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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.No.3083 of 2021
and
CMP.No.21372 of 2021

1. The Government of Tamil Nadu,
Represented by its Secretary,
Cooperative, Food and Consumer
Protection Department,
Fort St. George, Chennai - 600 006.
 2. Registrar of Cooperative Societies,
Kilpauk, Chennai - 600 010.
 3. Joint Registrar,
Villupuram Region,
Villupuram.
- ...Appellants/Respondents

Vs

R. Venu ... Respondent/Petitioner

Appeal filed against the order passed by this Court dated 25.02.2019 in WP No.11134 of 2011.

Prayer in WP.No.11134/2011:

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorified Mandamus calling for the connected records from the first respondent and quash the order of the first respondent bearing A.B.(2D) No.121, Co-Operative, Food and consumer protection Department, dated 25.11.2009, confirming the order of the 2nd respondent dated 23.04.2007 bearing R.C.No.37256 of 2005, D-A3 and the order of the 3rd respondent dated 23.06.2004, bearing Na.Ka.No.12225/2003, Pa.A as illegal, arbitrary and contrary to law and consequently direct the respondents to restore the increment and pay all arrears of increment.



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For appellants : M/s. S. Anitha,
Government Advocate

For Respondent : Mr. Balan Haridoss

J U D G M E N T
(made by, M.DURAI SWAMY, J.)

Challenging the order passed in W.P.No.11134 of 2011, the respondent in the writ petition has filed the above writ appeal.

2. The respondent herein filed the writ petition to issue a Certiorified Mandamus to call for the records from the file of the first respondent and quash the order of the first respondent dated 25.11.2009, confirming the order of the second respondent dated 23.04.2007, and the order of the third respondent dated 23.06.2004, and consequently, direct the appellants to restore increment, and pay all the arrears of increment.

3. It is the case of the respondent that at the relevant point of time, he was working as a Special Officer at Vellimalai Lamp Co-operative Society and on 01.04.2003, he was issued with a charge memo under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. As per the charge memo, six charges were framed against the respondent relating to his failure to send the defect rectification report in respect of final audit for the years commencing from 1983-84 to 1991-92. According to the charge memo, the respondent has not taken steps to rectify the audit objection, being the Special Officer of the society. Based on the charge memo, a departmental enquiry was conducted in respect of all the six charges framed against the respondent and the enquiry officer found Charge Nos. 1, 2, 3, 5 and 6 were not proved and Charge No.4 alone was found to be proved. The disciplinary authority imposed the punishment of stoppage of increment for one year with cumulative effect. Challenging the same, the respondent filed an appeal before the second respondent/appellate authority and the appellate authority rejected the appeal by order dated 23.04.2007. A further appeal was preferred and the same was also rejected on 25.11.2009. Challenging the order passed by the appellants, the respondent filed the writ petition.

4. On a perusal of the materials available on record and the submissions made by the learned counsel on either sides, it could be seen that the charge memo was issued to the respondent after a lapse of 15 years from the date of the discrepancies noticed by the audit. It is pertinent to note that during the said period, the respondent was not employed as a Special Officer in the society. The findings of the inquiry officer with



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regard to charge Nos.1, 2, 3, 5 and 6 cannot be segregated from the findings of the inquiry officer with regard to charge No.4. All the charges framed against the respondent are inter-related and Charge No.4 alone cannot be segregated and found to be proved.

5. The learned Single Judge while allowing the writ petition has rightly took into consideration the delay in initiating the disciplinary action against the respondent. It is pertinent to note that there was no explanation forthcoming from the appellants for the inordinate delay of 15 years in initiating action against the respondent. When the discrepancies had happened during the period 1983-84, the appellants for the reasons best known to them have remained silent for 15 years.

6. The learned Single Judge has also rightly observed that the initiation of disciplinary action against the respondent appears to be on a mala fide consideration and therefore, found that such disciplinary action initiated by the third respondent in the writ petition suffers from colourable exercise of power. The learned Single Judge also observed that since it is a case of no evidence, the findings of the inquiry officer in respect of Charge No.4 will have to be interfered with. The learned Single Judge also observed that the inquiry officer's findings in respect of Charge No.4 cannot be singled out without there being any proper explanation, which ultimately invited the impugned penalty from the disciplinary authority. It is also evident that the appellate authorities have blindly chosen to dispose of the appeals without proper and due exercise of the issues on hand.

7. The appellate authority have not taken into consideration the crucial aspect of delay in initiating the disciplinary action against the respondent.

8. In view of the unexplained delay in initiating the disciplinary action, the orders impugned in the writ petition were rightly set aside by the learned Single Judge.

9. The learned Single Judge also observed that the findings rendered by the Inquiry officer in respect of Charge No. 4 cannot be sustained both in law and on facts for the simple reason that the findings in respect of Charge Nos.1,2,3,5 and 6 will also hold good in favour of the 4th charge as well.

9. The learned Single Judge has taken into consideration all these aspects and rightly set aside the orders impugned in the writ petition and allowed the writ petition.



10. We do not find any ground to interfere with the orders passed by the learned Single Judge and the writ appeal is devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

mrn

To

1. The Government of Tamil Nadu,
Represented by its Secretary,
Cooperative, Food and Consumer
Protection Department,
Fort St. George, Chennai - 600 006.
2. Registrar of Cooperative Societies,
Kilpauk, Chennai - 600 010.
3. Joint Registrar,
Villupuram Region,
Villupuram.

+1cc to Mr.Balan Haridas, Advocate, S.R.No.3822
+1cc to the Government Pleader, S.R.No.3698

W.A.No.3083 of 2021
and
CMP.No.21372 of 2021

PCH(CO)
CB(04/02/2022)