

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2007

CORAM:

THE HON'BLE MR.JUSTICE CHOCKALINGAM

W.P.NO.4031 OF 2007

AND

WP.MP.NOS.1 AND 2 OF 2007

S.Ramamoorthy

...Petitioner

Vs.

1.The Chairman,
Common Cadre Authority/Joint Registrar
of Coop Societies,
Tiruvannamalai Region,
Tiruvannamalai.

2. The Special officer,
H.H.583. Nallavanpalayam Primary
Agricultural Coop.Bank Ltd.,
Nallavanpalayam,
Tiruvannamalai Taluk,
Tiruvannamalai District.

..Respondents

Petition filed under Article 226 of the Consttution of India praying for the issuance of a writ of Certioarified Mandamus calling for the entire records relating to the impugned oder passed by the Ist respondent in his proceedings Na.Ka.No. 7556/2005 PA.CB dated 31.10.2006 ans quash the same and consequently reinstate the petitioner into service with all backwages.

For Petitioner: Mr.C.Prakasam

For Respondent No.1: Mr.I.Paranthaman

Additional Government Pleader

For Respondent No.2: Mr.D.Srinivasan

O R D E R

Invoking the writ jurisdiction of this Court, the petitioner sought for the issuance of a writ of Certiorarified mandamus to quash the proceedings of the first respondent made in No.7656/05 PACB dated 31.10.2006, whereby the petitioner was terminated from service and also for reinstatement of the petitioner into service with all backwages.

2. The Court heard the learned counsel on either side.

3. Advancing his arguments on behalf of the petitioner, learned counsel for the petitioner would submit that the petitioner was appointed as salesman in the second respondent bank in the year 1979, that he was also promoted as Clerk and subsequently as Assistant Secretary in 1992 and subsequently he was promoted as Secretary in the second respondent bank. At the time of Audit inspection made in the year 2003-04, as per the Audit Report, certain irregularities were found in this connection and charge memo was issued for the alleged irregularities, that the petitioner has sanctioned loan to the members more than the value of land and without sufficient documents and also that sanctioned loan without any resolution and have not obtained prior permission from the higher officials and prepared focus records regarding with issuing loans and misused his wife's savings bank account and thereby caused loss to the bank to the tune of Rs.1.16 lakhs . Charge memo was served upon the petitioner. He gave detailed explanation, but the respondents have not considered the same and appointed domestic enquiry officer who in turn conducted enquiry and in that enquiry, the petitioner has participated and also made a request to furnish relevant documents enabling him to defend the case. But the domestic officer had not furnished the same, but he has not allowed the petitioner to go through the records, but on the other hand he acted in favour of the respondents. Under such circumstances, a written request was made to the first respondent that the enquiry officer should be immediately changed, but that was not done. Further, all the charges were found against him as a result of the said domestic enquiry and further the first respondent has issued the second show cause notice. But without giving reasonable opportunity for submitting his explanation, the first respondent has passed an order of termination against him .

4. Learned counsel has assailed the said impugned order of termination on four grounds. Firstly, at the time of enquiry, despite the request, copy of the documents were not furnished to him to put forth his defence, Secondly, while the enquiry officer was going in partisan attitude, the petitioner has made a representation to change the enquiry officer, but it was not done so. Thirdly, after the report of the enquiry officer regarding the finding that the charges were proved against the petitioner, the second show cause notice was issued, but without reasonable opportunity for submitting his explanation and subsequently, termination order was passed by the first respondent. Fourthly, during the pendency of the proceedings, subsistence allowance was not paid to him from the time of suspension . Under such circumstances, the impugned order has got to be quashed.

5. In support of his contention, learned counsel for the petitioner has relied on the Division Bench Judgment of this Court in C.JEYARAJAN VS. STATE OF TAMIL NADU AND OTHERS reported in (2006) 3 M.L.J. 251.

6. The Court heard the learned counsel for the respondents on the above contentions.

7. According to the learned counsel for the respondents sufficient opportunity was given to the petitioner after levelling charges against him. He has filed his explanation on 15.2.2006 and he has also participated in the domestic enquiry and after the enquiry was over, recording that the charges were proved, the second show cause notice was served upon him. Following which, the order of termination came to be passed. So far as subsistence allowance was concerned, it has been paid on 25.8.2007 and hence the order of termination was perfectly correct and it has got to be sustained.

8. After considering the rival submissions made, this Court is of the considered opinion that the order of termination has got to be quashed for more than one reason. In the instant case, it is not in controversy that certain charges were levelled against the petitioner herein and following the explanation, domestic enquiry was ordered. The first grievance ventilated by the petitioner that despite his representation for giving copy of the documents, the enquiry officer has not furnished the same and even he was not allowed to make the inspection of the document. Though he made a representation about the partisan attitude of the enquiry officer, it was not considered at all. Apart from that, the enquiry officer proceeded with the enquiry and recorded the finding against him without giving reasonable opportunity. At this juncture, it is pertinent to point out that in the instant case, subsistence allowance from the time of suspension till the enquiry was over, has not been paid. Now the contention put forth by the respondents that it has been paid on 25.8.2007 cannot be an answer. In the instant case what is noticed by this Court is that proceedings are culminated from the dismissal of the employee, the petitioner herein. It is needless to point out due to the non payment of subsistence allowance, the petitioner has got much sufferings and also it caused prejudice to the petitioner. Under such circumstances, the departmental proceedings are vitiated and the order of termination has got to be quashed. The employee is not only entitled for reinstatement, but also other benefits accrued thereon.

9. The writ petition is disposed of accordingly. No costs. Consequently, MP.Nos.1 and 2 are closed.

VJY

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Chairman,
Common Cadre Authority/Joint Registrar
of Coop Societies,
Tiruvannamalai Region,
Tiruvannamalai.

2. The Special officer,
H.H.583. Nallavanpalayam Primary
Agricultural Coop.Bank Ltd.,
Nallavanpalayam,
Tiruvannamalai Taluk,
Tiruvannamalai District

+ One cc to Mr. D. Srinivasan, Advocate sR 54736

+ One cc to Mr. C. Prakasam, Advocate sR 54622

BV (co)

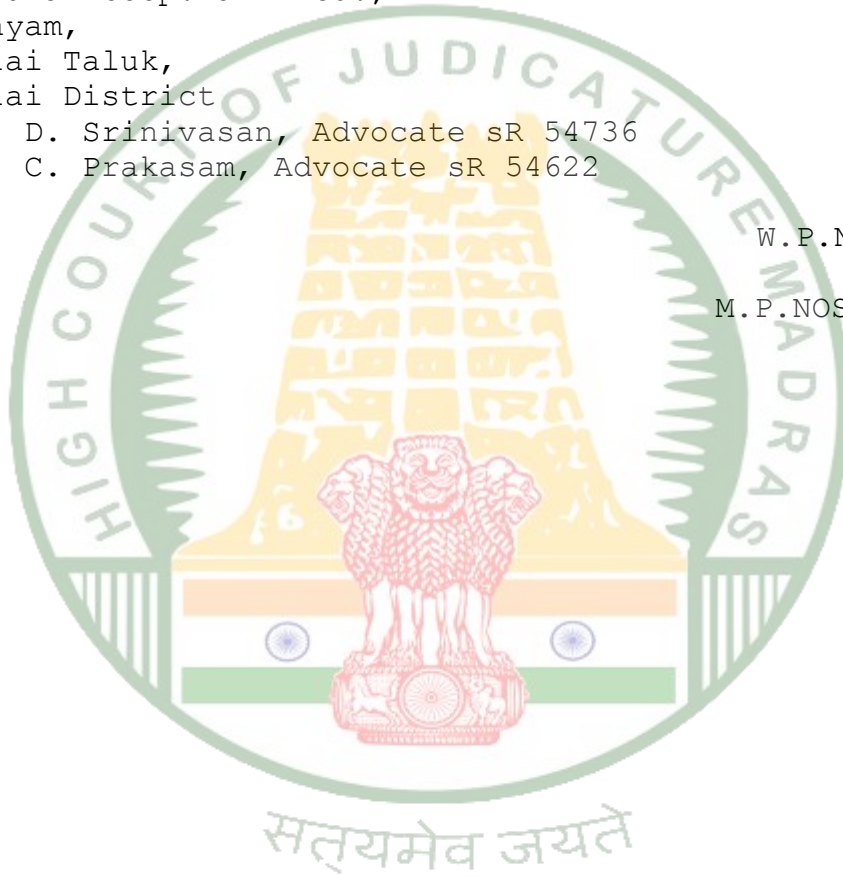
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