



W.P. No. 13948 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P. No. 13948 of 2015
and WMP.No.34500 of 2016

M.Murugesan

...Petitioner

Vs

1. The Principal secretary to Government
Co-op. Food and Consumer
Protection Departmental Secretariat
Chennai-9

2. The Joint Registrar of Co-op. Societies
Salem Zone
Salem-7

3. The Special Officer
Salem District Co-op printing press
No.8, Sangaralayam Road
Salem-1

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of writ calling for the records connected with the orders of the 1st respondent dated 27.10.2014 passed in G.O.Ms.No.115 on the petitioner's review petition, confirming his



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previous order dated 08.10.2010 passed in G.O.Ms.No.145- modifying the punishment of discharge dated 31.08.2005 imposed on the petitioner by the 3rd respondent to one that of stoppage of increment for one year with cumulative effect and his consequent reinstatement without any monetary benefits treating the said interregnum period of non-employment as leave on loss of pay on the appeal filed by the petitioner, quash the same and also direct the respondent to grant all the service and other attendant benefits including monetary benefits from the date of suspension on 24.12.2004 to the date of reinstatement on 01.12.2010.

For Petitioner : M/s. S.Girija

For Respondents : Mr.M.Rajendran for R1 & R2
Add.Govt Pleader
Mr.L.P.Shanmugasundaram for R3

ORDER

This Writ Petition is filed praying to quash the impugned order of the 1st respondent-Principal Secretary to Government, dated 27.10.2014, whereby, the first respondent modified the punishment from discharge of service into stoppage of one year increment with cumulative effect without monetary benefits. The petitioner further seeks for a direction to the respondents to provide all the service and other benefits from the date of suspension on 24.12.2004 to the date of reinstatement on 1.12.2010.



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2. It is averred in the writ petition that the petitioner joined as a Binder on 23.10.1978 under the service of the 3rd respondent/press and retired from service on 30.06.2011 on attaining the age of superannuation. During his service, since he was holding the post of Secretary in the Salem Cooperative printing Press Association, he sent complaint letter dated 26.09.2004 and 29.09.2004 against Mr.G.Ganesan, Special officer and Mr.K.Arumugam, Administration officer respectively. During the said period, dispute under Section 2 (k) Industrial Dispute Act was initiated on 15.12.2004, seeking redressal of 10 genuine demands of workers. Conciliation was held on 22.12.2004. Following the same, the petitioner was suspended from service on 24.12.2004.

3. Since the 3rd respondent has not obtained prior permission of the Labour Officer before suspending the petitioner, who was a protected workman, the petitioner sought for revocation and a petition was filed by the Union on 28.12.2004 before the Labour Officer.



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4. The 3rd respondent-Society issued charge memo dated 17.01.2005 on the petitioner, levelling four charges. In the enquiry, the petitioner could not participate, so the petitioner made a representation dated 30.7.2005, seeking re-enquiry, but the same was rejected. The Enquiry Officer issued 2nd show cause notice on the petitioner. The enquiry officer held that out of four charges, charges Nos. 1 and 2 were found proved. Rejecting petitioner's request to give his explanation, a final order of discharge dated 31.8.2005 was passed by the 3rd respondent.

5. Aggrieved by the punishment of discharge, the petitioner filed an appeal dated 12.02.2007 before the 1st respondent, who modified the order of discharge into one stoppage of increment for 1 year with cumulative effect, but the reinstatement was ordered without any monetary benefits for the interregnum period i.e from the date of suspension on 24.12.2004 till the date of reinstatement on 01.12.2010 and that the said period was treated as leave on loss of pay.



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6. Aggrieved by the order passed in appeal whereby the punishment is only modified, the petitioner filed a review petition dated 27.10.2014. The 1st respondent rejected the said review petition and confirmed the order passed in appeal dated 08.10.2010.

7. Challenging the above said orders passed by the respondents, the petitioner filed the present writ petition.

8. The respondents filed counter affidavit and stated that the petitioner had quarrelled with his superior officers during office hours and hence, charge memo was issued. The disciplinary action taken against the petitioner is purely departmental action. Enquiry was conducted by following the principles of natural justice. The petitioner was paid subsistence allowance as per law. The order of the 1st respondent in rejecting the review petition is legally valid one and the same need not be interfered with.

9. This court considered the submissions of both sides.



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10. A perusal of the averments and counter affidavit would go to show that four charges were levelled against the petitioner. The enquiry officer found that charges 1 and 2 were found proved. Second show cause notice along with report of enquiry officer was sent to the petitioner on 13.08.2005. Based on the said enquiry report, 3rd respondent discharged the petitioner from service by order dated 31.08.2005 w.e.f 01.09.2005. However, in the appeal filed by the petitioner, the 1st respondent, taking into consideration the grounds of appeal, modified the punishment of discharge into stoppage of one year increment with cumulative effect, without monetary benefits for the intervening periods and it was treated as leave on loss of pay. Feeling not satisfied with the above modification, review petition was filed by the petitioner which was dismissed on 27.10.2014. Now the petitioner seeks for a direction to the respondents to grant him the service and other attendant benefits including monetary benefits from the date of suspension to the date of reinstatement (from 24.12.2004 to 01.12.2010).

11. On perusal of typed set of papers would go to show that the Inspector of Factories by his letter dated 27.05.2005 intimated the 3rd



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respondent to maintain status quo in the matter. The Inspector of Factories, on consideration of petition filed by the Union dated 28.12.2004, found that once a reference under Section 33-A has been taken for adjudication, it is not open to the Management to issue order of suspension against the Union Office bearers. The Inspector of Factories further viewed that such an act of suspension order passed by the 3rd respondent is in contravention of Section 33-A of the I.D.Act. Therefore, the Factories Inspector informed the Special Officer, 3rd respondent Society to maintain status quo.

12. The requirements of the proviso to Section 33 of the I.D.Act, have to be satisfied by the employer. In the case on hand, it is seen that the suspension order dated 24.12.2004 and the order of discharge dated 31.08.2005 passed by the 3rd respondent has not been approved by the Labour Court. It is well settled that if approval is not granted, the order of dismissal or discharge passed by the employer is wholly invalid or inoperative and the employee can legitimately claim to continue to be in the employment of the employer notwithstanding the order passed by him



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dismissing or discharging him. In short, the order of discharge or dismissal effective, in the absence of approval, such an order is invalid.

13. In view of the above said reasonings, the impugned order passed by the 1st respondent dated 27.10.2014 is quashed. The respondents are directed to grant the service and other attendant benefits to the petitioner including monetary benefits from the date of suspension i.e., 24.12.2004 till the date of reinstatement i.e., 01.12.2010. The said exercise shall be completed within a period of twelve weeks from the date of receipt of this order. No costs.

14. In the result, the Writ Petition is allowed on the above terms. No costs. Consequently connected miscellaneous petition is closed.

12.04.2023

Index:Yes/No
msv/nvsri



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