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W.P.No.12528 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.12528 of 2020
and W.M.P.No.15437 of 2020

A.Jeevareethan

... Petitioner

Vs.

1.The Joint Registrar of Cooperative Societies,
Coimbatore Division, Coimbatore – 38.

2.The President,
K.141, Malayandipattinam Primary Agricultural Co-operative Credit
Society,
Malayandipattinam Post, Pollachi – 642 114.

3.Manonmani,
Secretary (In-charge)
K.141, Malayandipattinam Primary Agricultural Co-operative Credit
Society,
Malayandipattinam Post, Pollachi – 642 114.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned orders dated 22.11.2017 issued by the second respondent herein namely the President K.141, Malayandipattinam Primary Agricultural Co-operative Credit Society, Malayandipattinam Post, Pollachi,



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quash the same as non-est in the eye of law and the order in Revision Petition No.0825/2018 Va2 date 26.12.2018 issued by the first respondent herein namely the Joint Registrar of Cooperative Societies Coimbatore Division, Coimbatore, quash the same as non-est in the eye of law and consequently direct the first respondent herein namely the Joint Registrar of Cooperative Societies Coimbatore Division, Coimbatore 38, to issue consequential order of reinstating the petitioner into service as Salesman in K.141, Malayandipattinam Primary Agricultural Co-operative Credit Society, Malayandipattinam Post, Pollachi with effect from 10.11.2017 AN onwards and to treat the period from 10.11.2017 AN to date of reinstatement as one of duty for all purposes with attendant, service and monetary benefits and continuity of service for the above said period with full back wages for the said period and to treat the period from 02.06.2015 to 31.08.2015 as one of duty for all purposes and to pay the full wages for the above said period and to treat the period from 01.09.2015 to 09.11.2017 as one of duty for all purposes and to pay the full wages for the above said period and also pay wages for the month of May 2015, within a short date that may be fixed by this Hon'ble Court and for payment of costs to the petitioner herein by the second and third respondents herein.

For Petitioner : Mr.K.S.Govinda Prasad

For Respondent 1 : Mr.K.Tamil Vendan,
Government Advocate

For Respondent 2 : Mr.L.P.Shanmugasundaram



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For Respondent 3 : No Appearance

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ORDER

The petitioner has filed this writ petition seeking to call for the records relating to the impugned orders dated 22.11.2017 issued by the second respondent herein namely the President K.141, Malayandipattinam Primary Agricultural Co-operative Credit Society, Malayandipattinam Post, Pollachi, quash the same as non-est in the eye of law and the order in Revision Petition No.0825/2018 Va2 date 26.12.2018 issued by the first respondent herein namely the Joint Registrar of Cooperative Societies Coimbatore Division, Coimbatore, quash the same as non-est in the eye of law and consequently direct the first respondent herein namely the Joint Registrar of Cooperative Societies Coimbatore Division, Coimbatore 38, to issue consequential order of reinstating the petitioner into service as Salesman in K.141, Malayandipattinam Primary Agricultural Co-operative Credit Society, Malayandipattinam Post, Pollachi with effect from 10.11.2017 AN onwards and to treat the period from 10.11.2017 AN to date of reinstatement as one of duty for all purposes with attendant, service and monetary benefits and continuity of service for the above said period with full back wages for the



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said period and to treat the period from 02.06.2015 to 31.08.2015 as one of duty for all purposes and to pay the full wages for the above said period and to treat the period from 01.09.2015 to 09.11.2017 as one of duty for all purposes and to pay the full wages for the above said period and also pay wages for the month of May 2015, within a short date that may be fixed by this Hon'ble Court and for payment of costs to the petitioner herein by the second and third respondents herein.

2. Learned counsel for the petitioner submitted that the petitioner was appointed as Salesman in the services of the second respondent/society viz., K.141, Malayandipattinam Primary Agricultural Co-operative Credit Society, Malayandipattinam Post, Pollachi from the year 1991 onwards and he has been discharging his duties to the utmost satisfaction of his superior officers and the general public without giving any room for any complaint, whatsoever from any quarters, till the date of his dismissal from service. Thus, his appointment with the second respondent society is a regular appointment.



3. Learned counsel for the petitioner would further submit that the petitioner has put in a total qualifying unblemished service of 26 years right from 03.05.1991 to till the date of dismissal from service that is on 22.11.2017. By letter dated 02.06.2015 submitted before the second respondent, the petitioner has prayed for grant of leave from 02.06.2015 to 30.08.2015 on medical grounds that he was suffering from the ailment of diabetics, which was so severe for him and the said letter was returned with the endorsement “refused”. In this regard, the petitioner has also submitted a representation dated 22.06.2015 to the Hon'ble Chief Minister's cell.

4. Learned counsel for the petitioner would further contend that on 31.07.2015, the second respondent had sent a letter asking the petitioner to come and join duty immediately, within a period of seven days from the date of receipt of the said letter. Hence, the petitioner went two times and met the Secretary (In charge) Tmt.Manonmani and on account of political interference, she has not permitted the petitioner to report and join duty. Though, the petitioner has sent representations to join duty as Salesman, the same was not considered and disposed of.



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5. Learned counsel for the petitioner would further contend that the second respondent issued a letter dated 25.09.2015 to the petitioner stating that in spite of the letter sent, the petitioner was not reporting for duty and it caused disruption in the public distribution system and spoiled the name and reputation of the society and also other unwanted allegations against the petitioner. In reply to the said letter, the petitioner sent a reply letter dated 07.10.2015, denying all the allegations made against him. This being so, the second respondent has not paid the salary payable to the petitioner for the month of May 2015 and in order to treat the said period as duty period, the petitioner had filed a Revision petition dated 09.09.2016 before the first respondent. However, no order was passed.

6. Learned counsel for the petitioner would further submit that by letter dated 27.09.2016 issued by the first respondent, the petitioner was directed to pay a sum of Rs.160/- towards necessary charges and fees for processing the Revision Petition and the same was paid by the petitioner. Since, no order was passed, the petitioner has preferred a Writ Petition in W.P.No.615 of



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2017, before this Court seeking direction to the first respondent herein to consider the revision petition dated 09.09.2016 and the same was disposed of by this Court on 09.01.2017. Subsequent to the same, the first respondent has passed an order in revision petition on 07.09.2017. Thereafter, the petitioner was informed to produce the medical certificates within 7 days and the same was sent to the second respondent on 31.10.2017. Moreover, the petitioner prayed to disburse the pay for the period 01.06.2015 to 31.08.2015 and from 01.09.2015 to 07.09.2017.

6.1. This being so, the petitioner has sent a representation dated 07.11.2017 to the second respondent to point out the lacuna in the proceedings and to take decision in the Board meeting regarding his grievance. However, in the Board Meeting, the members of the society has decided to take action against the petitioner on account of non-reporting for duty and the same was published in many Tamil Dailies as the petitioner was issued with a punishment of dismissal from service from 10.11.2017 A.N. Subsequently, by order dated 22.11.2017, the petitioner was issued with the



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said punishment of dismissal from service from 10.11.2017 A.N.

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7. Learned counsel for the petitioner further contended that on receipt of the said dismissal, the petitioner has preferred a revision petition dated 20.01.2018, before the District Assistant Registrar of Co-operative Societies, Coimbatore Division, Coimbatore to set aside the order of dismissal dated 22.11.2017 and to direct the respondent to reinstate the petitioner into service as a Salesman in the second respondent/society, but, no order was passed. Hence, the petitioner has filed a writ petition in W.P.No.14277 of 2018 before this Court seeking direction to consider and dispose of the revision petition. This Court by its order dated 13.06.2018, directed the competent authority to dispose of the same. Thereafter, by order dated 26.12.2018, the first respondent rejected the revision petition. Hence, the petitioner has come forward with the present writ petition.

8. Learned Government Advocate appearing for the respondent has filed a counter affidavit dated 07.12.2020 and submitted that the petitioner vide his letter dated 02.06.2015 prayed to grant leave from 02.06.2015 to



30.08.2015 on medical grounds but failed to enclose the Medical Certificate.

Though the second respondent/society instructed the petitioner to rejoin duty vide its letter dated 25.09.2015 and 25.10.2015, the petitioner has not turned down. The petitioner was absent/staying away from duty with effect from 01.09.2015. The petitioner in his letter dated 18.02.2018 has stated that while attempting to join duty on 20.09.2017, the second respondent negative his request with instruction only by producing Certificate from Medical Board, the petitioner will be allowed to join.

9. Learned Government Advocate appearing for the respondents further submitted that the petitioner stayed away from duty with effect from 01.09.2015 to 07.09.2017 for the total period of 737 days and in the Revision Petition filed by the petitioner, the first respondent, in his order dated 07.09.2017 ordered that if the petitioner furnished Medical Certificate then the absence of duty may be treated based on the availability of leave. Further, it has directed the second respondent/society to take action against the petitioner for staying away from duty without proper permission. In pursuance of the order dated 07.09.2017, the second respondent/society has



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instructed the petitioner vide letter dated 20.09.2017, 20.10.2017 and 02.11.2017. Hence, the petitioner came to join duty on 25.09.2017 but failed to produce neither the Medical Certificate nor explanation for stayed away from duty and gone.

10. Learned Government Advocate appearing for the respondent contended that in the General Body Meeting, which was held on 10.11.2017, it was unanimously resolved to dismiss the petitioner from service of the Society with effect from 10.11.2017 and the same was published in the “Dinathanthi Newspaper” on 16.11.2017. Aggrieved by the dismissal order of the second respondent, the petitioner filed Revision Petition dated 20.01.2018 under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 . Subsequently, the petitioner has filed writ petition in W.P.No.14277 of 2018 to consider the revision petition. Based on the order of this Court dated 13.06.2018, the first respondent passed an order in Revision Petition No.0825/2018 Ve 2. dated 26.12.2018 confirming the impugned order of dismissal.



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11. Learned Government Advocate appearing for the respondents further contended that the in view of the legal principles settled by the Larger Bench, Clause (vii) of Paragraph 21 of the judgment (Full Bench Judgment of this Court, which was reported in 2006 (4) CTC 689 of Marappan case) and in the absence of any exceptional circumstances, the Court will not ordinarily entertain any writ petition under Article 226 of the Constitution of India, when the Act provides for an alternative remedy. In this case, even though the petitioner has preferred a Revision Petition under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983, he has not challenged the order passed by the first respondent dated 26.12.2018 by way of filing Review Petition under section 154 of the Tamil Nadu Co-operative Societies Act, 1983. Thus, this Court need not entertain the writ petition under Article 226 of the Constitution of India.

12. Learned Government Advocate appearing for the respondents further submitted that the case on hand has to be addressed to the Competent Authority viz., Regional Joint Registrar of Co-operative Society, Coimbatore Region, Coimbatore District by way of filing Review Petition under Section



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154 of the Tamil Nadu Co-operative Societies Act, 1983 or by filing Revision Petition before the Government (Additional Secretary to Govt. Co-operation, Food and Consumer Protection Dept.) under Section 153 of the Tamil Nadu Co-operative Societies, Act, 1983. In the present case on hand, the petitioner has preferred Revision Petition before the first respondent under Section 153 of the aforesaid Act, however, challenging the order dated 26.12.2018, the petitioner has not preferred any Review Petition under Section 154 of the aforesaid Act.

13. Learned counsel appearing for the second respondent has also filed a counter affidavit dated 16.07.2023, wherein, it is stated that the dispute arising out of service matter relating to employees of Co-operative Societies, being the disputes between master and servants will have to be resolved under the Industrial Disputes Act or under the provision of Tamil Nadu Co-operative Societies Act, 1983. The petitioner has not availed the statutory remedy by way of filing Review Petition under Section 154 of the Tamil Nadu Co-operative Societies Act, 1983 before the Joint Registrar of Co-operative Societies, Coimbatore Region, Coimbatore District.



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14. Heard the learned counsel on either side and perused the materials available on record.

15. In this case, the petitioner by his letter dated 02.06.2015 submitted a letter before the second respondent for grant of leave from 02.06.2015 to 30.08.2015 **on medical grounds but failed to enclose the medical certificate.** The petitioner was absent and staying away from duty with effect from 01.09.2015. Though the petitioner was instructed to join duty vide letter dated 25.09.2015 and 25.10.2015 by the second respondent, the petitioner failed to join duty.

16. It is pertinent to note that the petitioner has sent a letter dated 07.10.2015 to the second respondent stating that he has received a letter issued by the second respondent dated 25.09.2015 and he is ready to join duty in the second respondent/society. **Moreover, in this case, the medical certificate was not submitted by the petitioner and there is no detail regarding the submission of the same during the enquiry proceeding and**



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it is clear that the petitioner has applied for medical leave for the period from 02.06.2015 to 31.08.2015, but he has failed to submit the medical certificates.

17. Thereafter, the second respondent issued a letter dated 31.07.2015, 25.09.2015 and 25.10.2015 to the petitioner, asking him to join duty but there was no reply from the petitioner. Hence, the petitioner was on unauthorized absence without furnishing any information from 01.09.2015. In view of the continuous absence, the petitioner was dismissed from service by the first respondent vide order dated 22.11.2017. Challenging the same, the petitioner has preferred a Revision Petition and the same was dismissed on 26.12.2018. At this juncture, it is pertinent to extract the relevant portions of the said order hereunder:

எழுவினா-1க்கான தீர்வு

சீராய்வு மனுதாரர் தனக்கு உடல்நிலை சரியில்லாத காரணத்தால் 02.06.2015 முதல் 31.08.2015 வரை மருத்துவ விடுப்பு கோரி சங்கத்தலைவர்/எதிர்மனுதாரருக்கு 02.06.2015 நாளிட்ட கடிதம் மூலம் கோரியுள்ளார். ஆனால், மருத்துவ விடுப்புக்கான மருத்துவச் சான்றிதழை பின்னர் சமர்ப்பிப்பதாக தெரிவித்துள்ளார். ஆனால், மருத்துவ சான்றிதழ்



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சமர்ப்பித்த விவரம் எதுவும் விசாரணையில் தொரிவிக்கப்படவில்லை. எனவே, தனது மருத்துவ விடுப்பு குறித்து நிர்வாகத்திற்கு எழுத்து மூலமாக தகவல் வழங்கப்பட்டதாக **கருதுவதைத் தவிர முறையாக விண்ணப்பம் சமர்ப்பிக்கவில்லை என்று எழுவினா தீர்வு செய்யப்படுகிறது.**

எழுவினா-2க்கான தீர்வு

மனுதாரர் 02.06.2015 முதல் 31.08.2015 முடிய மருத்துவ விடுப்பு கோரி தனது 02.06.2015 நாளிட்ட கதம் மூலம் விண்ணப்பித்துள்ளார். இருப்பினும் அதற்கான மருத்துவச் சான்றதழினை இணைக்காமல் கடிதம் மட்டும் எதிர்மனுதாரர் நிர்வாகத்திற்கு அனுப்பியுள்ளார். இதனைத் தொடர்ந்து எதிர்மனுதாரர் 31.07.2015, 25.09.2015 மற்றும் 26.10.2015 ஆகிய தேதிகளில் மனுதாரரை பணியில் சேர அறிவுறுத்தி பதிவச்சல் மூலம் கடிதம் அனுப்பியுள்ளார் அவற்றிற்கு எவ்வித பதிலோ விளக்கமோ மனுதாரரால் எதிர்மனுதாரருக்கு சமர்ப்பிக்கப்படவில்லை. எனவே, மனுதாரர் 01.09.2015 முதல் எவ்வித தகவலும் இல்லாமல் பணிக்கு வராமல் இருந்துள்ளார் என்று எழுவினா 2-க்கு தீர்வு காணப்படுகிறது.

எழுவினா-3க்கான தீர்வு

மனுதாரர் 02.06.2015 முதல் 31.08.2015 முடிய மருத்துவ விடுப்பு விண்ணப்பித்ததைத் தொடர்ந்து விடுப்பு முடிந்த பின்பு பணியில் சேர 20.09.2017 அன்று சென்ற போது மருத்துவ குபவின் அறிக்கை இருந்தால்



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மட்டுமே பணியில் சேர அனுமதிக்க முடியும் என எதிர் மனுதாரராகிய சங்கத்தலைவர் அவரை பணியில் சேர மறுத்துவிட்டதாக தனது 18.02.2018 நாளிட்ட மனுவில் குறிப்பிட்டுள்ளார்.

மனுதாரர் 31.08.2015 அன்று தனது மருத்துவ விடுப்பு முடிந்த உடன் பணியில் சேர எவ்வித முயற்சியும் மேற்கொண்டாரா என்பது குறித்து சீராய்வில் தெரிவிக்கவில்லை. அது குறித்த ஆவணங்கள் எதனையும் சமர்ப்பிக்கவில்லை. தனது 20.01.2018 நாளிட்டு இணைப்பதிவாளருக்கு வழங்கிய மனுவில் பக்கம் 5-ல் “22. Sanction of Leave” என்ற தலைப்பின் கீழ் விடுப்பு தொடர்பான சங்க துணைவிதிகளை குறிப்பிட்டுள்ளனர். அதில் வ.எண்.1 முதல் 5 வரை உள்ள துணைவிதிகள் பின்வருமாறு.

“1. Leave shall ordinarily be applied for and sanction obtained in advance.

2. No employee shall claim leave as a matter of right except the leave eligible under the Act.

3. Every application for medical leave shall ordinarily be accompanied by a Medical Certificate from a Civil Assistant Surgeon and in exceptional cases, Medical Certificate can be given within a 3 days from the date of commencement of leave.



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4. In case of other leave applied on the basis of illness, medical certificate shall be produced if required within twenty four hours of such requisition.

5. It shall be competent to the society to refer the employee to a Civil Surgeon in the Tamil Nadu Government Medical Services or to the Medical Board, if so desired. Such a reference to Civil Surgeon or Medical Board shall be made, if the total period of medical leave exceeds sixty days. When the society makes such a reference, it shall be the duty of the employee concerned to appear before the Civil Surgeon or the Medical Board, as the case may be, at this own cost on the date, time and place as may be specified by the Civil Surgeon or the Medical Board, without fail.”

18. In the instant case, the issue to be decided is to be decided whether the petitioner's unauthorized absence was wilful or not. Though the petitioner has applied for Medical Leave for the period from 02.06.2015 to 31.08.2015, he has not produced any Medical Certificate as per the by law of the second respondent/society. From the impugned order passed by the first respondent, it is clear and evident that the



petitioner has not submitted any documents or evidence to substantiate his claim that he was not on unauthorized absence for the aforesaid period.

19. In the impugned order, it is mentioned that the petitioner gave assurance to the second respondent that the Medical Certificates will be submitted afterwards but despite his assurance, he has not submitted the same before the second respondent. **In the absence of Medical Certificate, it is evident that the petitioner was not suffering from any ailment and for which 737 days of leave is unnecessary.** Furthermore, the second respondent/society instructed the petitioner to join duty vide letter dated 25.09.2015 and 25.10.2015, but the petitioner came to join only on 25.09.2017 and **failed to produce Medical Certificate nor any explanation having stayed away from duty and gone.**

20. The petitioner has not entitled for the relief sought for in the present writ petition for the following reasons:

(i) The petitioner was on unauthorized absence for the period from



02.06.2015 to 30.08.2015. Even though, he has applied leave on medical ground, he has not submitted any medical certificate, despite his assurance to submit the same later on to the second respondent.

(ii) Though the second respondent instructed the petitioner to submit the medical certificate on the date of joining, the petitioner has failed to produce the same, while he reported for duty on 25.09.2017.

(iii) The petitioner has not furnished the details of the ailment, which he was suffering from and for which, he was on unauthorized absence from 01.09.2015 to 07.09.2017 for a total period of 737 days.

(iv) Despite several reminders were given to the petitioner for submitting the medical certificate, the petitioner has failed to submit the same.

(v) The petitioner has failed to exhaust the remedy available under Section 154 of the Tamil Nadu Co-operative Societies Act, 1983 by preferring Review Petition before the Regional Joint Registrar of the Co-operative Society and directly approached this Court by way of filing this writ petition under Article 226 of Constitution of India.



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21. In view of the factual matrix of the case and for the foregoing reasons, this Court is not inclined to interfere with the orders passed by the respondents 1 & 2 dated 22.11.2017 and 26.12.2018 and the same is hereby confirmed.

22. In the result, this writ petition stands dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

29.09.2023

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Speaking Order : Yes/No
Neutral Citation : Yes/No

To:

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Coimbatore Division,
Coimbatore – 38.

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2.The President,
K.141, Malayandipattinam Primary Agricultural Co-operative Credit
Society,
Malayandipattinam Post, Pollachi – 642 114.

3.Manonmani,
Secretary (In-charge)
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J.SATHYA NARAYANA PRASAD,J.

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