

Case relating to Departmental Promotion:**Parties** : F. Ismail Pillai Annavi Versus State of Tamil Nadu rep. By Secretary & Others**Court** : High Court of Judicature at Madras**Case No** : W.P.No.238 of 2003**Judges**: THE HONOURABLE MR. JUSTICE M. JAICHANDREN**Appearing Advocates** : For the Petitioner: S. Gomathinayagam, Advocate. For the Respondents: R2, K. Surendranath, Advocate, R1 & R3, P. Muthukumar, Government Advocate.**Date of Judgment** : 04-11-2008**Head Note :-**

SUBJECT

Judgment :-

(Prayer: Petition filed seeking to issue a writ of Certiorarified Mandamus, calling for the records of the respondents particularly that of the second respondent, dated 9.4.2001, in Lr.No.587/DCD-B2/2001-1, and consequential G.O.(2D)No.35, dated 18.10.2001 of the 1st respondent and quash the same as illegal, unlawful, without jurisdiction, against the principles of natural justice and ultra vires and consequently direct the respondents to prove all such service and monetary benefits applicable to the petitioner with effect from 4.11.1998.)

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

2. The petitioner has stated that he was working as a supervisor of industrial cooperatives, until 15.9.93. He was later promoted as Industrial Cooperative Officer, with effect from 15.9.93. Later, he was promoted as Industrial Cooperative officer/Secretary, Tirunelveli District Women Printing Industrial Cooperative Society. Thereafter, he was transferred and posted as Industrial Co-operative Officer/Secretary, Kadayanallur Adi Dravidar Coir Workers Industrial Cooperative Society Limited at Kadayanallur, Tirunelveli District. The petitioner had also been given additional charge as Industrial Cooperative Officer/Secretary In-charge, Pandian Small Match Producers Service Industrial Cooperative Society Limited, Kadayanallur, Tirunelveli District. While so, the third respondent had passed orders suspending the petitioner from service, on 4.11.98, which was communicated to the petitioner, on 9.11.98, along with the charge sheet. An enquiry officer was appointed for conducting the enquiry against the petitioner. The enquiry officer had conducted the enquiry, without giving an opportunity to the petitioner to peruse the relevant records and without being given an opportunity to cross examine the witnesses. Under such circumstances, the petitioner had sent several representations to the respondent requesting that the enquiry may be conducted against the petitioner following the principles of natural justice. Meanwhile, the third respondent, by an

order, dated 4.8.99, had revoked the order of suspension imposed on the petitioner and posted the petitioner as Industrial Cooperative Officer, Anbil Auto Taxi Drivers' Industrial Cooperative Society Limited, Trichy, and Trichy District Kamarajar Auto Drivers' Industrial Cooperative Society Limited, Trichy. Pursuant to the said order, the petitioner had joined duty, with effect from 18.8.99.

3. It has been further stated that the third respondent, by his proceedings, dated 5.7.2000, had passed final orders based on the report submitted by the enquiry officer holding that all the charges against the petitioner, except Charge No.4, had been proved. By the said order, dated 5.7.2000, the petitioner was awarded the punishment of stoppage of increment for a period of three years, without cumulative effect.

4. It has been further stated that the petitioner had preferred an appeal before the first respondent, on 15.9.2000, challenging the order of the third respondent, dated 5.7.2000. On receipt of the said appeal the first respondent had sought for an opinion from the second respondent, as a routine procedure. The second respondent, by a communication, dated 9.4.2001, had given an opinion that the entire enquiry was void due to the fact that the signatures of the witnesses had not been obtained in the depositions and that the enquiry officer had failed to attest the recorded enquiry proceedings. Based on the said opinion the first respondent had set aside the order of punishment imposed on the petitioner by the third respondents, vide G.O.(2D) No.35, Small Industries (E.II.2) Department, dated 18.10.2001, and consequently, directed the third respondent to conduct de nova proceedings from the stage where the defect had crept in and to pass final orders thereon. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

5. In the counter affidavit filed on behalf of the first and third respondents the allegations made by the petitioner have been denied. It has been stated that the writ petition is not maintainable, either in law or on facts. It has been further stated that during his tenure, the petitioner had committed serious irregularities involving misappropriation of funds of the society, as the Secretary of Kadayannallur Adi Dravidar Coir Workers Industrial Cooperative Society Limited. He has also been involved in falsification of records, releasing of building advance funds and other irregularities, causing serious loss to the society. Therefore, the petitioner had been placed under suspension from service, by the proceedings of the Director of Industries and Commerce, Chennai, dated 4.11.1998, based on the charges framed, under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules. The charges had been framed and it was served on the petitioner, on 10.11.98. The petitioner had submitted his statement of defence, on 20.11.98, and he had opted for an oral enquiry, by personal hearing. The oral enquiry was conducted on 8.4.99. In his representation, dated 8.4.99, the petitioner had stated that he was given a reasonable opportunity to peruse the records and to defend his case. By the

proceedings of the third respondent, dated 7.7.99, the suspension of the petitioner had been revoked and he was reinstated in service and he was posted as Industrial Co-operative Officer at Trichy, by proceedings, dated 4.8.99.

6. It has been further stated that out of the five charges framed against the petitioner, charges 1,2 3 and 5 were held proved. Since the said charges were serious in nature he was imposed with the punishment of stoppage of increment for three years, with cumulative effect, vide proceedings of the third respondent, dated 5.7.2000. The petitioner had filed an appeal to the first respondent, on 15.9.2000. The first respondent had referred the appeal to the Tamilnadu Public Service Commission, the second respondent herein for its views, under Regulation 18(1)(a) of the Tamilnadu Public Service Commission Regulations, 1954. Based on the views communicated by the second respondent the first respondent had set aside the punishment imposed on the petitioner and he had directed the third respondent to conduct de nova proceedings, from the stage where the defect had crept in and to pass final orders thereon, as deemed fit, vide G.O.(2D) No.35, Small Industries (E.II.2) Department, dated 18.10.2001. As there is no infirmity or illegality in the impugned orders, the writ petition is liable to be dismissed.

7. The learned counsel appearing on behalf of the petitioner had submitted that the proceedings of the second respondent, dated 9.4.2001, and the consequential order, dated 18.10.2001, made in G.O.(2D) No.35, Small Industries (E.II.2) Department, are illegal and unsustainable in law. Once the enquiry was set aside, as being contrary to law, it would not be lawful for the first respondent to order a de nova enquiry against the petitioner.

8. The learned counsel appearing on behalf of the petitioner had relied on a decision of the Supreme Court, in State of M.P. Vs. Bhooraji and others (2001)7 SCC 679, in support of his contentions, wherein the Supreme Court had laid down that a de nova trial should be the last resort and that too only when such a course becomes so desperately indispensable. It should be limited to the extreme exigency to avert 'a failure of justice'. Any omission or even the illegality in the procedure, which does not affect the core of the case, is not a ground for ordering a de nova trial.

9. The learned counsel appearing on behalf of the respondents had submitted that no harm has been done to the petitioner by the ordering of a de nova enquiry by the first respondent. Since certain procedural infirmities were found to have crept in during the recording of the enquiry proceedings, based on the views expressed by the second respondent, the first respondent had directed the third respondent to conduct de nova proceedings to prove the charges levelled against the petitioner. At this stage, the petitioner cannot claim that he is an aggrieved person. It has been submitted that the enquiry has been completed pursuant to the order of this Court, dated 6.10.2003, made in W.P.M.P.No.267 of 2003. However, no final orders have been passed till date, as directed by this Court.

10. In view of the submissions made by the learned counsels appearing for the petitioner, as well as for the respondents and on a perusal of the records available, this Court is of the considered view that the petitioner has not shown sufficient cause or reason for this Court to grant the reliefs, as prayed for in the present writ petition. No prejudice has been caused to the petitioner by the order of the first respondent directing the third respondent to conduct a de nova enquiry against the petitioner, with regard to the charges levelled against him. Further, the enquiry proceedings had been held pursuant to the order passed by this Court, on 6.10.2003, in W.P.M.P.No.267 of 2003. However, final orders have not been passed. Further, it would be open to the petitioner to challenge the final order that may be passed, based on the enquiry proceedings conducted against the petitioner, pursuant to the impugned order of the first respondent, made in G.O.(2D) No.35, Small Industries (E.II.2) Department, dated 18.10.2001, if so advised, in the manner known to law. Accordingly, the writ petition stands dismissed with the above observations. No costs.