



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.6071 of 2014

WEB COPY

K.Sethuraman

... Petitioner

vs..

1. The Joint Registrar of Cooperative Societies,
Madurai Region,
Madurai.

2. The Special Officer/Managing Director,
No.975, Madurai District Central Cooperative Bank,
No.187, North Veli Street,
Madurai - 625 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records from the first respondent in his proceedings in Revision Petition No.14/2012 r.g> dated 05.03.2014 by confirming the order of the second respondent in his proceedings in R.C.894/03.04, g.1, dated 21.04.2004 and quash the same and consequently direct the respondents to pay the arrears of amount due to him within a period stipulated by this Court.

For Petitioner : Mr.J.Saranya
for Mr.N.Sathish Babu

For R-1 : Mr.J.K.Jayaseelan
Government Advocate (civil side)

For R-2 : Mr.D.Shanmugaraja Sethupathi

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records from the first respondent in his proceedings in Revision Petition, dated 05.03.2014 by confirming the order of the second respondent in his proceedings, dated 21.04.2004 and quash the same and consequently direct the respondents to pay the arrears of amount due to him within a period stipulated by this Court.

2. The petitioner was appointed as Junior Supervisor in the second respondent bank at Bodinayakanur Branch in the year 1971. Then, he was promoted as Senior Assistant and then as Assistant



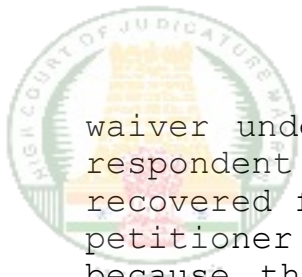
Manager. The petitioner served in the second respondent bank at Chinnamanur Branch, Theni District and retired from service on 31.01.2006. When the petitioner was working as a Assistant Manager in the second respondent bank at Bodinayakanur Branch, the petitioner sanctioned 631 loans for the members to set up Bio Gas service. Out of 631 beneficiaries, 98 persons have defaulted in repayment of loan, for which the petitioner has taken necessary steps to recover the loan by filing the recovery applications before the Sales Officer, Theni, in ARC No.1293/08.08.2003 to 1390/08.08.2003.

3. The second respondent has issued a charge memo, dated 14.07.2003 and the charge is that the petitioner has not taken necessary steps to recover the said loans. The petitioner submitted an explanation and without accepting the explanation, the second respondent imposed the punishment of stoppage of increment without cumulative effect for a period of two years, vide order, dated 21.04.2003. Thereafter, the petitioner was permitted to retire on 31.01.2006.

4. In the mean while, the Government of Tamil Nadu issued G.O.No.17, dated 27.02.2009, wherein, it has waived the defaulted loans sanctioned to the beneficiaries to set up Bio Gas. Relying on G.O.No.17, dated 27.02.2009, the petitioner has stated that there is no monetary loss for the second respondent. The learned Counsel appearing for the petitioner submitted that based on this G.O.No.17, dated 27.02.2009, the petitioner has given a representation, dated 12.04.2004, to consider and revoke the order of stoppage of increment and the same was rejected by the second respondent on 23.4.2012, for the reason that the second respondent has no authority to review his own order. Therefore, the petitioner preferred a Revision Petition under Section 153 of Tamil Nadu Cooperative Societies Act in Revision Petition No.14 of 2012.

5. The second respondent has filed a counter in the said Revision Petition and after hearing the parties, the first respondent has dismissed the Revision Petition, dated 05.03.2014. Aggrieved over the same, the present writ petition is filed.

6. The first respondent has filed a counter affidavit stating that the petitioner was examined in the domestic enquiry and adequate opportunity was granted to cross examine the witness. After proper analysis the Enquiry Officer has submitted the enquiry report. Since, a full fledged enquiry was conducted, there is no violation of principles of natural justice. The contention of the petitioner is that there is no financial loss, since there is



waiver under G.O.No.17, dated 27.02.2009, cannot be accepted. The respondent submitted that, if the loan amount is sought to be recovered from the petitioner through recovery proceedings, then the petitioner may contend that the bank cannot recover the loss, because the loan amount was waived by the Government. But in the present case the punishment is imposed for the charge of negligence and dereliction of duty and not for recovery of loss. Hence, the petitioner cannot take advantage of the Government order No.17, dated 27.02.2009, which waive the Gas loan. The Revisional authority has heard the parties and has come to the independent conclusion, and the same cannot be found fault. The power of the Revisional authority is to see, whether the individual is refused fair treatment and whether the competent Officer has granted natural justice and there is violation of principles of natural justice. Since no such allegations were levelled, the petitioner cannot be aggrieved and prays for dismissal of this Writ Petition.

7. The second respondent bank has also filed a separate counter affidavit stating that the petitioner has submitted an explanation, wherein, it has been stated that legal action cannot be taken against the borrower, due to work load and pleaded apology. Since the petitioner has accepted the guilt, the punishment was imposed. The petitioner was granted opportunity to cross examine and there is no violation of principles of natural justice and for other contention the counter affidavit is similar to the contention of the first respondent.

8. Heard Mr.J.Saranya, learned Counsel appearing for the petitioner and Mr.J.K.Jayaseelan, learned Government Advocate appearing for the first respondent and Mr.D.Shanmugaraja Sethupathi, learned Counsel appearing for the second respondent.

9. The learned Counsel appearing for the petitioner contended that there is no loss to the Government, since the G.O.No.17 has granted waiver to all the beneficiaries, who obtained loan for Bio Gas Scheme. The petitioner has stated that legal proceedings were initiated as per the proceedings in ARC No.1293/08.08.2003 to 1390/08.08.2003, so the respondent cannot allege that the petitioner has not taken any action. The entire punishment was granted based on the single ground that the petitioner has accepted the guilt, which the petitioner has denied stating, the reason of work load cannot be taken as acceptance of guilt. Since the second respondent has directed to file the Revision Petition, the petitioner has filed this Revision Petition and the Revisional authority has entertained the Revision Petition and has condoned the delay and at this stage, delay and laches cannot be alleged.



10. The learned Counsel appearing for the second respondent has stated that since the petitioner is retired from service, there is no employer and employee relationship and at this stage a petition to reduce the punishment cannot be entertained. In a similar case the Honourable Division Bench of this Court in W.A.No.180 of 2015, dated 09.04.2018, has held as follows:

"There was no employer and employee relationship between the appellant and the Police Department as on the date on which the writ petition im W.P.Np.8556 of 2009 was filed by the respondent. The respondent ought to have challenged the punishment imposed by the disciplinary authority during the currency of his service. There is no question of permitting the respondent to challenge the order which was passed during the currency of his service after a period of four years and more particularly after the termination of the relationship between the employer and employee."

11. The second respondent also relied on in another order in W.P.No.6794 of 2010 dated 07.06.2019, wherein, this Court has held as follows:

"Based on the enquiry report, three old actions are permissible:-

- Departmental disciplinary proceedings can be initiated.*
- Criminal prosecution can be launched by registering complaint before the Commercial Crime investigation of the Police Department.*
- Surcharge proceedings can be initiated under Section 87 of the Act."*

12. From the above order, it is clear that Departmental proceedings, Criminal prosecution and Surcharge proceedings are independent to each other. So the petitioner cannot claim that there is no loss to the bank and no Surcharge proceedings were initiated and therefore, the Departmental proceedings ought to be dropped, which cannot be accepted.

13. After perusing the affidavit and the relevant papers, this Court is of a firm view that this writ petition is liable to be



dismissed on the ground of laches. Since, the petitioner was imposed punishment in the year 2004, the petitioner was retired in the year 2006, the G.O.No.17 was passed in the year 2009 and then the petitioner has submitted a representation in the year 2012. As rightly pointed out by the second respondent, there is no Employer/Empolyee relationship to consider the claim of the petition to reduce the punishment. It is submitted that stoppage of two increments will come around Rs.1678/- and the currency of the punishment is also over and it is not affecting the pension of the petitioner.

14. Therefore, this Court is not inclined to grant any releif to the petitioner. Hence, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

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Madurai Region,
Madurai.

2. The Special Officer/Managing Director,
No.975, Madurai District Central Cooperative Bank,
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+1 CC to M/s.SPL GP (SR-36720[F] dated 01/12/2021)

W.P. (MD)No.6071 of 2014

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RD(5.01.2022) 5P 4C