000 revising the consolidated pay for various posts in which the post of packers was revised from Rs.800/- to Rs.1,150/- w.e.f. 01.04.2000. Accordingly, the salary of the aforesaid staff members was revised.

4. The learned counsel for the petitioner has further submitted that Mittur Primary Agricultural Co-operative Bank has passed resolution on 08.01.2003 to recover the salary paid as per the above G.O and the said revised pay has to be paid from April 2001 by relying upon the circular issued by the Registrar of Cooperative Societies dated 04.06.2001 and consequential proceedings of the Joint Registrar, Vellore dated 13.06.2001. While that being so the 3rd respondent issued a charge memo to the petitioner dated 01.07.2003 on two counts. The charges against the petitioner is while he was working as Special



Officer of Mittur PACB had passed orders revising the salary for the packers from Rs.600/- to Rs.1,150/- and they were reinstated into service despite of the fact that the aforesaid persons have been terminated on the premises that they have been irregularly appointed and apart from that they were given arrears of salary.

5. The petitioner has submitted a detailed explanation to the enquiry officer, stating reasons that the reinstatement into service and the revision of salary to the aforesaid two persons was done only as per the interim orders of the Court and the orders passed by the Government in G.O.Ms.No. 238, dated 19.10.2000. The enquiry officer without considering the explanation submitted by the petitioner has found the charges levelled against the petitioner are proved. Based on the said enquiry report, the disciplinary authority/2nd respondent has imposed punishment of stoppage of increment for the period of one year with cumulative effect. Challenging the said punishment order the petitioner had preferred an appeal before the appellate authority/1st respondent. The 1st respondent without considering merits and demerits of the appeal grounds raised by the petitioner, has simply confirmed the punishment order passed by the 2nd respondent. According to the learned counsel for the petitioner, the punishment order passed by the 1st respondent confirming the order of the 2nd respondent is totally non consideration of request made by the petitioner for oral enquiry of other persons connected to the charges framed against the petitioner. Without doing so, the enquiry was proceeded and awarded punishment as against the petitioner. Hence the entire proceedings are liable to be set aside for having violated the principles of natural justice.

6. According to the learned counsel for the petitioner at the time of initiating surcharge proceedings, the petitioner has paid the excess salary amount to the society which is said to have been paid to the aforesaid two staff members. Therefore there is no loss to the Society for the excess payment made to the aforesaid two staff, hence the punishment order imposed on the petitioner is liable to be set aside.

7. Counter affidavit has been filed respondent, wherein it is stated that the petitioner is solely responsible for the excess payment by way of revised salary made to the aforesaid two packers, therefore, the action by the Society to recover the loss sustained by the society is proper and no violation of any Rules as contended by the learned counsel for the petitioner.

8. Heard both sides and perused the materials available on record.



9. It is an undisputed fact that the respondents had initiated surcharge proceedings as against the petitioner for the loss sustained by the respondent-Bank to the tune of Rs.48,300/- for revising the salary to the packers and the said amount was recovered from the petitioner. The said fact was not challenged by the petitioner, on the contrary he admitted the said charges and paid the amount. Subsequently, the respondent had initiated the disciplinary proceedings against the petitioner and framed charges. The petitioner had submitted a detailed explanation to the enquiry officer by raising specific ground that at the time of initiating surcharge proceedings, the petitioner had paid the excess amount to the society which is said to have been paid to the aforesaid two staff members. Without considering the said grounds, the disciplinary authority had imposed punishment on the petitioner and the said punishment was also confirmed by the 1st respondent/appellate authority, which is double jeopardy .

10. Though it is strongly contended by the learned counsel for the petitioner that the reinstatement into service and the revision of salary to the aforesaid two persons was done by the petitioner only as per the interim orders of the Court and the orders passed by the Government in G.O.Ms.No. 238, dated 19.10.2000, the petitioner had issued the said orders without adhering the instructions/directions issued by his higher authority viz., Registrar of Co-operative Society. Therefore, on this ground the petitioner is liable to suffer the punishment. However, it is also relevant to take into consideration the fact that after the petitioner had compensated the loss to the Society on the surcharge proceedings, the charges were framed and the punishment came to be imposed on the petitioner, which according to the learned counsel for the petitioner is excessive and non application of mind. This Court also feels that the punishment imposed by the respondents on the petitioner is excessive and requires modification.

11. In view of the discussions made in the foregoing paragraphs, this Court is of the view that the punishment imposed on the petitioner is excessive and accordingly, the same is modified as "stoppage of increment for the period of one year without cumulative effect"



12. In fine, the impugned orders passed by the respondents in both writ petitions are modified to the above extent. The writ petitions are partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar of Co-operative Societies
Kilpauk, Chennai.
2. The Joint Registrar of Co-operative
Societies,
Vellore Region, Vellore District.
3. The Deputy Registrar of
Co-operative Societies,
Tirupathur Circle,
Vellore District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.65235
+1cc to the Government Pleader, S.R.No.64834

W.P.Nos. 28761 & 28762 of 2005
and
M.P.Nos. 31421 to 31423 of 2005

NRL(CO)
KKV/01/02/2022