



W.P.(MD)No.24448 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.24448 of 2016

and

W.M.P.(MD)No.17643 of 2016

M.Rasool Deen

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of Co-operative,
Food and Consumer Protection (CL1) Department,
Secretariat, Chennai.

2.Tamil Nadu Public Service Commission,
Brazer Bridge Road,
Chennai – 600 003.
Represented by its Secretary.

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

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records relating to the impugned



W.P.(MD)No.24448 of 2016

WEB COPY

proceedings of the 2nd respondent in Letter No.3242/TiCiTe-Oo2/2011-1 dated 10.02.14 and the consequential order of punishment passed by the 1st respondent in Government Order(Nilai) No.121 dated 17.10.16 and quash the same as illegal.

For Petitioner : Mr.M.Jerin Mathew

For Respondent : Mr.K.S.Selvaganesan
Additional Government Pleader for R-1 and R-3

Mr.J.Anandkumar
Standing Counsel for R2

ORDER

This writ petition is filed challenging the impugned proceedings, dated 10.02.2014 and the consequential order of punishment passed by the 1st respondent in Government Order (Nilai) No.121 dated 17.10.2016.

2. Heard Mr.M.Jerin Mathew, learned counsel appearing for the petitioner and Mr.K.S.Selvaganesan, learned Additional Government Pleader appearing for R-1 & R-3 and Mr.J.Anandkumar, learned Standing Counsel appearing for R-2. Perused the material documents available on record.



W.P.(MD)No.24448 of 2016

WEB COPY

3. The petitioner was initially appointed as Junior Inspector in the 3rd respondent department in the year 1970, subsequently he was promoted as Cooperative Sub-Registrar. While so, on the eve of petitioner's retirement, he was deputed as Business Manager, Consumer Wholesale Stores, Tirunelveli District and the petitioner was holding the above post for a period from 09.01.2002 to 31.01.2003. Since the petitioner has attained superannuation on 31.01.2003 he was allowed to retire from service in the post of Special Officer/Deputy Registrar of Cooperative Societies, vide proceedings of the 3rd respondent, dated 31.01.2003.

4. The 2nd respondent has issued a memo, dated 13.04.2005 under Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978 for the alleged lapses during the period from 09.01.2002 to 31.01.2003. The charge against the petitioner is during that period he abetted some wardens of the District Backward Class/Most Backward Class/Denotified Community Hostels for misappropriating the funds of Government to the extent of Rs.2,42,431.84 in the purchase of vegetables and other items and failed to maintain integrity. The respondents have issued a charge memo, dated 07.05.2005 and the petitioner requested the respondents to furnish



W.P.(MD)No.24448 of 2016

WEB COPY

copies of various documents. The petitioner has submitted a detailed explanation on 26.06.2005, stating that he was no way connected with the alleged delinquency and also submitted, if at all there was any misappropriation, it could be attributable only to the three employees of the Cooperative stores, namely;

- 1.S.Pakkir Mohammed (Godown Keeper)
- 2.K.Subramanian (Cashier) and
- 3.K.Sivaramakrishnan (Procurement Manager)

and that the other two employees of the Adi-Dravidar and Tribal Welfare Department, namely, Nellaiappan (Hostel Warden) and Anwar Batcha (Assistant). However, without considering the explanation the enquiry officer has conducted enquiry and enquiry report, dated 05.10.2005 was submitted, wherein it is stated that there was inducement on the part of the petitioner in the misappropriation allegation, but the charge has not been proved to that effect that the petitioner has misappropriated the funds as alleged. The respondents have served copy of the enquiry report to the petitioner and directed to submit explanation. The petitioner has submitted his explanation, dated 26.06.2005, 10.05.2006 and 26.05.2006, explaining his innocence.



W.P.(MD)No.24448 of 2016

WEB COPY

5. Thereafter, the 1st respondent vide proceedings, dated 01.09.2009 has issued a show cause notice to the petitioner to explain why pension should not be appropriated against the entire alleged loss of Rs.2,42,431.84 and also a punishment of reduction of Rs.300/-per month for two years should not be calculated from the petitioner's pension. The petitioner has submitted a detailed explanation on 07.12.2010. The petitioner has also challenged the charge memo in W.P.(MD)No.19 of 2011 and the same was disposed of, vide order, dated 02.04.2012, directing the respondents to pass final orders. Thereafter, the 1st respondent has consulted the 2nd respondent behind back of the petitioner and the 2nd respondent, vide proceedings, dated 10.02.2014 had advised to impose the proposed punishment. Thereafter, the 1st respondent has passed the present impugned order of recovery of 1/3 of petitioner's pension until a sum of Rs.2,42,431.84/-is satisfied for the alleged loss caused to the Government and thereafter to withhold a sum of Rs.300/- as punishment for proving misconduct. The petitioner submitted that the said punishment is without any application of mind.



W.P.(MD)No.24448 of 2016

WEB COPY

6. The contention of the petitioner is that the enquiry was commenced on the basis of enquiry report, dated 14.06.2010 submitted by the Joint Registrar under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983. In the said enquiry report, charges were revealed against the four persons, namely Pon Arunachalam, Manikanda Dhas, K.Ponnappan, M.Manoharan Jebraj Julian and the writ petitioner.

7. In the enquiry report, dated 14.06.2010, it had been concluded that except the 1st person namely A.Pon Arunachalam all the other four persons in connivance with one Nellaiappan are involved in the misconduct and caused loss to the government. On the basis of the section 81 enquiry report, a charge memo was issued to all the three persons as accused in the above enquiry including the petitioner. The said Manoharan Jebaraj Julian was also involved in the similar charge as that of the petitioner and enquiry was also conducted against him. The enquiry report has held that the charge against the said Manoharan Jebaraj Julian was not proved, but the petitioner charge is proved. The contention of the petitioner is that the petitioner has followed the same system which the said Manoharan Jebaraj Julian had followed. But the enquiry report states that the



W.P.(MD)No.24448 of 2016

WEB COPY

Manoharan Jebaraj Julian's charge is not proved but the charge against the petitioner is proved. Hence the petitioner submitted that the charge against the petitioner cannot be held as proved. The petitioner further submitted that the respondents have not conducted a common enquiry when two or more departments are involved. Further, the respondents have not obtained any sanction order from the competent authority for initiating disciplinary proceedings against the petitioner. Hence the petitioner raised various other grounds to quash the impugned order.

8. The respondents have filed counter stating that the contention of the petitioner is that though he has submitted the same explanation of Manoharan Jebaraj Julian, who was exonerated from the charges, but the petitioner was imposed punishment cannot be acceptable. Since the petitioner was wrong in adopting such procedures, which is against the circular issued by the respondents. Therefore, the Manoharan Jebaraj Julian was exonerated from the charges and the petitioner was imposed with the punishment.



W.P.(MD)No.24448 of 2016

WEB COPY

9. It is seen from the records that the petitioner has paid amount to the warden which is against to the circular. This will not be a correct conclusion since the said Manoharan Jebaraj Julian has also not followed the same circular. When both the petitioner and the said Manoharan Jebaraj Julian has not followed the circular, then the respondents ought to have either held the charges are proved against both or ought to have held the charges are not proved against both. The respondents cannot held the charge is proved against the petitioner alone and therefore the petitioner is entitled to be considered.

10. The next ground put forth by the petitioner is that sanction order should be obtained for initiating any disciplinary proceedings and relied on Rule 9 of the Tamil Nadu Pension Rules. Under Rule 9(2)(b) specifically states that the Government should sanction in case any disciplinary proceedings should be initiated for a person who are in service before retirement or serving under re-employment. The relevant portion of the rule is extracted hereunder:



W.P.(MD)No.24448 of 2016

WEB COPY

9. Right of Government to withhold or withdraw pension.- .

2.(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the Procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

11. Therefore, in the present case, the respondents have not obtained any sanction order from the sanctioning authorities before initiating disciplinary proceedings. Therefore, the petitioner is on advantageous position.

12. The next contention that was raised by the petitioner is under Rule 9(a), wherein in the said provision it is stated that if there are one or more delinquents, the delinquent who is holding the higher post against whom the



W.P.(MD)No.24448 of 2016

WEB COPY

higher authority can institute a disciplinary proceeding will be the appropriate authority to conduct disciplinary proceedings. Moreover, there are two departments involved in the case. One is society and other one is Backward Class Department. Therefore, the 1st respondent being Principal Secretary ought to have appointed a person to conduct a joint enquiry covering the two departments. In the present case, there is no joint enquiry and independent enquiry was initiated and the entire loss is fastened on the petitioner and the same is illegal. At least, the respondents ought to have split the loss and imposed the same on all the delinquents. In the present case, the entire loss is fastened on the petitioner. Hence the petitioner is entitled to be considered.

13. In the present case, the respondents are relying only on the section 81 enquiry. In the charge memo the respondents have not stated any list of witness. The respondents have not produced any witness, no documents were produced. It is seen from the charge memo under witness “NIL”. Therefore, the respondents have not conducted the enquiry properly at all. Moreover, at the time of filing this writ petition the petitioner was aged about 70 years.



W.P.(MD)No.24448 of 2016

WEB COPY

14. In view of the foregoing reasons, the impugned order dated 10.02.2014 and the consequential order in Government Order (Nilai) No.121 dated 17.10.16 are hereby quashed. The Writ Petition is allowed. No Costs. Consequently, connected writ miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
ksa

21.03.2023

To

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of Co-operative,
Food and Consumer Protection(CL1) Department,
Secretariat,
Chennai.
- 2.Tamil Nadu Public Service Commission,
Brazer Bridge Road,
Chennai – 600 003.
Represented by its Secretary.
- 3.The Registrar of Co-operative Societies,
Kilpauk,
Chennai – 600 010.



WEB COPY



W.P.(MD)No.24448 of 2016

S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No. 24448 of 2016**

21.03.2023