



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.40037 OF 2016

M.Kalyana Sundaram

...Petitioner

Vs

- 1.The Principal Secretary
Co-operation, Food and Consumer Protection
Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.
- 2.The Joint Registrar of Co-operative Societies,
Perambalur Region,
Perambalur,
Perambalur District.
- 3.The Co-operative Sub-Registrar/
Special Officer,
PR2 Perambalur District
Consumer Co-operative Wholesale Stores Ltd.,
No.5, K.R.Complex,
Thuraimangalam 621 220.
Perambalur.
- 4.PR.2 Perambalur District Consumer Co-operative
Wholesale Stores Ltd.,
No.5, K.R.Complex,
Thuraimangalam 621 220.
Perambalur
represented by its Managing Director.

...Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of writ of certiorari calling for the records in Proceedings in Rc.1339/2009 dated 9.11.2011 on the file of the 3rd Respondent and as confirmed by the 2nd and 1st Respondents by the order passed in Na.Ka.5835/011/sa.pa dated 12.06.2015 and passed in Government Order (D) No.210 dated 16.09.2016 respectively and quash the said orders made therein.



For Petitioner : Mr.R.Jeyaram
For R1 & R2 : Mr.S.Prabhakaran
Government Advocate
For R3 & R4 : Ms.P.Rajalakshmi
for Mr.L.P.Shanmugasundaram

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O R D E R

Pursuant to the charge dated 9.3.2009 issued by the 3rd respondent, to the effect that the petitioner had submitted an office note to the Special Officer of the 4th respondent stores stating that sweets can be prepared for Diwali and sold through 600 ration shops under the control of the Co-operative department, he was subjected to an enquiry whereby this charge came to be held as proved. The 3rd respondent herein through his order dated 09.11.2011 had imposed the punishment of dismissal from services. The order was later confirmed by the 1st respondent on 16.09.2016. Aggrieved against these actions, the present Writ Petition has been filed.

2. The learned Counsel for the petitioner predominantly raised two grounds. Firstly, he would submit that there was a considerable delay in filing the Enquiry officer's report after conclusion of the Enquiry, which is opposed to Rule 104 (6) (a) of Tamil Nadu Co-operative Societies Rules, 1988. Secondly, it is submitted that the petitioner was charged on the assumption that he was holding the post of 'Superintendent' where actually he was an 'Assistant' during the relevant year 2006. Since the Enquiry Officer's findings had also proceeded on the basis that the petitioner was a 'Superintendent', the very charge itself cannot be sustained.

3. Per contra Ms.Rajalakshmi, standing Counsel for 3rd and 4th respondents would deny the statement that the petitioner was not a Superintendent at the relevant point of time and that the time stipulated is only directory in nature, since there is a provision for extension of said time as contemplated under Rule 104 (4).

4. Mr. S.Prabhakaran, learned Government Advocate would adopt the arguments advanced by the learned Counsel for the 3rd and 4th respondents and submit that there is no infirmity in the orders passed by the Government dated 05.08.2015 and 16.09.2016.

5. I have given careful consideration to the submissions made by the respective Counsels. In so far as the first ground raised by the petitioner is concerned, Rule 104 (6) (a) of the Tamil Nadu Co-operative Societies Rules, 1988 reads as follows,



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"(6) (a) The Enquiry Officer, or Inspecting Officer or Investigation Officer shall submit his report on the matters on which enquiry is ordered to be held or inspection or investigation is ordered to be made to the Registrar within such time as may be specified by the Registrar but not exceeding ten days from the date of completion of the enquiry or inspection or investigation."

6. The report specified in the aforesaid rules relates to an enquiry contemplated under Section 82 of the Tamil Nadu Co-operative Societies Act. A plain reading of the aforesaid rules indicates that on completion of the enquiry, the Enquiry Officer is mandated to submit his report within a period of 10 days there from, in the absence of any time specified by the Registrar in this regard.

7. The inspection report dated 27.02.2009 indicates that the Enquiry had commenced on 25.06.2007 and completed on 24.10.2007. However, the Enquiry report came to be filed only on 27.02.2009, which is more than one year and eight months. Apparently, the delay is not a conformity with the limitation of 10 days prescribed under Rule 104 (6) (a) of the Tamil Nadu Co-operative Societies Rules and on this ground, the enquiry report itself cannot be legally sustainable.

8. The grounds raised by the learned Counsel for the 3rd and 4th respondents is that the limitation for submission of report is directory in nature is concerned, is not in conformity with the rules. The learned Counsel had placed reliance on the Rule 104 (4) which does not speak about submissions of the Enquiry report. On the other hand, the Sub-Rule 4 pertains to an application seeking for extension of time for the purpose of concluding the enquiry and not for filing of report.

9. In so far as the second ground raised by the petitioner is concerned, the inspection report dated 27.02.2009 clearly indicates that at the time of the inspection conducted on 27.06.2007, the petitioner herein was employed as an 'Assistant' among the four Assistants in the 4th respondent Co-operative societies. The names of the four Superintendents is also reflected in the inspection report and that does not carry the name of the petitioner. The charges against the petitioner pertains to an event which occurred in the year 2006. Obviously the petitioner must have been employed only as an 'Assistant' during the year 2006 as per the inspection was conducted in the year 2007, which affirms that the petitioner was an 'Assistant' in the year 2007. The designation of the petitioner gains importance in the present case since the findings in the enquiry report indicates that, since the petitioner was employed as a



'Superintendent', he had failed to take the permission of the Deputy Registrar for manufacture and sale of sweets for the Diwali festival in the year 2006 and accordingly had come to the conclusion that the charge against him in this regard stands proved. Had the Enquiry Officer taken note of the fact that the petitioner was not employed as a 'Superintendent', such a findings would not have been rendered and consequently the ultimate finding that the charges in the report may have been differed. In view of the inspection report dated 25.06.2007 which ratifies that the petitioner was employed only as a 'Assistant', the enquiry report dated 12.11.2009 presuming the petitioner to be a 'Superintendent' cannot be sustainable.

10. Consequently, the punishment imposed by the 3rd respondent herein on 09.11.2011, as well as the consequential orders passed in the revision and the appeal thereafter by Government, cannot be sustained.

11. In the result, Proceedings in Rc.1339/2009 dated 9.11.2011 on the file of the 3rd Respondent and as confirmed by the 2nd and 1st Respondents by the order passed in Na.Ka.5835/011/sa.pa dated 12.06.2015 and passed in Government Order (D) No.210 dated 16.09.016 respectively are quashed. Accordingly, the Writ Petition is allowed. In view of the allowing of the Writ Petition, the petitioner shall be entitled for all the service and retirement benefits, as if the petitioner was never discharged from his services. The respondents herein shall endeavour to disperse all the monetary benefits to the petitioner as expeditiously as possible, in any event within a period of 4 weeks from the date of receipt of copy of the order.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To

1.The Principal Secretary
Co-operation, Food and Consumer Protection
Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.



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

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3.The Co-operative Sub-Registrar/
Special Officer,
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Consumer Co-operative Wholesale Stores Ltd.,
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4.PR.2 Perambalur District Consumer Co-operative
Wholesale Stores Ltd.,
No.5, K.R. Complex,
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Perambalur
represented by its Managing Director.

+2ccs to Mr.R.Jeyaram, Advocate SR.No.67002

+1cc to the Government Pleader SR.No.67518

W.P.No.40037 of 2016

GSM(CO)
RVM(03/01/2022)