



W.P.No.20754 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.20754 of 2021

M.Prabakaran

...

Petitioner

/vs/

1. The Joint Registrar of Cooperative Societies,
Salem Region,
Salem.

2. 107, Omalur Primary Agricultural
Co-operative credit society Ltd.,
Rep. by its President,
Omalur Post, Salem District.

3. C.Muthusamy

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the order passed by the first respondent in RC.1081/2020 Sa.Pa. dated 07.07.2021 declining to grant back wages during the period of suspension and treating the suspension period as no work no pay and confirming the



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order of the second respondent dated 13.12.2019 quash the same and consequently direct the respondents 1 & 2 to regularize the petitioner's suspension period as duty period, fix the pay scale and all consequential benefits including promotion with effect from 01.08.2016 pursuant to the Circular issued by the Registrar of Co-operative Societies, Chennai No.14/2018, Na.Ka.No.7646/2018 PACS dated 08.11.2018 and 08.12.2019.

For Petitioner ... Mr.M.S.Palaniswamy

For Respondents ... Mr.P.Sanjai Gandhi
Special Govt. Pleader for R1 to R3

Ms.P.Jagadeesan for R3

ORDER

The petitioner has filed this writ petition to set aside the order of the first respondent dated 07.07.2021 and direct the second respondent to regularize the period for which the petitioner was under suspension and fix the pay scale and consequently monetary benefits including promotion with effect from 01.08.2016.



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2. The petitioner was given with a charge memo for some alleged lapses and he was kept under suspension with effect from 03.06.2016. An Enquiry Officer was appointed by the third respondent after giving opportunity to the petitioner to submit his explanation. The petitioner made his representation and thereafter he filed a Writ Petition in W.P.24041/2016 challenging the order of suspension dated 03.06.2016 and the charge memo dated 15.06.2016. An interim order has been passed on 03.10.2019 in the said writ petition by giving direction to the respondents to conclude the enquiry before 15.12.2019 and to reinstate the petitioner in view of the judgment of the Hon'ble Supreme Court in *State of Tamil nadu Vs. Promod Kumar IPS & Another (Civil Appeal No.8427-8428 of 2018)* and *Ajay Kumar Choudhary Vs. Union of India (2015) 7 SCC 291*. It is learnt that the petitioner has got the benefit of reinstatement since the enquiry has not been completed within the prescribed time limit.

3. M.S.Palaniswamy, the learned counsel for the petitioner, submitted that without conducting proper enquiry, the petitioner was given with the punishment of considering his period of suspension as 'no work



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no pay'. It is further submitted that the petitioner's representation to grant him the copies of relevant documents were also not furnished and the revision application filed before the first respondent was also confirmed by holding the principle of 'no work no pay' for the period under suspension.

4. Mr.P.Sanjai Gandhi, the learned Government Advocate, submitted that the enquiry has been conducted in a proper manner and enquiry report has also been filed; only after considering the enquiry report, out of five charges, four charges were found to be proved and on the basis of which the punishment order has been passed.

5. A copy of the enquiry report is available before this Court wherein it is seen that the petitioner did not participate in the enquiry to cross-examine the witnesses on the side of the management and now had chosen to file this writ petition by stating that he was not given with any opportunity. Despite the enquiry report would show that it has been submitted as early as on 25.12.2017, in the writ petition the essential facts were not properly brought before the Court. However the petitioner has got



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the advantage of getting reinstatement on the perception that enquiry was not concluded within the prescribed time limit. Even the respondents did not bother to disturb the reinstatement of the petitioner.

6. The order has been passed only in respect of suspension period during which the petitioner was granted with subsistence allowance alone and not with regular pay. In the order passed by the first respondent in the revision, it has been observed that no recovery has been made as against the terminal benefits of the petitioner for the subsistence allowance that has been made between the period from 03.06.2016 to 13.12.2019. The punishment of imposing 'no work no pay' for the period from 03.06.2016 to 13.12.2019 except the subsistence allowance is reasonable. In the revision order itself it has been observed how the petitioner had given his representation wherein he has stated that he denied the statement of witnesses. Had there not been an enquiry and if the petitioner was not aware about the statement given by the witnesses during the course of enquiry, such representation could not be made by him.



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7. Since the charges against the petitioner has been proved, he was given with a lenient punishment of not granting pay for the period during which he was kept under suspension i.e. from 03.06.2016 to 13.12.2019. However, the subsistence allowance that was already paid to him shall not be ordered to be recovered. As the punishment has been imposed only after the charges have been proved, I find no reason for interference.

8. Accordingly, this Writ Petition is dismissed. No costs.

20.12.2023

Index: Yes / No
Speaking order / Non-speaking order
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To:
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R.N.MANJULA ,J.

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