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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.699 of 2010

and

M.P. No.1 of 2010

M. Alagarsamy

... Petitioner

Vs.

1. The Additional Registrar
(Sale Project & Development)
Co-operative Societies
Registrar Office, (NVN Malagai)
170, Periyar EVR High Road,
Keelpauk, Chennai - 10.
2. The Joint Registrar/President
Public Service Committee,
Tiruvarur Zone,
Thiyagarajapuram, Tiruvarur.
3. The Special Officer,
Z-789, Narthangudi Co-operative
Credit Society, Narthangudi & Post,
Nidamangalam - 614404,
Tiruvaru District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the impugned order dated 02.11.2009 made in Na.Ka.No.89604/09 Sapal on the file of the 1st Respondent and quash the same and direct the Respondents to promote me as Secretary of the 3rd Respondent co-operative Society.



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For Petitioner : Mr.J.Nandagopal
For Respondent 1: Mr. S. Arumugam
Government Advocate

For Respondent 2 : Mr.S.Rajesh
Government Advocate

For Respondents 3 : Mr.S. Prabakaran
Government Advocate

ORDER

This writ petition is filed challenging the order passed by the 1st Respondent under Section 153 of the Tamil Nadu Co-operative Societies Act 1983 in Na.Ka.No.89604/09 Sapal dated 02.11.2009, to quash the same and to further direct the Respondents to promote the petitioner as Secretary of the 3rd Respondent Society.

2. Brief facts that may be relevant are set-out hereunder:

a. The petitioner was appointed in the 3rd Respondent Society as Attender on 01.07.1973. The petitioner was thereafter promoted as Clerk, Assistant Secretary and finally as Secretary of the 3rd respondent Society in the year 1991. During the audit for the year 2002-2003 of the 3rd Respondent Society, the auditor found certain irregularities and submitted a special report for further action. In the mean while an inspection report was also submitted stating various irregularities in the Savings Bank accounts of the 3rd respondent Society. On perusal of the special report and the inspection report the Deputy Registrar ordered an inspection under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983. The Inspection Officer submitted a report recommending disciplinary action against the petitioner. Pursuant thereto the Deputy Registrar directed the Special Officer to send a proposal along with a draft charge memo for the approval of the Thiruvavur Region Primary Agricultural Co-operative Bank, Secretary, Common Cadre Committee. There were 5 charges originally framed against the petitioner out of which charges 1, 2 and 4 was found to be proved and is the subject matter of challenge in this writ petition viz.,

i) Charge 1: Misappropriation of funds from Savings Account and tampering with the accounts.



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ii) Charge 2: Misappropriation of funds by tampering with the accounts and misuse of the cheques of account holders.

iii) Charge 4: Advances being paid to the staff without obtaining necessary permission and sanction of the Special Officer.

3. On perusal of the proposal it was resolved by the committee to take disciplinary action against the petitioner and the charge memo was approved, which was served on the petitioner on 20.09.2007. The Special Officer appointed a Domestic Enquiry Officer to conduct the enquiry in compliance with the procedures set out in the Rules and Regulations for such Domestic Enquiry. After giving the petitioner adequate opportunity and after obtaining the petitioner's explanation the Domestic Enquiry Officer submitted his report on 05.12.2007 which was in turn submitted before the Common Cadre Committee for perusal. The Committee resolved to accept the Domestic Enquiry Report wherein it was found that three out of the five charges namely charges 1, 2 and 4 were proved. The Committee also resolved to forward its decision along with Domestic Enquiry report to the petitioner and to obtain his explanations, if any, on the decisions of the committee vide its resolution dated 31.07.2008. The same was duly served on the petitioner through the Joint Registrar of Co-operative Societies. Though it was initially proposed to dismiss the petitioner from service, however the Common Cadre Committee considering the plea of the petitioner that the order of dismissal from service would adversely affect his family and thus imposition of a lesser punishment may be considered on humanitarian grounds.

4. On consideration of the material on record and gravity of the charges and also the plea of the petitioner for consideration of lesser punishment on humanitarian grounds. The 3rd respondent vide order dated 03.01.2009 imposed the punishment of reduction in rank from the post of Secretary to that of Assistant Secretary and fixed his pay and allowances on the scale as it existed in the year 1999.

5. Aggrieved by the same the petitioner filed a revision petition on 07.05.2009 to the Additional Registrar of Co-operative Societies which was rejected on the ground of delay.

6. Aggrieved by the same the petitioner preferred a W.P. No. 13913 of 2009, wherein this Court by an order dated 22.07.2009 was pleased to direct the revision petition to be entertained and to pass orders on merits thereon and granted an opportunity to the petitioner to put forth his contention within



a period of three months from the date of receipt of a copy of the order. Pursuant to the above directions of this Court, the revision petition was heard and disposed of vide order dated 02.11.2009, confirming the order of the Special Officer and Joint Registrar of Co-operative Societies.

7. Aggrieved by the above order of the Revisional Authority, the petitioner has filed this petition.

8. Before we proceed further it is relevant to note that the petitioner had admitted before the enquiry officer that he had misappropriated the funds from savings account by manipulating/tampering with the accounts with regard to Charge 1. Again, with regard to charge No.2 it was seen that misappropriation of funds by tampering with the accounts and misuse of the cheques of the account holders was admitted by the petitioner whose only defence was that the funds so misappropriated has been repaid with interest. With regard to charge No.4 viz., that the petitioner had without obtaining the permission of the Appropriate Authority had granted salary advance resulting in loss to the 3rd Respondent Society, which was also admitted to by the petitioner.

9. Importantly, the petitioner had admitted all the three charges before the enquiry officer and it was found in the impugned order that the petitioner had also admitted to the above allegations before the Inspection officer and the Domestic Enquiry Officer. It was found by the first respondent in the impugned order that the petitioner had misappropriated funds by tampering/manipulating entries in the savings bank account. The Society suffered huge losses, in view of the wrong entries in the savings account and Sales omission, apart from the advances paid to the staff without obtaining necessary permission and sanction of the Special Officer in gross violation of Code of Conduct.

10. The learned counsel for the petitioner submitted that the impugned order is unsustainable primarily on the following grounds viz.,

a. That the impugned order is bad in law as it has been made violation of principles of natural justice.

b. The punishment of reduction of rank from the post of Secretary to Assistant Secretary and also fixing the pay scale existing in the year 1999 would amount to double jeopardy and that it is excessive and disproportionate to the charges.



11. To the contrary it was submitted by the learned counsel for the respondent that the petitioner having admitted charges 1, 2 and 4 relating to misappropriation which is grave does not warrant any leniency. It was further submitted that Courts have repeatedly held that with regard to any act of misappropriation the delinquent does not deserve any leniency for the act of misappropriation shakes the confidence/faith of the employer and thus prayed for the dismissal of the writ petition.

12. On going through the entire records and also the submissions of the learned counsel for the petitioner and the learned counsel for the respondents the challenge to the impugned order would have to fail for the following reasons:

A. Violation of principles of Natural Justice:

Insofar as the ground that the impugned orders suffers from violation of natural justice, we find that the same is contrary to the facts and material on record which would show that the above ground is clearly baseless. In this regard it may be relevant to record and note that the Revisional Authority while dealing with the ground of violation of natural justice has found that the same is not sustainable inasmuch as the petitioner had admitted all the charges and had not submitted any explanations to the proposal to initiate disciplinary action. Further, the Domestic Enquiry Officer had issued a summon on 01.10.2007 intimating the petitioner that the enquiry would be conducted on 11.10.2007. Pursuant thereto enquiry was conducted on 11.10.2007 and 26.11.2007. It was thus found by the Revisional Authority that the above would show that the petitioner was provided with adequate opportunity and the plea of violation of natural justice is specious and baseless. Further, the plea of double jeopardy is on the ground of misconception and cannot be sustained.

Misappropriation - No room for leniency:-

13. The charge of misappropriation and misuse of funds of the 3rd Respondent Society by the petitioner and which is also admitted to by the petitioner is serious and grave. In this regard, it may be useful to refer to the following judgments wherein the charge of misappropriation has been found warranting severe punishment and it has been consistently held that there is no place for generosity or misplaced sympathy in such cases.

a. In the case of U.P. SRTC v. Vinod Kumar, (2008) 1 SCC 115 : (2008) 1 SCC (L&S) 1 : 2007 SCC OnLine SC 1479 at page 118 wherein it was held as follows:



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"10.....This Court in a number of judgments has held that the punishment of removal/dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds; and the courts should be reluctant to reduce the punishment on misplaced sympathy for a workman. That, there is nothing wrong in the employer losing confidence or faith in such an employee and awarding punishment of dismissal. That, in such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering with the quantum of punishment....."

b. In the case of Secretary to the Panchayat Raj v. Mohd. Ikramuddin, 1995 SCC (L&S) 1246 at page 1247 wherein it was held as follows:

"4. It is not necessary for us to deal with any other finding reached by the High Court because we are of the view that the charge of misappropriating and misusing the government funds is proved against the respondent on his own admission. This alone is sufficient to warrant the dismissal of the respondent from the service. We, therefore, allow the appeal, set aside the impugned judgment of the Tribunal and uphold the dismissal of the respondent from service. No costs."

In the case of Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd.) v. Secy., Sahakari Noukarara Sangha, reported in (2000) 7 SCC 517 wherein it was held as follows:

"Apparently, it would be an unjustified direction to reinstate an employee against whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though a number of such misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot be rewarded or legalised by reinstatement in service with full or part of back wages."

14. It may also be relevant to note that the submissions of the petitioner that the misappropriated fund has been re-paid with interest only needs to be noticed to be rejected. In this regard it may be relevant to refer the decision of the Supreme Court in the case of Narendra Nath Bhalla v. State of U.P., reported in (2007) 15 SCC 775 wherein it was held that the repayment of money does not absolve the employee who is found guilty of the serious charge of misappropriation and the relevant portion is extracted hereunder:



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"Learned counsel for the appellant also submitted that the appellant has already paid back the money which was held proved against him that he had misappropriated. Mere repayment of money does not absolve him of serious charge of misappropriation. The last submission that the punishment imposed on the appellant is too harsh also does not appeal to us, having regard to the serious nature of charges including the misappropriation of money and issuing a receipt on plain paper and reflecting it in the official record as something else..."

15. In view of the above we do not find any reason to interfere with the order of the first respondent and this writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

smn
To

1. The Additional Registrar (Sale Project & Development)
Co-operative Societies Registrar Office, (NVN Malagai)
170, Periyar EVR High Road, Keelpauk, Chennai - 10.
2. The Joint Registrar/President Public Service Committee,
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