



W.P.(MD)No.3694 of 2018

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 15.06.2023**

**CORAM**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P.(MD)No. 3694 of 2018**

**and**

**W.M.P(MD)Nos. 3843 & 3844 of 2018**

S.Karthikeyan(Died)

1.Koorishwari

2.Madhumohan

3.Thennarasu

4.Muthu Manikam Bharathi

... Petitioners

**Vs.**

1. The Appellate Officer / Joint Registrar  
of Cooperative Societies,  
Collector office Campus,  
Ramanathapuram,  
Ramanathapuram District.

2. The Deputy Registrar of Cooperative Societies,  
Paramakudi,  
Ramanathapuram District.

3. The Special Officer,  
A 1339, Orivayal Primary Agriculture  
Co-operative Bank,  
Ramanathapuram District.



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4. The President,  
A 1339, Orivayal Primary Agriculture,  
Co-operative Bank,  
Ramanathapuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records of the 1<sup>st</sup> respondent, dated 23.10.2017 in Appeal No.2/2016(Na.Ka.886/2016/Sapa), passed in consonance with the order, dated 31.07.2014 by the 4<sup>th</sup> respondent, quash the same, as the same is arbitrary, ultra vires, contrary to the provisions of Tamil Nadu Societies Registration Act and consequentially direct the 4<sup>th</sup> respondent to conduct an enquiry afresh.

For Petitioners : Mr. R.G.Shankar Ganesh  
For R-1 & R-2 : Mr. M.Lingadurai,  
Special Government Pleader  
For R-3 & R-4 : Mr.A.K.Manikkam

### **ORDER**

This writ petition filed to quash the impugned order, dated 23.10.2017 passed in Appeal No.2 of 2016 confirming the order of the 4<sup>th</sup> respondent, dated 31.07.2014 with a consequential direction to the 4<sup>th</sup> respondent to conduct enquiry afresh.



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2. The petitioner has joined in the respondent Society as Night Watchman on 10.08.1989 as Full-Time employee, thereafter, he was promoted as 'Attender' on 07.08.2012. The 4<sup>th</sup> respondent has issued a charge memo, dated 15.04.2014 for the following three allegations:

- (i) allegation of dereliction of duty and cooperating for malfeasance in the 4<sup>th</sup> respondent society,
- (ii) Forged the signature of the Secretary in the receipts acting contrary to the interests of the society and the general public.
- (iii) In the year 2009-2010 swindled the funds of the society by giving false address for the beneficiaries under the Agricultural scheme.

The petitioner has participated in the enquiry proceedings and the charges were held proved. Against the same, the petitioner has preferred an appeal to the Appellate authority, the Joint Registrar of Co-operative Societies and the punishment order was confirmed. Aggrieved over the same, the present writ petition is filed.

3. The respondents have also filed a detailed counter stating that the Enquiry Officer has granted sufficient opportunity to the petitioner. The petitioner was granted time to peruse the material documents and the petitioner



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has also participated in the enquiry. The management after taking the enquiry report into consideration, has independently come to the conclusion that the charges are proved. Based on the enquiry report and the order of the original authority, the Revisional authority has considered the case of the petitioner independently and passed elaborate speaking order and confirmed the punishment of dismissal. The respondents deny the contention of the petitioner that he was not granted any duties. After promotion, specific duties and responsibilities were fixed on the petitioner. Moreover, after suspension of one Karuppiah who is the Secretary of the society, the petitioner was holding additional charge of jewel key and maintain the loan file and the petitioner had not handed over the key and file. The petitioner has committed serious misconduct and created forged documents and misappropriated the funds of Rs.4,91,395/- with connivance of Ex-Secretary Mr.Karuppiah in the year 2009-2010 for the Crop insurance disbursement claim. It is also further submitted that the said Karuppiah was also temporarily suspended from service and he is also facing a disciplinary proceeding. Therefore, the respondents prayed to dismiss the writ petition.



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4. Heard Mr. R.G.Shankar Ganesh, the Learned Counsel appearing for the petitioner, Mr. M.Lingadurai, the Learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.A.K.Manikkam, the Learned Additional Government Pleader appearing for the respondents 3 and 4 and perused the material documents placed on record.

5. The learned counsel appearing for the petitioner submitted that the respondents are biased in taking disciplinary proceedings against the petitioner alone and has raised such plea before the Revision Authority. The Revision Authority has held that the action would be taken against each individual as per their error and the same cannot be compared. The relevant portion is extracted here under:

.....

□4. சங்க செயலாளர் கருப்பையா தொடர்ந்து தற்காலிகப் பணிநீக்கத்தில் உள்ள நிலையில் மறு ஆய்வு மனுதாரான தன் மீது மட்டும் ஒழுங்கு நடவடிக்கையினை விரைந்து முடித்து நிரந்தரப் பணிநீக்கம் செய்யப்பட்டது காழ்ப்புணர்ச்சி காரணமாக என்று சாட்டுரையில் மனுதாரரின் குற்றச்சாட்டுக்கு மனுதாரர் எந்தவொரு ஆதாரத்தினையும் அளிக்கவில்லை. ஒவ்வொருவர்



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மீது ஒழுங்கு நடவடிக்கை முடிவும் அதன் தன்மைக்கேற்ப தீர்வு செய்யப்படும். அவற்றினை ஒப்புநோக்கி பரிகாரம் தேடுவது சரியானதல்ல. அதில் வலுவான காரணிகள் ஏதுமில்லை என்ற காரணத்தினால் மனுதாரரின் இக்கோரிக்கை நிராகரிக்கத்தக்கது என்று தீர்மானித்து நிராகரிக்கிறேன்.□

The findings of the Revisional authority cannot be accepted. Whenever disciplinary proceeding is initiated against erring officials, then the respondents ought to take action against all the erring officials. In the present case the disciplinary proceeding was initiated against the Ex-Secretary but the respondents are silent about the status of the enquiry against the said Ex-Secretary Karuppiah, creating suspicion of bias.

6. The next contention of the petitioner is that he was working as Attender in the respondent society. But, the allegation against the petitioner is that he has forged the signature of the Secretary. For which, the petitioner has produced several letters, which were written by the beneficiaries. The beneficiaries had stated in the letters that the petitioner had not forged the signature of the beneficiaries but it is the Secretary who has forged the



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beneficiaries' signature. The Revision Authority has not considered this plea in the order at all and hence this Court is of the considered opinion that there is violation of principles of Natural Justice.

7. Moreover, the 1<sup>st</sup> allegation against the petitioner is dereliction of duty and cooperating for malfeasance. Since the allegation against the petitioner is cooperating for the malfeasance, then the person indulged in malfeasance ought to be punishment. In the present case it is the Ex-Secretary Karuppiyah, but the respondents have not conducted the enquiry against the said Karuppiyah properly for the reasons best known to them. On perusing this charge this Court is of the considered opinion that the respondents are selectively taking action against the petitioner and the same is clearly hit by bias.

8. The next contention of the petitioner is that the petitioner had submitted the revision petition along with the letter signed by the eight members of the Management Committee, wherein it is accepted by them that there was no Board meeting on 31.07.2017. The respondents have issued summons to all the members. But the respondents have recorded that three members have not



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appeared for enquiry inspite of the receiving summons. But the respondents failed state the status of the remaining members. Therefore, this Court is of the considered opinion that the petitioner deserves one more opportunity.

9. The next contention of the petitioner is that the respondents have conducted 2<sup>nd</sup> enquiry under section 81. In the first report it is stated 13 beneficiaries had obtained insurance amount by forged document for a tune of Rs. 5,12,500/-, but in the 2<sup>nd</sup> report it states 11 beneficiaries had obtained insurance amount by forged document for a tune of Rs.5,04,500/-. But the respondents have punished the petitioner based on the 1<sup>st</sup> report. Infact the petitioner is not aware of 2<sup>nd</sup> enquiry at all, while conducting the 2<sup>nd</sup> enquiry the petitioner was not enquired at all. Moreover, the list of 11 beneficiaries was not served to the petitioner. The respondents are bent upon punishing the petitioner alone, but are trying to leave the Ex-Secretary, hence the petitioner prayed to remand the case back to the authorities for fresh consideration. On considering this plea and the plea stated in previous paragraphs this Court is inclined to remand the case back to the respondents.



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**10.** However pending writ petition, the petitioner died and his legal heirs were impleaded in this writ petition and hence now the case cannot be remanded back. Therefore, this Court is inclined to modify the punishment. At the time of filing this writ petition, the petitioner was aged about 44 years and he has long spell of service. By taking these facts into consideration this Court is modifying the punishment as Compulsory retirement, by fixing the period of service from 10.08.1989 till his date of death i.e., on 01.02.2023. The respondents are directed to modify the punishment and grant all the service benefits applicable to the deceased employee to the legal heirs.

**11.** Further, it is seen that the petitioner was suspended from service on 31.07.2014, but he was not granted any subsistence allowance until his dismissal. The respondents have stated that the petitioner has not taken any steps to claim subsistence allowance. This plea of the petitioner cannot be accepted, since it is the right of the delinquent and it is the duty of the employer. The respondents ought to have disbursed subsistence allowance without demanding for a formal application. Therefore, the respondents shall pay the full salary for



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the said period of suspension.

**12.** The above directions shall be complied within a period of six weeks, from the date of receipt of a copy of the order.

**13.** The learned counsel appearing for the petitioners submitted that the petitioners are seeking compassionate appointment as well. The petitioners are directed to submit an application to the Appropriate authorities and the same shall be processed in accordance with law.

**14.** For the reasons stated supra the writ petition is allowed in above terms. No cost. Connected Miscellaneous petitions are closed.

Index : Yes / No  
Internet : Yes  
ksa

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**S.SRIMATHY, J**

**ksa**

**Order made in  
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