



W.P.(MD)No.16081 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.10.2024

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THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.(MD)No.16081 of 2022

and

W.M.P(MD)No.11624 of 2022

R.Kannan

... Petitioner

Vs.

1.The Sub-Registrar,
Office of the Co-operative Society,
Karur District Consumer Co-op Wholesale Stores,
Karur,
Karur District.

2.The Special Officer,
Office of the Co-operative Society,
Karur District Consumer Co-op Wholesale Stores,
Karur,
Karur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order in Na.Ka.No.89/2019/Ne.Be, dated 10.06.2013 passed by the first respondent herein and to quash the same and consequently directing the respondents to issuance in the petitioner's five years increment salary.



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W.P.(MD)No.16081 of 2022

For Petitioner : Mr.D.Srinivasaragavan

For Respondents : Mr.M.Senthil Ayyanar
Government Advocate

ORDER

The writ petition has been filed challenging the order passed by the first respondent vide Na.Ka.No.89/2019/Ne.Be, dated 10.06.2013.

2. The case of the petitioner is that he joined as a Salesman in Pasupathipalayam Bunk on 01.12.1998 and it was under the control of the respondents' Society. The petitioner was working without any allegation for a period of 20 years and without any blemish of complaint from any quarters. The second respondent vide his proceeding in Na.Ka.No.89/Ne.Be/2010, dated 22.10.2010, temporarily suspended the petitioner from service with effect from 22.10.2010. Thereafter, the second respondent has framed charges against the petitioner vide proceeding Na.Ka.No.89/Ne.Be/2010, dated 01.02.2011. In the said proceeding, three charges were framed against the petitioner. The first charge is that the petitioner created the forged bills for issuing kerosene to the tune of 1611 liters, issuing kerosene to the tune of 2222 liters to the ration card holders, which was already cancelled and over limit sales of kerosene to the



W.P.(MD)No.16081 of 2022

tune of 485 liters and total loss amount is to the tune of Rs.39,696.60/-. The

second charge is that he misappropriated the above amount by selling of kerosene. The third charge is that the petitioner has committed above misappropriation while discharging duty.

3. Based on the charges, enquiry officer has been appointed by the respondents to conduct enquiry. In the meantime, the petitioner paid the loss amount of Rs.39,700/- to the respondents on 09.02.2011 and the same was received by the respondents vide Voucher No.10732, dated 09.02.2011 and the petitioner also submitted the cash receipt before the enquiry officer. But the enquiry office did not accept the same. The enquiry officer without conducting the enquiry properly submitted the enquiry report before the second respondent. The second respondent has given notice to the petitioner asking for explanation upon the enquiry report. The petitioner has given explanation to the second respondent on 15.10.2012 and the same was received by the second respondent. However, the second respondent did not accept the explanation. Finally, the second respondent has passed an order vide Na.Ka.No.89/2010/Ne.Be, dated 26.12.2012 imposing punishment of stoppage of increment for three years with cumulative effect.



W.P.(MD)No.16081 of 2022

WEB COPY

4. In the meanwhile, the Deputy Registrar has given compliant against the petitioner before the Food Cell and Economic Wing, Karur on 07.06.2011. Based on the complaint, FIR in Crime No.442 of 2011 has been registered for the offences under Section 6(3) 14(1) a of TNSC (RDCS) order 1982 read with 7(1) a (ii) of E.C. Act, 1955 and the said FIR is pending before the Food Cell and Economic Wing, Karur. The first respondent in another proceeding vide Na.Ka.No.89/2010/Ne.Be, dated 10.06.2013 *suo motu* enhanced the punishment of stoppage of increment for 5 years with cumulative effect.

5. Aggrieved by the same, the petitioner has come forward with the present writ petition.

6. The learned counsel for the petitioner submitted that originally the punishment was imposed by the second respondent vide proceeding Na.Ka.No. 89/Ne.Be/2010, dated 26.12.2012. Thereafter, the first respondent without issuing any notice to the petitioner *suo motu* enhanced the punishment of stoppage of increment for 5 years with cumulative effect, which is in violation of principles of natural justice and the same has to be set aside. Hence, he prays for allowing the writ petition.



W.P.(MD)No.16081 of 2022

WEB COPY

7. The learned Government Advocate for the respondents submitted that no notice was issued to the petitioner while enhancing the punishment by the first respondent as contended by the learned counsel for the petitioner. He further submitted that the impugned order, under challenge dated 10.06.2013, but after a delay of 9 years, the writ petition was filed only in the year 2022. He further submitted that the petitioner has paid the loss amount of Rs.39,700/- to the respondent on 09.12.2011 and in turn, the respondent issued the receipt vide Voucher No.10732, dated 09.12.2011 to the petitioner.

8. Heard both sides and perused the materials available on record.

9. The above impugned proceeding is issued without any notice and opportunity of personal hearing and the same is in violation of principles of natural justice.

10. Since the writ petition is on the final hearing stage, this Court is not inclined to go into delay aspects. The writ petition has already been admitted and interim order was passed by this Court on 22.07.2022.



W.P.(MD)No.16081 of 2022

WEB COPY

11. In view of the above factual matrix of the case, the impugned order passed by the first respondent vide Na.Ka.No.89/2019/Ne.Be, dated 10.06.2013 is liable to be set aside. Accordingly, the same is set aside. The second respondent is directed to refund the amount recovered in regard to two years increment cut with cumulative effect to the petitioner, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

12. In the result, the writ petition stands allowed with the above observations and directions. No costs. Consequently, connected miscellaneous petition is closed.

14.10.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
SN/BTR

To:

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W.P.(MD)No.16081 of 2022

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W.P.(MD)No.16081 of 2022

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W.P.(MD)No.16081 of 2022

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