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W.P.No. 10390 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.Nos. 10390 of 2017
and
W.M.P.Nos. 11291 of 2017

S. Anandan

... Petitioner

Vs.

- 1.The Chairman,
Tamilnadu Cooperative Milk Producers Federation Ltd.,
Aavin Illam, Madhavaram Milk Colony,
Chennai – 600 051.
- 2.The Managing Director,
Tamilnadu Cooperative Milk Producers Federation Ltd.,
Aavin Illam, Madhavaram Milk Colony,
Chennai – 600 051.
- 3.The Joint Managing Director,
Tamilnadu Co.operative Milk Producers Federation Ltd.,
Ambattur Industrial Estate,
Chennai – 600 098.
- 4.The General Manager (Marketing),
(formerly known as the Dy. General Manager (P.P & M)),
Tamilnadu Cooperative Milk Producers Federation Ltd.,
Pasumpon Muthu Ramalinga Devar Salai,
Nandanam, Chennai – 600 035.

... Respondents



W.P.No. 10390 of 2017

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent bearing Ref.No.28934/Pers.IR1/2007 dated 03.03.2016 signed by the second respondent and to quash the same and direct the second respondent to disburse the terminal benefits in respect of the petitioner employment together with interest @ 9% per annum from the date of retirement.

For Petitioner : Mr. L. Dhamodaran

For Respondents : Mr. P. Bala Ramesh

ORDER

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents and perused the materials available on record.

2. The facts leading to filing of this writ petition is as follows:-

The petitioner was working as Manager (Distribution) in the Tamilnadu Co-operative Milk Producers Federation was charge sheeted for certain delinquencies and following charges were framed against him.

Charge No.1: that he had allowed the Whole Sale Dealers (WSDs) to retain 18,739 empty tubes with them as on 31.07.2004, by not properly watching the return of empty tubs to the Diary and also failed to watch the return of empties daily before delivering milk to the distributors.



Charge No.2: that he has not taken any effective steps to collect the empty tubs from the WSD and thereby causing heavy financial loss towards the cost of empty tubs.

3. An enquiry officer was appointed to conduct enquiry against the petitioner. After conducting enquiry, the enquiry officer submitted his report concluding that the charges are partly proved. The Disciplinary Authority by its proceedings dated 30.05.2007 awarded a punishment of “cesure”. The Disciplinary Authority further directed withholding of the terminal benefits of the petitioner.

4. The petitioner was allowed to retire on 31.05.2007 upon attaining the age of superannuation. The petitioner challenged the order imposing punishment before the Appellate Authority. The said appeal was dismissed by the Appellate Authority on 03.03.2016. Aggrieved by the same, the petitioner constrained to file this writ petition.

5. On behalf of the respondents, a counter affidavit has been filed. It is stated in the counter affidavit that the conduct of the petitioner in discharging his duties has caused financial loss to the respondents. He also contends that the enquiry officer has found that the charges are partly proved. He further contends that the enquiry officer



has elaborately considered the matter and only then he has come to the conclusion and accordingly, the Appellate Authority has considered his findings then confirmed the punishment imposed by the disciplinary authority.

6. Learned counsel for the petitioner has placed a copy of the common order dated 06.07.2016 in W.P.Nos.17852 and 17853 of 2016 to substantiate his arguments and submits that in an identical circumstances, the learned Signed Judge of this Court allowed the writ petition and set aside the order of Disciplinary Authority and Appellate Authority and directed to release the terminal benefits which were withheld by the respondents. The learned counsel also placed a copy of the common judgment dated 19.06.2018 in W.A.Nos.1272 and 1273 of 2016 wherein the writ appeal is partly allowed and the order of the learned Single Judge is modified to the extent of the punishment imposed by the Disciplinary Authority is confirmed and the further direction of the Disciplinary Authority directing withholding benefits of the respondents is set aside.

7. On perusal of the order of the Division Bench of this Court in W.A.Nos.1272 and 1273 of 2016, it is clear that in an identical circumstances, the said judgment was passed. The relevant paragraphs of the said judgments are extracted herein under: -



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9. *We have perused the records and considered the rival submissions. Of course the order of the Appellate Authority, confirming the order of the Original Authority imposing the punishment is cryptic, to say the least. The purpose of providing a statutory appeal in cases involving Disciplinary proceedings itself is to give an opportunity to the delinquent employees to raise factual issues which had escaped the attention of the Disciplinary Authority. If the Appellate Authority which is empowered to go into factual aspects disposes of Appeals in a mechanical fashion, as has been done in this case, the very remedy of an appeal would be rendered otiose.*

10. *However, such failure on the part of the Appellate Authority cannot lead to the entire proceedings being quashed by this Court. The normal result should be to set aside the order of the Appellate Authority and the remit the matter to the Appellate Authority, for considering the same on merits afresh in accordance with law. We are constrained to deviate from the normal course because of the fact that the respondent had already retired from service, even in the year 2010 and almost 8 long years have lapsed since then. Therefore, we do not propose to remit the matter to the Appellate Authority for fresh consideration.*

11. *It is also on record that the appellant Federation has filed Civil Suits against the dealers and obtained decrees against them even during 2007. The counsel for the appellants would submit that execution proceedings are still pending. The charges that have been framed against the respondent would indicate that there has been a dereliction of duty on his part, which is resulted in a certain loss to the appellant Federation. The appellant Federation has obtained decrees in CS No.382 of 2004 and CS No.205 of 2004 against the dealers and if the decrees are executed, and monies are recovered that would offset the loss that has been caused to the Federation.*



12. *We are therefore constrained to take lenient view of the entire issue and confirm the punishment of stoppage of increment alone setting aside the further order of the Disciplinary Authority directing withholding of the retirement benefits of the respondent. It is made clear that the respondent will not be entitled to any interest on his retirement benefits.*

13. *For the foregoing reasons, the Writ Appeal is partly allowed. The Judgment of the learned Single Judge is modified, the punishment of withholding the increment for the period of 3 years without cumulative effect is confirmed and the further direction of the Disciplinary Authority directing withholding retirement benefits of respondent alone is set aside. The appellants are directed to pay retirement benefits of the respondent within a period of twelve (12) weeks from the date of receipt of a copy of this order sans any interest. However considering facts and circumstances of the case, there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.*

8. On consideration of the facts and circumstances of the case and in the light of the judgment of the Division Bench as stated supra, this Court is inclined to follow the said judgment in the present case to meet the interest of justice.

9. For the aforesaid reasons, the Writ Petition is partly allowed with the following direction: -

- i. The punishment of award “censure” is confirmed.
- ii. The direction of the Disciplinary Authority to withhold retirement benefits of the petitioner is set aside.



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iii. The respondents are directed to pay retirement benefits to the petitioner within a period of eight weeks from the date of receipt of copy of this order.

iv. It is made it clear that the petitioner will not be entitled to any interest on his retirement benefits.

10. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

27.03.2024

Index :Yes/No

Neutral Citation :Yes/No

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