



W.P.(MD)No.20000 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.20000 of 2018
and
W.M.P.(MD).No.17779 of 2018

P.Singaram

... Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies,
Tiruchirappalli Region,
Manarpuram,
Tiruchirappalli-20.

2.The President,
Palakurichi Primary Agricultural
Co-operative Credit Society (M.M.353),
Tiruchirappalli District.

... 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 order passed by the second respondent, dated 13.10.2016 and consequential order passed by the first respondent in his proceedings in Na.Ka.No. 277/2017/Sa.Pa, dated 21.05.2018 and quash the same.



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For Petitioner : Mr.B.Prahalad Ravi

For Respondents : Mrs.D.Farjana Ghoushia,
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 13.10.2016, passed by the second respondent and the order dated 21.05.2018, passed by the first respondent, imposing punishment on the petitioner, viz., increment cut for a period of two years with cumulative effect.

2. The petitioner is working as a Salesman in the second respondent Society since 01.04.1999. The petitioner is placed under suspension by the second respondent through an order, dated 25.02.2016 relating to the charge memo issued to him dated 14.03.2016. Subsequently, the second respondent appointed an Enquiry Officer and the Enquiry Officer had filed a report before the second respondent stating that all the charges levelled against the petitioner was proved. The charges pertained to the misappropriation of funds of the second respondent Society by the petitioner. The petitioner submitted his explanation pertaining to the charge memo in the enquiry proceedings, but, did not participate in the enquiry proceedings as according to him he was under the wrong impression that he need not participate in the enquiry proceedings. Since



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the Writ Petition filed by him earlier in W.P.(MD).No.9542 of 2016 challenging the charge memo was pending. The second respondent based on the enquiry report which has held that the charges framed against the petitioner has been proved, has imposed the punishment of increment cut for a period of two years with cumulative effect on the petitioner under the impugned order dated 13.10.2016.

3. Aggrieved by the same, the petitioner preferred a revision before the first respondent. The first respondent confirmed the order of the second respondent dated 13.10.2016 in his order dated 21.05.2018 and thereby, confirming the punishment imposed by the second respondent. Aggrieved by the orders passed by the first and second respondents dated 13.10.2016 and 21.05.2018 respectively as stated supra, this Writ Petition has been filed.

4. Learned counsel appearing for the petitioner would submit that the petitioner has deposited the alleged money disclosing in the charge memo with the second respondent Society on 24.02.2016 and the alleged misappropriation as per the charge memo is said to have taken place on 22.02.2016, 24.02.2016 and 25.02.2016. He would further submit that the petitioner had also submitted his explanation to the Enquiry Officer with regard to the charges framed against



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him in the disciplinary proceedings denying that he has misappropriated the funds of the second respondent Society. He would further submit that only due to the pendency of the Writ Petition challenging the charge memo, the petitioner did not participate in the enquiry proceedings after submitting his explanation. According to him, the enquiry report is an *exparte* report and he would also submit that the procedure contemplated for holding an enquiry in the disciplinary proceeding has not been adhered to since no presenting officer was appointed and the enquiry officer himself acted as a Prosecutor which is not permissible under law.

5. Learned counsel appearing for the petitioner would also submit that since the petitioner had deposited the entire amount disclosed in the charge memo with the second respondent Society within a short span of time, the question of imposing such a harsh punishment as imposed in the impugned order does not arise.

6. Learned counsel appearing for the petitioner also relied upon a Judgment of the learned Single Judge of this Court in the case of ***K.Govindasamy Vs. Tamil Nadu Civil Supplies Corporation*** reported in ***(1998) 2 MLJ 323*** and would submit that the learned Single Judge has followed



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a decision of the Hon'ble Supreme court in the case of ***Mohinder Singh Vs.***

State of Punjab and Others reported in (1994) 2 SCC (L. and S.) 842, wherein,

it has been held that the stoppage of increment with cumulative effect is a major penalty and the same cannot be imposed without enquiry. Relying upon the aforesaid decision, learned counsel appearing for the petitioner would submit that the imposition of punishment as per the impugned orders is a major penalty and the same ought not to have been imposed without holding a proper enquiry by the respondents.

7. On the other hand, learned Special Government Pleader appearing for the respondents would reiterate the contents of the impugned order and would submit that only by following the procedure contemplated under law, enquiry was conducted and only based on the enquiry report, wherein, it has been categorically found that the charges framed against the petitioner has been proved, the impugned orders have been passed imposing the punishment of increment cut for a period of two years with cumulative effect. She would also distinguish the judgment of the learned Single Judge relied upon by the learned counsel appearing for the petitioner as stated supra by stating that in the instant case, enquiry was conducted, whereas, in the decision relied upon by the learned counsel appearing for the petitioner, no enquiry was conducted. Therefore, she would further submit that orders passed by the respondents



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which are challenged in this Writ Petition have to be upheld by this Court.

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8. The following are the undisputed facts:

(a). The petitioner has deposited a sum of Rs.30,259/- (Rupees Thirty Thousand Two Hundred and Fifty Nine only) which is alleged to have been misappropriated by him with the second respondent Society in two instalments *i.e.*, 24.02.2016 and 26.02.2016. The alleged misappropriation said to have been committed by the petitioner is on 22.02.2016, 24.02.2016 and 25.02.2016.

(b). The petitioner has also submitted an explanation in the enquiry proceedings denying that he had misappropriated the funds of the second respondent Society as claimed in the charge memo framed against him.

(c). No witnesses were examined in the enquiry proceedings on both sides either on the side of the prosecution or on the side of the delinquent (petitioner).

(d). Only based on the charge memo and the explanation submitted by the petitioner, the Enquiry Officer has come to the conclusion that charges against the petitioner as framed in the disciplinary proceedings have been proved.



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9. The disciplinary authority, viz., the second respondent only based on the enquiry report has passed the impugned order dated 13.10.2016, imposing the punishment of increment cut for a period of two years with cumulative effect on the petitioner. The second respondent has also not considered the subsequent explanation submitted by the petitioner after the submission of the enquiry report in the impugned order dated 13.10.2016. In the said explanation also, once again, the petitioner has reiterated that he is not guilty of the charges framed against him. The petitioner had also filed a revision aggrieved by the order of the second respondent, dated 13.10.2016, but, the first respondent has also rejected the petitioner's revision by his order dated 21.05.2018 reiterating the reasons given by the second respondent in his order dated 13.10.2016.

10. The sum involved is only Rs.30,259/- (Rupees Thirty Thousand Two Hundred and Fifty Nine only) and the same has also been repaid by the petitioner with the second respondent Society within a span of few days from the alleged date of misappropriation. The same is also not disputed by the respondents.

11. It is also brought to the notice of this Court by the learned Special



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Government Pleader on instructions that except for those charges, there are no other charges pending against the petitioner and he is also on the verge of retirement.

12. Learned counsel appearing for the petitioner would also submit that if a harsh punishment imposed on the petitioner as per the impugned orders is implemented, the petitioner will lose lot of money by way of monetary benefits. Which he would have been otherwise entitled to. After giving due consideration to the aforementioned facts, this Court is of the considered view that the punishment imposed on the petitioner as per the impugned orders cannot be set aside in entirety, but, can only be modified.

13. It is an admitted fact that the petitioner had to render proper accounts pertaining to a sum of Rs.30,259/- (Rupees Thirty Thousand Two Hundred and Fifty Nine only) on or before the dates mentioned in the charge memo, but, whereas he did not do so. But, immediately, within a few days, he had deposited the said money to the credit of the second respondent Society and so no loss has been caused to the second respondent Society. The said fact is also not disputed by the respondents. Therefore, he cannot be left to go scotfree and the only relief that can be granted by this Court in this Writ Petition is to modify



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the punishment to a lesser one namely, one of increment cut for a period of two years without cumulative effect instead of increment cut for a period of two years with cumulative effect.

14. In the result, the Writ Petition is disposed of by modifying the punishment imposed on the petitioner as per the impugned orders passed by the second and first respondents to one of increment cut for a period of two years without cumulative effect instead of increment cut for a period of two years with cumulative effect. No costs. Consequently, connected miscellaneous petition is closed.

03.09.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
TSG

To

- 1.The Joint Registrar of Co-operative Societies,
Tiruchirappalli Region,
Manarpuram,
Tiruchirappalli-20.
- 2.The President,
Palakurichi Primary Agricultural
Co-operative Credit Society (M.M.353),
Tiruchirappalli District.



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ABDUL QUDDHOSE, J.

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