



W.P.No.27706 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.27706 of 2015

and

M.P.No.1 of 2015

A.Kannusamy

.... Petitioner

vs

1. The Joint Registrar of Co-operative Societies,
Perambalur Region, Prambalur,
Perambalur District.

2. The President,
Kalpadi Primary Agricultural
Cooperative Credit Society,
Kalpadi Village & Post,
Perambalur Taluk & 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 order passed by the 1st respondent in his proceedings Na.Ka.2856/2011/Sa.Pa dated 12.06.2015 and quash the same and consequently direct the respondents to reinstate the petitioner into service as Salesman in the 2nd respondent society with all attendant benefits, backwages and other monetary benefits.



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For Petitioner : Mr.C.Prakasam

For Respondents : Mr.J.C.Durairaj
Additional Government Pleader for R1
Mr.S.Arumugam for R2

ORDER

This writ petition has been filed by the petitioner challenging the order of termination dated 12.06.2015 passed by the 1st respondent and consequently, direct the respondents to reinstate the petitioner into service as Salesman in the 2nd respondent society with all attendant benefits, backwages and other monetary benefits.

2. The case of the petitioner is that he was appointed as Salesman in the 2nd respondent society on 25.08.1998. For certain irregularities, the petitioner was suspended from service by the then Special Officer on 25.03.2004. The petitioner was issued with a charge memo on 1.7.2005 and the petitioner had submitted a detailed explanation. Not being satisfied with the same, the 2nd respondent appointed the Enquiry Officer, who conducted and submitted his report on 19.09.2005. After receipt of the report, the 2nd respondent issued the 2nd show cause notice to the petitioner, for which, a detailed explanation was submitted by the petitioner. On being satisfied



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with the explanation, the petitioner was permitted to join duty as Saleman on 18.05.2006. After lapse of five years, the 2nd respondent, once again, issued notice on the basis of the enquiry report dated 19.09.2005. Therefore, the petitioner approached this Court by filing W.P.No.29080 of 2010 and this Court vide order dated 22.12.2010, directed the 1st respondent to dispose of the petitioner's revision petition within eight weeks. The 1st respondent rejected the petitioner's revision vide order dated 17.03.2011.

3. The 2nd respondent issued order of termination on 23.05.2011. Thereafter, the petitioner preferred statutory revision before the 1st respondent challenging the termination order. The 1st respondent rejected the petitioner's revision vide proceedings dated 12.06.2015, confirming the order of the 2nd respondent dated 23.05.2011.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent.

5. Learned counsel for the petitioner would submit that five years after reinstatement into service, the petitioner was again issued with a notice on the basis of the same enquiry report dated 19.09.2005 for taking final decision on the disciplinary proceedings initially initiated against the



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petitioner. Therefore, on the ground of inordinate and unexplained delay, the impugned order is liable to be set aside. The petitioner also filed statutory revision on 18.11.2010. Since no order was passed, the petitioner filed writ petition in W.P.No.29080/2010 and the same was disposed of by directing the respondents to dispose of the statutory revision within eight weeks. However, the 1st respondent without considering the grounds raised by the petitioner, rejected the revision on 17.03.2011. Thereafter, the impugned order of termination was passed by the 1st respondent on 12.06.2015, based on the same enquiry report dated 19.09.2005, which is liable to be set aside.

6. Per contra, the learned Additional Government Pleader would submit that the petitioner has misappropriated Rs.7,86,731.75ps in connivance with the then Secretary one P.Sekar and the petitioner has remitted an amount of Rs.3,00,000/- only and requested the 2nd respondent Society to reinstate him into service on 16.08.2005. The 2nd respondent Society, on humanitarian consideration reinstated the petitioner on 19.05.2006 on the assurance given by the petitioner that he will abide by the final order to be issued as against him on the basis of domestic enquiry report and also he will remit the balance misappropriate amount in due course. However, the petitioner has not remitted the balance



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misappropriated amount as promised by him. Hence, 2nd notice was issued to the petitioner and subsequently, he was terminated from service. There is no laches in the disciplinary proceedings.

7. This Court considered the submissions made on either side and perused the materials available on record.

8. It is seen that the petitioner was reinstated into service on 16.08.2005 and was working without any complaint. Initially, charge memos were issued on 01.07.2005 and 05.08.2005 and the petitioner has given explanation on 11.08.2005. Thereafter, domestic enquiry was conducted and a report was submitted on 19.09.2005 holding the charges framed against the petitioner as proved. The said enquiry report was communicated to the petitioner and a show cause notice dated 24.09.2005 was issued and the petitioner also submitted his explanation and also paid a sum of Rs.3,00,000/- and he was reinstated into service on 19.05.2006. After a period of five years, again initiating action against the petitioner for the same charges, amounts to nothing but a malafide and colourable exercise of power, which cannot be countenanced in law.

9. It is pertinent to point out that the Hon'ble Apex Court in P.V.Mahadevan V. M.D., Tamil Nadu Housing Board in 2005 (4) CTC 403



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has held that the inordinate and unexplained delay in conducting the departmental proceedings, pursuant to the issuance of charge memo, would vitiate the departmental proceedings. In the present case, the 2nd show cause notice was issued to the petitioner and the petitioner also submitted a detailed explanation for the same and no final order was passed. The petitioner was permitted to join duty as Salesman on 18.05.2006. But after a lapse of five years, the 2nd respondent, once again, issued notice on the basis of the same enquiry report dated 19.09.2005. Therefore, the petitioner approached this Court by filing W.P.No.29080 of 2010 and this Court vide order dated 22.12.2010, directed the 1st respondent to dispose of the petitioner's revision petition within eight weeks. The 1st respondent rejected the petitioner's revision vide order dated 17.03.2011.

10. The allegation made against the petitioner is that he did not remit the sale proceed amount of the fair price shop everyday but he made entry in the salesman register, as if he made remittance. It is the contention of the petitioner that he paid the entire sale proceed amount everyday and the same was duly countersigned by the Secretary everyday. In all the periodical inspections made by the cooperative officials during the relevant period, no officials have made any objection or remarks against the petitioner. All the



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officials made entry in their inspection report that the petitioner remitted the said sale proceed amount.

11. Moreover, the allegation against the petitioner is that he had misappropriated Rs.7,86,731.75ps in connivance with the then Secretary one P.Sekar. It is seen that the petitioner has remitted an amount of Rs.3,00,000/- and only thereafter, he has been reinstated in service. It is not known whether any amount was recovered from the then Secretary, P.Sekar.

12. This Hon'ble Court, time and again, held that the inordinate delay in proceeding with the disciplinary proceedings would vitiate the entire proceedings as per the judgments reported in *2009(3) MLJ 108 (R.Rajasekar vs. Secretary to Government, Agricultural Department, Chennai & others)* and *2009(5) MLJ 1101(Tamil Nadu Water Supply and Drainage Board, rep. by its Managing Director, Chennai and Another Vs. A.Abdul Wahab)*. The delay in proceeding with the departmental proceedings has not been properly explained by the respondents. Therefore, the order, rejecting the revision filed by the petitioner, cannot be sustained.

13. Even assuming that the disciplinary action is permissible to be initiated against the petitioner, this initiation of disciplinary action after a period of 5 years on the basis of the same set of facts and circumstances



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which existed in 2004 is patently unjust, unreasonable, which cannot be countenanced both in law and on facts.

14. For the aforesaid discussions, this Court is of the opinion that the petitioner is entitled for reinstatement into service with all attendant benefits but without backwages. Therefore, the impugned order passed by the 1st respondent dated 12.06.2015 is set aside. The respondents are directed to reinstate the petitioner into service as Salesman in the 2nd respondent Society with all attendant benefits but without backwages. The said direction shall be complied with by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

15. The Writ petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

17.03.2023

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

To

1. The Joint Registrar of Co-operative Societies,
Perambalur Region, Prambalur,
Perambalur District.



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2. The President,
Kalpadi Primary Agricultural
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J.NISHA BANU,J.

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