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W.P.No.18557 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 30.03.2023

Order delivered on 19.04.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.18557 of 2015
and
W.M.P.No.21701 of 2022

S.Sukumar

.... Petitioner

vs

1. The Addl. Registrar of Cooperative Societies,
(Marketing, Planning & Development),
No.170, E.V.R.Periyar High Road,
Kilpauk, Chennai - 600 010.
2. The Addl.Registrar of Cooperative Societies,
(Finance & Banking),
No.170, E.V.R.Periyar High Road,
Kilpauk, Chennai - 600 010.
3. The Joint Registrar of Coop. Societies,
Erode Region, Erode - 638 003.
4. The Joint Registrar of Coop. Societies,
Tiruppur Region, No.377, Kamarajar Salai,
Palladam Road, Tiruppur - 641 604.
5. CE 17, Dharapuram Public Servants'
Cooperative Thrift and Credit Society Ltd.,



W.P.No.18557 of 2015

WEB COPY

rep. by its President,
No.50, Alangiam Road,
Dharapuram - 638 656.
Tiruppur District.

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned Suo-moto Revision Order made in Na.Ka.10241/2014/Sa.Pa. dated 29.05.2015 passed by the 3rd respondent and consequently direct the 5th respondent to reinstate the petitioner into service with all backwages, attendant benefits and other monetary benefits together with continuity of service.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.U.M.Ravichandran
Special Government Pleader
for R1 to R4
Mr.K.V.Shanmuganathan for R5

ORDER

This Writ Petition has been filed challenging the order passed by the 3rd respondent dated 29.05.2015 whereby, the 3rd respondent in suo motu revision, set aside the order of reinstatement passed by the 5th respondent



W.P.No.18557 of 2015

WEB COPY

management dated 28.09.2013 and restored the order of dismissal from service dated 11.08.2011 passed by the erstwhile Special officer of the 5th respondent Society.

2. i) The case of the petitioner is that he was working as a Clerk in the 5th respondent society. The Special Officer of the 5th respondent Society issued a show cause notice on 19.07.2011 calling upon the petitioner to submit his explanation for the alleged irregularities during 1977-1998, on the ground that the dividends to the extent of Rs.46,000/- were not properly disbursed to the members. After more than a period of 11 years of the alleged period of incident, the show cause notice was issued against the petitioner. The petitioner, however, to safeguard his job, as per instructions given by the 4th respondent, deposited the above said amount to the credit of the 5th respondent Society. The petitioner submitted his explanation but without considering the same, the Special Officer of the 5th respondent Society dismissed the petitioner from service on 11.08.2011.

ii) The petitioner preferred a revision under section 153 of the Tamilnadu Cooperative Societies Act, 1983 before the 4th respondent and the 4th respondent passed an order on 03.05.2013 setting aside the order of dismissal from service dated 11.08.2011 and directed the 5th respondent



W.P.No.18557 of 2015

Management to follow proper procedure and after scrutinizing the domestic enquiry report, explanation from the petitioner, to pass an order in accordance with law on merits by following principles of natural justice and the same should be completed within two months. Based on the said order, the petitioner requested the 5th respondent to reinstate him. After conducting an enquiry, the 5th respondent passed Resolution No.2 on 24.08.2013 and reinstated the petitioner into service on 24.08.2013.

iii) While the petitioner was working as Clerk, the three Directors of the 5th respondent Society insisted the 3rd respondent to take suo-moto revision against the order passed by the 4th respondent. Thereafter, the 3rd respondent, taking suo motu revision, passed the impugned order dated 29.05.2015 in the suo motu revision petition by setting aside the order of reinstatement passed by the 5th respondent Management dated 28.09.2013 and restored the order of dismissal dated 11.08.2011. Hence, this writ petition with the aforesaid relief.

3. Heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for the respondents 1 to 4 and the learned counsel appearing for the 5th respondent.

4. i) Learned counsel for the petitioner would submit that the



W.P.No.18557 of 2015

WEB COPY

impugned suo moto revisional order was passed in violation of the provisions of Tamil Nadu Cooperative Societies Act and principles of natural justice. The 3rd respondent has no jurisdiction and authority to take up suo moto revision under section 153 of the said Act, since the 4th respondent who is the jurisdictional authority had already passed an order on the earlier revision petition filed by the petitioner.

ii) Learned counsel would further submit that the 3rd respondent failed to furnish the copies of the relied documents to the petitioner including the complaints given by the erstwhile directors of the 5th respondent Society, but the 3rd respondent, while passing the impugned order, has relied on those documents.

iii) Learned counsel would further submit that the charges were not even proved against the petitioner with material evidence and the domestic enquiry was conducted in violation of principles of natural justice, without permitting the petitioner to examine the members and other witnesses including the officers of the society.

iv) Learned counsel would further submit that the petitioner remitted an amount of Rs.46,119.30 along with interest of Rs.76,757/- to the 5th respondent society only to save the job on the oral assurance given by the



W.P.No.18557 of 2015

then Special Officer and not accepting the guilt of misappropriation of funds as alleged in the charges.

v) Learned counsel would submit that there is no violation in the procedure followed by the management in awarding the punishment of stoppage of increment for a period of two years with cumulative effect but the 3rd respondent usurping the authority of the Board of Management has passed the impugned order which is nothing but a colourable exercise of powers. The Deputy Registrar of Co-operative Societies, Dharapuram has already withdrawn the criminal complaint lodged by him vide his proceedings dated 02.05.2012 and only based on the same, the 5th respondent management has decided to impose the punishment of stoppage of increment for two years with cumulative effect instead of dismissal from service. Therefore, the question of pendency of criminal case on the date of passing of the final order in the disciplinary proceedings by the 5th respondent does not arise.

vi) Learned counsel would further submit that the revisional authority/ 3rd respondent while exercising powers under section 153 of the Act, cannot interfere in the decision of the employer/management in the matter of awarding the punishment to the employee in the course of



W.P.No.18557 of 2015

disposing of the disciplinary proceedings against the employee. Therefore, the impugned orders passed in the suo moto revision is liable to be set aside.

5. i) Per contra, learned Special Government Pleader appearing for respondents 1 to 4 would submit that the petitioner was appointed as Assistant in the 5th respondent Society and promoted as Manager on 1990. While so, he was placed under suspension for certain misconduct and an enquiry was conducted and thereafter, an order was passed on 18.10.2004, imposing punishment of reversion from the post of Manager to Clerk. After three months he claimed the salary of Manager, though he was reverted to Clerk. His request was rejected and hence, he filed revision and the same was rejected vide order dated 29.05.2006. Challenging the same the petitioner filed W.P.No.21057/2006 and the same was dismissed on 11.12.2009 with a specific observation that "in view of the fact that the petitioner was let off with a lesser punishment, this Court is not inclined to interfere."

ii) Learned Special Government Pleader would further submit that when there were irregularities reported against the petitioner in disbursement of dividends to the members and in payment of interest to the Thrift Deposits, the Deputy Registrar of Cooperative Societies, Erode,



W.P.No.18557 of 2015

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ordered for an inspection under section 82 of the Tamilnadu Cooperative Societies Act. The Society framed 14 charges and the charge memo dated 12.02.2011 was served on the petitioner. Simultaneously, the petitioner was placed under suspension and the same was challenged by him in W.P.No.5931/2011, but the said W.P. was dismissed, by order dated 11.03.2011. Thereafter, disciplinary action initiated and the enquiry officer filed his report finding that all the charges levelled against the petitioner are proved.

iii) Learned Special Government Pleader would further submit that thereafter, the second show cause notice dated 19.07.2011 was issued to the petitioner proposing the punishment of dismissal for the proved misconduct against him. The petitioner voluntarily remitted Rs.46,119.30 along with interest of Rs.76,757/- thus Rs.1,22,675.30 in total on 25.07.2011 and submitted his explanation on 29.07.2011 with a request to impose minor punishment. But referring the black mark in his earlier service vide order dated 11.08.2011 the Society imposed the punishment of dismissal from service. The same was challenged by filing yet another revision before the 4th respondent and the 4th respondent remanded the matter to the Society by order dated 03.05.2013 by setting aside the order of dismissal. In the



W.P.No.18557 of 2015

WEB COPY

meantime, there were changes in the management and notice was served on 16.05.2013 to the petitioner, for which he gave explanation. Subsequently, the Board resolved to reinstate the petitioner and order dated 24.08.2013 to that effect was issued.

iv) Learned Special Government Pleader would further submit that among the 11, 5 Directors of the board resigned and the minimum quorum of 6 members, who were the supporters of the President, alone were in the Board. Three, among the 5 resigned Directors sent a detailed complaint on 27.12.2013 to the Registrar of Cooperative Societies, based on which the Additional Registrar sent his report dated 05.09.2014 to the Registrar of Cooperative Societies. As suggested in the report, the 3rd respondent initiated suo motu revision proceedings on the justification of punishment imposed on the petitioner withholding of increment for 2 years with cumulative effect for the proved charges and after sending summons to the petitioner and after hearing and perusing the records, passed the impugned order.

v) Learned Special Government Pleader would further submit that the petitioner has remitted the amount on 25.07.2011 and thus, it shows the self-explanatory for his guilt. Nowhere the petitioner has stated that the payment



W.P.No.18557 of 2015

was made on the assurance of the then Special officer or to protect his job or remitted under protest or without prejudice to his protest etc. Moreover, the petitioner could not rebut the charges with acceptable material evidence. Hence, there is no infirmity or illegality in the impugned order and therefore, prayed for dismissal of the writ petition.

6. This Court, considered the submissions made on either side and perused the materials available on records.

7. Admittedly, the 2nd show cause notice was issued on 19.07.2011, calling upon the petitioner to submit his explanation for the alleged irregularities during 1977-1998 on the ground that the dividends to the tune of Rs.46,000/- were not properly disbursed to the members, i.e., after a period of 11 years from the alleged period of incident. The petitioner, however, deposited the above said amount together with interest to the credit of the 5th respondent Society, in order to safeguard his job. Further, the 3rd respondent did not furnish the copies of the relied documents to the petitioner including the complaints given by the erstwhile Directors of the 5th respondent Society which were relied on by the 3rd respondent while passing the impugned order.



W.P.No.18557 of 2015

WEB COPY

8. It is pertinent to note that the petitioner remitted an amount of Rs.46,119.30 along with interest of Rs.76,757/- to the 5th respondent society. Initially, the petitioner was reinstated into service by awarding a punishment of stoppage of increment for a period of two years with cumulative effect. The Deputy Registrar of Co-operative Societies, Dharapuram has already withdrawn the criminal complaint lodged by him vide his proceedings dated 02.05.2012 and only based on the same, the 5th respondent management has decided to impose the punishment of stoppage of increment for two years with cumulative effect instead of dismissal from service. Therefore, as recorded in the impugned order, the question of pendency of criminal case on the date of passing the final order in the disciplinary proceedings by the 5th respondent does not arise. Further, as rightly argued by the learned counsel for the petitioner, the revisional authority/ 3rd respondent, while exercising the powers under section 153 of the Act, cannot interfere in the decision of the employer/management in the matter of awarding the punishment to the employee in the course of disposing the disciplinary proceedings against an employee.

9. Be that as it may, in the case on hand, the alleged irregularities are said to have occurred in the year 1977-1998 as stated in the show cause



W.P.No.18557 of 2015

WEB COPY

notice and the charge memo was issued after a period of 11 years. This Court, time and again, held that the inordinate delay in the initiation disciplinary proceedings would vitiate the entire proceedings, vide judgments reported in **2009(3) MLJ 108 (R.Rajasekar vs. Secretary to Government, agricultural Department Chennai & others)**, **2009(5) MLJ 1101 (Tamil Nadu water Supply and Drainage Board rep. By its Managing Director Chennai and another vs. A.Abdul Wahab)**, **1998 (4) SCC 154 (State of A.P. vs. N.Radhakrishnan)** and **2005(6) SCC 636 (P.V.Mahadevan vs. Managing Director, Tamil Nadu Housing Board)**. Necessarily unexplained delay would cause serious prejudice to the employee and therefore, on that ground alone, the proceedings will have to be quashed. In the instant case, the criminal complaint against the petitioner was, in fact, withdrawn and after a domestic enquiry, he was imposed with the punishment of stoppage of increment for two years with cumulative effect. Subsequently, another disciplinary action was initiated on the same set of allegations and the impugned punishment of dismissal from service was imposed.

10. Even assuming that the disciplinary action is permissible to be initiated against the petitioner, this initiation of disciplinary action after a



W.P.No.18557 of 2015

period of 11 years on the basis of the same set of facts and circumstances which existed a decade before, is patently unjust and unreasonable, which cannot be countenanced both in law and on facts. Moreover, the mental agony and sufferings undergone by the petitioner due to the protracted disciplinary proceedings for these long years would be much more than the punishment.

11. For the reasons stated above, this Court is of the opinion that the petitioner is entitled to be reinstated into service with all backwages, attendant benefits and other monetary benefits together with continuity of service.

12. In the result, the Writ Petition is allowed. The impugned suo motu revision order passed by the 3rd respondent dated 29.05.2015 is hereby quashed. The 5th respondent is directed to reinstate the petitioner into service with all backwages, attendant benefits and other monetary benefits together with continuity of service. No costs. Consequently, connected miscellaneous petition is closed.

19.04.2023

Index:Yes/No
Speaking/Non-speaking order
vsi



W.P.No.18557 of 2015

WEB COPY

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W.P.No.18557 of 2015

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W.P.No.18557 of 2015

19.04.2023