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W.P.No.19555 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.19555 of 2014

M.Gunasekaran

... Petitioner

Vs.

- 1.Registrar of Cooperative Societies,
170, EVR High Road,
Kilpauk, Chennai 600 010
- 2.Joint Registrar of Cooperative Societies,
Nilgiris region,
Udhagamandalam (Po) & (Dt)
- 3.Managing Director,
Nilgiris District Consumer Cooperative
Wholesale Stores Ltd.,
Regent House,
Udhagamandalam (Po) & (Dt)

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the records of the third respondent relating to his order dated 31.08.2012 and of the second respondent relating to his order revision No.1/2013 (Rc.262/2013 A2) dated 26.05.2014 confirming the said order of the third respondent and quash both the orders and consequently direct the respondent to pay the amount of salary cut imposed on the petitioner and also the additional amount of Provident Fund, Gratuity and Surrender value of leave before a date that may be specified by this Court.



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For Petitioner : Ms.M.Meenatchi
for Mr.P.Anbarasan

For Respondents
For R1 & 2 : Ms.Akhila Rajendran,
Government Advocate

For R3 : Mr.L.P.Shanmugasundaram

ORDER

This writ petition has been filed challenging the order of the third respondent dated 31.08.2012 and the order of the second respondent in revision No.1/2013 (Rc.262/2013 A2) dated 26.05.2014, thereby imposed punishment on the petitioner thereby reverted him from the post of Selection Grade Salesman to Salesman.

2. The petitioner was initially appointed to the post of Salesman in the third respondent Society. While being so, Vigilance and Anti Corruption conducted enquiry and framed two charges as against the petitioner in charge memo dated 15.06.2005. On receipt of the same, the petitioner submitted his explanation. Without satisfying with the explanation, the third respondent ordered for enquiry. A detailed enquiry was conducted and found that both charges were proved and he was



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reverted from the post of Selection Grade Salesman to Ordinary Grade Salesman and also reduction of salary from 01.09.2012 to the initial stage of pay scale applicable to the Ordinary Grade Salesman. Aggrieved by the same, the petitioner preferred revision and the same was also confirmed by the second respondent.

3. The learned counsel for the petitioner would submit that the third respondent conducted two enquiries. The first enquiry was ended in favour of the petitioner and as such, the third respondent without any reason ordered for second enquiry. That apart, the first enquiry report was not served with the petitioner. It causes prejudice to him to explain the charges in a proper manner. He further submitted that his wife was doing business during that period and on her income, properties were purchased in her name. All the properties were purchased by his wife and not from the income of the petitioner at any point of time. In fact, the petitioner also submitted his wife's income tax returns and she had shown her source of income. In the assets and liabilities also, she had shown all the properties which stand in the name of his wife. The first charge



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memo was issued on 15.06.2005 and thereafter it was dropped on receipt of explanation dated 22.06.2005. However, again the second charge memo was issued on 14.06.2006. One, Nanjundan, Advocate was appointed as enquiry officer. He conducted enquiry. As per his report dated 09.01.2009, one charge was proved and another charge was not proved and as such, the said report was not accepted by the third respondent and again, ordered for fresh enquiry. Therefore, it is violation of established procedure in the conduct of disciplinary enquiry. Without considering the same, the second and third respondents passed final order, thereby reverted the petitioner to the post of Ordinary Grade Salesman and also cut down the salary.

4. The respondents filed counter and Ms.Akhila Rajendran, Government Advocate submitted that both the charges are grave in nature. The petitioner while his tenure as Salesman of the Society, had acquired several movable and immovable properties stand in the name of his wife without obtaining prior permission from the competent authority of management. In fact, Special Bye-Laws No.34 of the Societies is very



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clear that no employee of a Society shall acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his name or in the name of any member of his family except after giving due notice to the Chief Executive and in the absence of Chief Executive to the President. Admittedly, the petitioner failed to obtain any prior permission before purchasing any movable or immovable property in the name of his wife. Therefore, both the charges were proved against the petitioner and very simple punishment was imposed by the third respondent instead of removal from service.

5. Heard the learned counsel appearing on either side.

6. Two charges were framed against the petitioner while he was working as Selection Grade Salesman in the third respondent Society as follows:

Charge No.1: Thiru.M.Gunasekaran, during his tenure as Salesman of the society, has acquired several movable and immovable properties in the name of his wife Tmt.Elizebath without obtaining prior



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permission from the competent authority of the management as detailed hereunder:

S.No	Year	Properties acquired in the name of his wife Tmt.Elizabeth
1	1996	77 cents of Tea Estate in S.No.328/02 and 328/03 of Devala Village for Rs.20,000/-
2	1996	1.84 acres of Tea Estate in S.No.328/02 and 328/03 of Devala Village for Rs.46,000/-
3	1996	A House Site measuring 15 cents in S.No.273/1 of Gudalur Taluk for Rs.2,23,932/-
4	1996	A Tata Sumo Car bearing Regn.No.TN 74 765 for Rs.3,90,992/- through the Motor General Finance Ltd., Nagarkoil, Kanyakumari District
5	1998	A residential building with ground and first floor with three portions was constructed in SF.No.273/1 at Gudalur, worth about Rs.6,10,623/-
6	2000	A Tata Sumo Car bearing Regn.No.TN 43 C 765 was purchased for Rs.4,48,241/- through Tata Finance Ltd., Coimbatore

Charge No.2 : Thiru.M.Gunasekaran, during his tenure as Salesman of the Society has acquired movable and immovable properties viz., Jeep bearing Regn.No.TNN 9334, KL 10.4343 and Lorry bearing Registration No.TN 59 N 1202 in the name of his wife Tmt.Elizabeth and sold them to difference persons at higher prices. He has not submitted his Assets and Liabilities returns in Form No.1 within the prescribed period of three months to the Management in respect of the movable and immovable properties acquired in his name and in the name of his family



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and the cash deposits in the Banks and thereby contravened the rule 149 contemplated in the TNCS Rules 1988 and clause 34 of the Special By-Laws relating to the service conditions of the employees of Cooperative Societies which act amounts to mis-conduct of the employee.

7. On receipt of the charge memo, the petitioner submitted his detailed explanation. Without satisfying with the explanation, the third respondent ordered for enquiry. Initially, one advocate was appointed as enquiry officer and he conducted enquiry. He found that the first charge was proved and second charge was not proved. However, without satisfying with the enquiry report submitted by the enquiry officer, the third respondent ordered for fresh enquiry by another enquiry officer. The second enquiry officer conducted detailed enquiry and in fact, without raising any objection, the petitioner appeared for enquiry and marked all the documents and he also cross examined the witnesses.

8. On perusal of enquiry report submitted by the enquiry officer, two charges were found proved against the petitioner. Further



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concluded that on perusal of charge memo and explanation along with the investigation report of the Vigilance and Anti Corruption Department, both the charges were found proved by the management beyond reasonable doubt. He had acquired several immovable properties in the name of his wife without obtaining prior permission from the competent authority of the management. Insofar as the second charge is concerned, he failed to submit his assets and liabilities returns to the competent authority of the management within the prescribed period of five years as contemplated under Rule 149(16) (a) and (c) of Tamilnadu Cooperative Societies Employees Rules, 1988 and Rule 34 (2), (3) & (4) of Special By-laws relating to service conditions of the Employees of Cooperative Societies. Further, the learned counsel for the petitioner specifically contended that the report of the first enquiry officer was not served on him and the second enquiry officer ought not to have been appointed for conducting another enquiry. It is seen that no prejudice caused to the petitioner for appointing second enquiry officer to conduct further enquiry since enquiry report submitted by the first enquiry officer was not satisfied with the third respondent. Therefore, the petitioner is



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also not entitled for the report submitted by the first enquiry officer. In fact, even as per the first enquiry report, first charge was proved against the petitioner namely the petitioner acquired movable and immovable properties in the name of his wife without obtaining prior permission from the authority concerned.

9. Therefore, the third respondent rightly imposed punishment on the petitioner and the same was also rightly confirmed by the second respondent. Hence, this Court finds no infirmity or illegality in the orders passed by the second and third respondents and this writ petition is devoid of merits.

10. Accordingly, this writ petition is dismissed. There shall be no order as to costs.

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Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.Registrar of Cooperative Societies,
170, EVR High Road,
Kilpauk, Chennai 600 010
- 2.Joint Registrar of Cooperative Societies,
Nilgiris region,
Udhagamandalam (Po) & (Dt)
- 3.Managing Director,
Nilgiris District Consumer Cooperative
Wholesale Stores Ltd.,
Regent House,
Udhagamandalam (Po) & (Dt)
4. The Public Prosecutor,
High Court, Madras.

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