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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.NO.34140 OF 2016

C.Devadoss

... Petitioner

..Vs..

1. The Additional Registrar of Co-op Societies,
Chennai Region (Full Additional Charge)
Chennai - 18.

2. The Special Officer,
Washermanpet Co-operative
Stores Ltd., XNC - 589,
Old No.91/2, New No.248,
P.A.N. Rajarathinam Road,
Chennai - 600 021.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Rc.No.1789/2015/C2, dated 27.04.2015 and quash the same and consequently direct the respondents to calculate the monetary benefits inregarding with retirement benefits and disburse the same to the petitioner within stipulated time.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.K.V.Sajeev Kumar
Government Counsel for R1
Mr.Rajendran
for Mr.P.Shanmugaindiren for R2

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. Writ petition is filed to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Rc.No.1789/2015/C2, dated 27.04.2015 and quash



the same and consequently direct the respondents to calculate the monetary benefits inregarding with retirement benefits and disburse the same to the petitioner within stipulated time.

3. It is seen that the petitioner was issued with a charge memo dated 10.06.2009. The petitioner herein was subject to enquiry and ultimately the second respondent herein had imposed the punishment of dismissal from service through his order dated 11.05.2011. As against the same, the petitioner had originally filed a revision under Section 153 of the Tamil Nadu Cooperative Societies Act and the first respondent herein had originally confirmed the order of dismissal on 02.01.2012.

4. When the petitioner had challenged the order of the first respondent dated 02.01.2012 before this court, an order dated 20.02.2015 passed in W.P.No.17968 of 2012 was made whereby the original order dated 02.01.2012 was set aside and remitted back the matter to the first respondent for fresh consideration.

5. While passing the said order, this Court had directed the first respondent to consider the earlier order passed by them dated 09.02.2011 in a similar case of packer whereby the order of dismissal was set aside.

6. On remand, the first respondent herein had once again passed orders on 27.04.2015 under Section 153 of the Act by rejecting the petitioner's case and confirming the earlier order of dismissal.

7. When the original order passed by the first respondent dated 02.01.2012 was challenged, this court had passed the following order in W.P.No.17968 of 2012.

"9. Right to reason is a valuable right. In case a particular authority is given power to decide the matter on merits the order passed by such authority should contain reasons. The parties should not be put in darkness. The order should be a self speaking one. It is all the more necessary in case the orders are appealable or revisable by higher authorities.

10. The Supreme Court in Maya Devi v. Raj Kumari Batra, (2010) 9 SCC 486, indicated the necessity of giving reason by a body or authority in support of its decision. The observation reads thus :-

"28. It is in the light of the above pronouncements unnecessary to say anything beyond what has been so eloquently said in support of the need to give reasons for orders



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made by courts and statutory or other authorities exercising quasi-judicial functions. All that we may mention is that in a system governed by the rule of law, there is nothing like absolute or unbridled power exercisable at the whims and fancies of the repository of such power. There is nothing like a power without any limits or constraints. That is so even when a court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well-recognised and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity.

29. What then are the safeguards against an arbitrary exercise of power? The first and the most effective check against any such exercise is the well-recognised legal principle that orders can be made only after due and proper application of mind.

Application of mind brings reasonableness not only to the exercise of power but to the ultimate conclusion also. Application of mind in turn is best demonstrated by disclosure of the mind. And disclosure is best demonstrated by recording reasons in support of the order or conclusion.

30. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate court or the authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own."

11. The impugned order passed by the first respondent does not contain reasons much less justifiable reasons. I am therefore of the view that the matter requires fresh consideration by the first respondent.

DISPOSITION:



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12. In the result, the impugned orders are set aside and the matter is remitted to the first respondent for fresh consideration. The first respondent is directed to consider and dispose of the statutory revision filed by the petitioner on merits and in the light of his earlier order dated 9.2.2011. The petitioner should also be given opportunity of hearing before passing final orders. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. It is open to the petitioner to produce materials in support of his contention before the revisional authority."

8. A perusal of the aforesaid directions of this court reveals that the first respondent was directed to reconsider the petitioner's case in the light of the earlier order dated 09.02.2011 which was passed in the case of one G.Arumugam, who was also employed as a packer.

9. In this background, the present impugned order dated 27.04.2015 was perused. The order, though runs to about 7 pages, the actual findings are found only in the last two paragraphs. Even in these two paragraphs, there is absolutely no reference to the earlier order dated 09.02.2011 passed in the case of G.Arumugam, packer. This is totally in violation of the direction of this court passed in W.P.No.17968 of 2012.

10. Apart from the aforesaid infirmity, it is seen that the first respondent herein had chosen to mechanically reject the petitioner's case by citing general grounds that in cases of charges of irregularities of stock deficit, raising a bogus bill, the packer is also jointly liable with the salesman and that if the amount of irregularity is more than Rs.10,000/-, disciplinary action can be taken. There is no reference to any of the facts of the case or the findings of the enquiry officer so as to enable the revisional authority to establish the correctness of the punishment order.

11. Sub-section (1) of Section 152 of the Tamil Nadu Co-operative Societies Act mandates the Registrar to first satisfy himself to the regularity of the proceedings, its correctness, legality or propriety of any decision passed before arriving at a conclusion, while exercising his powers under Section 153 of the Tamil Nadu Cooperative Societies Act.

12. In the present case, there is no subjective satisfaction or any findings with regard to the correctness, legality or propriety of the decision leading to the punishment imposed on the petitioner. As such, the order which is not in conformity



with the procedure contemplated under Section 153, cannot be sustained.

13. In usual course, whenever the order of revisional authority, in so far as procedural irregularity is found fault with, this court would normally remit back the matter to the revisional authority for reconsideration. However in this case, this court, had earlier remitted back the matter on the same procedural irregularity through its order dated 20.02.2015 passed in W.P.No.17968 of 2012, with certain directions to the revisional authority, which directions have also not been complied with, as detailed in the earlier portion of this order.

14. While that being so, another remittal of the matter to the first respondent for reconsideration, would be a futile exercise and time consuming. The petitioner herein, has already reached the age of superannuation and at this juncture, it would not be appropriate to subject him to a third round of litigation.

15. Though this court intends to interfere with the order of the dismissal, the monetary benefits can be with held, in so far as it relates to backwages i.e., the period of petitioner's non-employment, in order to strike a balance between the petitioner and the respondents.

16. In the light of the above observation, the impugned order passed in the Proceedings Rc.No.1789/2015/C2 dated 27.04.2015 on the file of the first respondent, is quashed. Consequently, the petitioner would be entitled for the retirement benefits, and other pensionary benefits. It is made clear that the petitioner shall not be eligible to claim backwages from the date of original order of dismissal till the date of his reaching the age of superannuation.

17. In the result, the Writ Petition stands allowed accordingly. The respondents shall endeavour to disburse the terminal benefits, atleast, within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gv



To

1. The Additional Registrar of Co-op Societies,
Chennai Region (Full Additional Charge)
Chennai - 18.

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2. The Special Officer,
Washermanpet Co-operative
Stores Ltd., XNC - 589,
Old No.91/2, New No.248,
P.A.N. Rajarathinam Road,
Chennai - 600 021.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.34476

+1cc to the Government Pleader, S.R.No.34943

W.P.No.34140 of 2016

PMK (CO)
CS/13/08/2021