

(2008) 12 MAD CK 0333

In the Madras High Court

Case No : Writ Petition No. 7864 of 1999

K. Sekaran

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 12(3), 18(1), 33

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2008) 12 MAD CK 0333

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : R. Thamaraiselvan, for the Appellant; P. Muthukumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—Heard the learned Counsels appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

2. It has been stated that the petitioner had joined in the service of the Co-operative Department in the year, 1988, as a Junior Inspector of Co-operative Societies. He was promoted as a Senior Inspector of Co-operative Societies in the year, 1992. The petitioner has been discharging his duties without any complaint. While the petitioner was serving as a Senior Inspector of Co-operative Societies (Inspection), he was placed in Additional Charge as the Special Officer of T.A. No. 71, Okkur primary Agricultural Co-operative Bank.

3. It has been further stated that the then Elected Board of Directors in-charge of the Management of Okkur Primary Agricultural Co-operative Bank, had entered into a settlement with its employees, u/s 12(3) of the Industrial Disputes Act, 1947. The period of settlement had expired, on 31.3.1993. Even after the expiry of the said settlement it had continued to be in force. However, as there was a delay in implementing the said settlement, the employees of Okkur

primary Agricultural Co-operative Bank had made an application to the state Government, u/s 33(c)(i) of the Industrial Disputes Act, 1947, for the recovery of the money due to them, as arrears of land revenue. The Government, vide letter No. 93598/B2/92-1, dated 23.1.1992, had directed the petitioner to show cause as to why a certificate, u/s 33(c)(i) of the the Industrial Disputes Act, 1947, should not be issued in favour of the employees for the recovery of the amounts due to them. Therefore, the petitioner had no other option except to pay the amount due to the employees in accordance with the settlement concluded u/s 12(3) of the Industrial Disputes Act, 1947.

4. It has been further stated that the fourth respondent had issued a charge memo, in Na.Ka. No. 5127/94-A1(1), dated 25.3.1994, alleging that the petitioner, as a Special Officer of Okkur primary Agricultural Co-operative Bank, had misused the funds by disbursing the same to the employees without the approval of the higher officials. The petitioner had submitted his explanation, dated 28.12.1994, denying the allegations made against him and by stating that he had disbursed the amount due to the employees only in accordance with the settlement concluded u/s 12(3) of the Industrial Disputes Act, 1947. Further, it was alleged that the petitioner had misutilised the funds of the Bank by disbursing the same to the employees of Ulagalandanvayal Primary agricultural co-operative Bank relying upon the fabricated settlement, dated 27.5.1991, said to have been concluded u/s 18(1) of the Industrial Disputes Act, 1947. Even though the petitioner had denied the allegations stating that he had joined the Bank only on 1.3.1993 and before disbursing the wages, as per the settlement, he had obtained the legal opinion from the Government Pleader. However, the third respondent, without considering the explanation submitted by the petitioner, had passed an order, dated 5.5.1997, in Na.Ka.1089/95-A1, dismissing the petitioner from service.

5. Aggrieved by the said order, the petitioner had filed an appeal to the second respondent. The second respondent, instead of setting aside the order of dismissal passed against the petitioner, had modified the said order of dismissal by converting it into an order of reversion, reverting the petitioner as a Junior Inspector for five years, by an order, dated 6.4.1998. Therefore, the petitioner had preferred a revision petition to the first respondent by a petition, dated 5.6.1998. The first respondent, by an order, dated 29.12.1998, had confirmed the order of the second respondent by a non-speaking order without assigning proper reasons for passing the said order. In such circumstances, the petitioner had preferred the present writ petition, under Article 226 of the Constitution of India.

6. A counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It has been stated that the petitioner, while he was the Special Officer of Okkur Primary Agricultural Co-operative Bank, had misutilised the funds of the Society by making illegal payments to the salesmen of the Public Distribution System. Therefore, the Deputy Register of the

Cooperative Societies, Aranthangi, had framed charges against the petitioner, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner had submitted his explanation on the charges levelled against him. In the enquiry held against the petitioner, the charges levelled against him had been proved. Therefore, the Joint Register of the Co-operative societies, Pudukkottai District, the third respondent herein, had dismissed the petitioner from service, by an order, dated 5.5.1997. In the appeal preferred by the petitioner, the Register of the Cooperative societies, the first respondent herein, had modified the dismissal order into one of reduction to the lower post i.e, from the cadre of Senior Inspector to that of Junior Inspector, for five years, from the passing of the order, dated 6.4.1998. The petitioner had preferred a revision petition to the Government of Tamil Nadu, the first respondent herein. By an order, dated 29.12.1998, the punishment of reduction to a lower post, imposed on the petitioner by the second respondent, had been confirmed.

7. It has been further stated that there was a settlement between the Management and the employees of Okkur primary Agricultural Co-operative Bank, u/s 12(3) of the Industrial Disputes Act, 1947. In the said settlement, there was a provision to give the minimum wages to the village public distribution system shop salesmen. Even though no payment should have been made to the salesmen of the Public Distribution system other than the amount fixed by the Government, the petitioner had raised the wages of the Public Distribution System salesmen and had also fixed the Dearness Allowance. He had also decided to pay the arrears to the employees without the approval of the higher officials of the Department. Further, he had misutilised the funds of the Ulagalandanvayal Primary Agricultural Co-operative Bank, while he was the special officer, by forging and fabricating the documents. Thus, he had caused heavy financial loss to both Okkur primary Agricultural Co-operative Bank and Ulagalandanvayal Primary Agricultural Co-operative Bank. In such circumstances, he was imposed with the punishment of dismissal from service, which has been subsequently modified to one of reduction to the lower cadre. Therefore, the writ petition preferred by the petitioner is devoid of merits and hence, it is liable to be dismissed.

8. At the stage of the hearing of the writ petition, the learned Counsel appearing for the petitioner had brought to the notice of this Court that the criminal proceedings initiated against the petitioner, with regard to the charges levelled against him, had been dropped by way of referred charge sheet, dated 30.9.1999, as there was no evidence to prove the guilt of the petitioner. Further, the surcharge proceedings initiated against the petitioner had also ended in his favour, by an order, dated 14.9.2000, made in Criminal Miscellaneous Appeal (C.S. No.) No. 8 of 1999, on the file of the Principal District Court, Pudukottai.

9. The learned Counsel had further submitted that there is no evidence to prove that the petitioner had committed the irregularities alleged against him. Therefore, the impugned orders, which are under challenge in the present writ

petition, are devoid of merits and unsustainable in the eye of law.

10. The learned Counsel appearing for the respondents had not refuted the contentions raised by the the learned Counsel appearing for the petitioner.

11. No records had been placed before this Court to substantiate the claims made on behalf of the respondents. Further, it is seen that the criminal charges levelled against the petitioner have not been pursued due to insufficient evidence. The surcharge proceedings initiated against the petitioner, to recover the loss said to have been caused by him, had also ended in favour of the petitioner, by an order, dated 14.9.2000, made in Criminal Miscellaneous Appeal (C.S. No.) No. 8 of 1999, on the file of the Principal District Court, Pudukottai. In such circumstances, this Court is of the considered view that the petitioner has shown sufficient cause to set aside the impugned orders of the respondents, as prayed for by the petitioner. Accordingly, the writ petition stands allowed. No costs.