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W.P.No.31999 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.31999 of 2022
and W.M.P.No.31449 of 2022

B. Ilango

... Petitioner

Vs.

1.The Registrar of Co-operative Societies,
Kilpauk, Chennai – 600 010.

2.The Joint Registrar of Co-operative Societies,
Krishnagiri District.

3.The Deputy Registrar of Co-operative Societies,
Krishnagiri, Krishnagiri District.

4.The Enquiry Officer,
Krishnagiri Taluk Agricultural Producers
Co-operative Marketing Society,
Krishnagiri District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the second respondent order bearing Na.Ka.4249/2014/Pa.Thou dated 22.04.2020 and the order of the first respondent bearing Na.Ka.25300/2020/OANA3 dated 06.09.2022 and



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quash the same and consequently directing the respondents to restore the original pay scale as on 01.04.2020 prior to the date of impugned order dated 22.04.2020.

For Petitioner : Mr.P.S. Sivashanmugasundaram

For Respondents : Mr.M. Bindran,
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner, as well as the learned Additional Government Pleader appearing for the respondents.

2. Through a Charge Memo dated 23.01.2015, the petitioner was subjected to six charges, predominantly on the ground that he had not sought for prior permission from the Department before acquiring the movable and immovable properties and on not being satisfied with the explanation given by the petitioner, disciplinary proceedings were initiated. In the inquiry, all the charges were held to be proved. Consequently, the second respondent herein, through an order dated 22.04.2020, had imposed a punishment of reduction of pay by one increment. Against the said punishment order, the petitioner had preferred an appeal on



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08.06.2020 before the first respondent, which was rejected on 06.09.2022.

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Challenging the aforesaid orders, the present Writ Petition has been preferred.

3. The learned counsel for the petitioner submitted that as per explanation to Rule 7(1)(a) of the Tamil Nadu Government Servant Rules 1973, when a member of the family of the Government servant purchases an immovable property out of his own resources, he is not required to give notice to the prescribed authority or seek permission from the prescribed authority. Though the grounds were raised before the Inquiry Officer, they were not properly construed and therefore, it is submitted that the inquiry proceedings stands vitiated. He further submitted that the petitioner had raised similar grounds, as well as various other grounds before the Appellate Authority, challenging the order of punishment, however, none of his grounds were considered in the appeal.

4. Per contra, the learned Additional Government Pleader submitted that during the course of inquiry, due opportunity was extended to the petitioner and that in accordance with Rule 7 of the Tamil Nadu



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Government Servant Rules 1973, he had failed to get prior permission from the prescribed authority before his spouse had acquired an immovable property. Furthermore, the petitioner has also failed to establish that his wife had purchased the immovable property out of her own resources and therefore, there is no infirmity in the findings of the Inquiry Officer. With regard to the order of the Appellate Authority, the learned Additional Government Pleader submitted that all the grounds raised by the petitioner have been taken into account while confirming the original order of punishment.

5. Insofar as the original order of punishment is concerned, the second respondent herein had gone into the findings of the Inquiry Officer and thereafter, had come to the conclusion that the petitioner had failed to prove that the immovable property was purchased by his wife, out of her own resources and therefore, since prior permission was not obtained, the second respondent had imposed a punishment.

6. However, in the order passed by the Appellate Authority dated 06.09.2022, though the order runs to about 7 pages, the findings of the



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Appellate Authority is in the penultimate paragraph alone. Even therein, the only application of mind by the authority is that he had perused the relevant documents carefully and thereby, dismissed the appeal.

7. In the appeal being filed by the petitioner dated 08.06.2020, he had raised several grounds on each of the six charges. Apart from placing reliance on the explanation to Rule 7(1)(a) of the the Tamil Nadu Government Servant Rules 1973, which exempts the spouse of the Government employee to seek for prior permission when the property is purchased out of her own resources, none of these grounds have been addressed or dealt with by the Appellate Authority. The order has been passed in a mechanical manner by simply stating that he had carefully considered the grounds and relevant documents alone. Such an order, in my view, can be passed even without looking into the file. Thus, the order being a non-speaking order, is deemed to be illegal and cannot be sustained in the eyes of law. Thus, this Court is of the view that the matter can be remitted back to the first respondent for reconsideration of the grounds raised by the petitioner herein.



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8. Accordingly, the order of the first respondent dated 06.09.2022, is hereby set aside and the matter is remitted back to the first respondent for reconsideration. While passing such order, the Appellate Authority shall strictly follow the procedures contemplated under Rule 23 of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules and after addressing each and every ground raised by the petitioner in his appeal petition dated 08.06.2020, shall pass a speaking order, within a period of three (3) months from the date of receipt of a copy of this order. While passing such order, the Appellate Authority shall also extend due and personal opportunity to the petitioner.

9. Accordingly, the Writ Petition stands partly allowed. No costs. Connected miscellaneous petition is closed.

08.11.2023

Index:Yes
Speaking order
Internet: Yes
Neutral Citation: Yes

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M.S.RAMESH,J.

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