



W.P.(MD).No.3835 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.11.2023

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD).No.3835 of 2016

and

W.M.P.(MD).Nos.4573 to 4578 of 2016

R.Kondu Reddy

.. Petitioner

Vs.

- 1.State Represented by its Secretary,
The Housing and Urban Development and Co-operative Department,
Secretariat,
Government of Tamil Nadu,
Chennai-9.
- 2.The Deputy Registrar (Housing),
Office of the Deputy Registrar of Co-operative Societies,
Singam Building (Upstairs),
Opp. RMKV, Vannarpet,
Tirunelveli.
- 3.The Registrar of Co-Operative Societies (Housing),
Housing Board Building,
493, Anna Malai,
Nandhanam,
Chennai - 20.
- 4.The President,
1847, N.G.O. Co-Operative Building Society Limited,
Jawahar Nagar,
Tirunelveli.



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5.1847, N.G.O. Co-Operative Building Society Limited,
Represented by its Secretary,
Jawahar Nagar,
Tirunelveli.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned G.O.(2D)No.121 dated 28.07.2015 passed by the 1st respondent and quash the same as illegal and consequentially direct the respondents to pay all salary benefits, with back wages, pensionary and retirement benefits to the petitioner.

For Petitioner : Mr.D.Saravanan

For R-1 to R-3 : Mr.T.Amjad Khan
Government Advocate

For R-4 and R-5 : Mr.M.Saravanakumar

ORDER

I heard Mr.D.Saravanan, learned counsel for the petitioner, Mr.T.Amjad Khan, learned Government Advocate appearing for the respondents 1 to 3 and Mr.M.Saravanakumar, learned counsel for the respondents 4 and 5.



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2. The writ petitioner was an employee with the fifth respondent Society. The fifth respondent Society had been created under the Tamil Nadu Co-operative Societies Act for the purpose of purchasing of sites, converting them into layouts and selling the same to its members. The writ petitioner joined the services of the Society on 21.04.1965. By the dint of his work, he was promoted from one stage to another and finally, he was promoted to the post of a Manager on 01.05.1980. While discharging his duties as a Manager, the Board had raised the wages of all the employees.

3. On 01.01.1991, one Mr.Mariappan took charge as the President of the Society. It is on record from paragraph no.7 of the counter that the said Mariappan was not on amicable terms with the employees as he was not in a position to reduce the wages and therefore, was “*on the lookout for reasons to issue a suspension order*”.

4. The said Mariappan issued a suspension order to the petitioner on 02.03.1991 and followed it up with a charge memo on 09.05.1991. The charge memo was served to the petitioner on 10.05.1991.



5. The charges framed against the petitioner are as follows:

“1st Charge (08.04.1989)

Failed to take steps,

- *For the removal of encroachment*
- *For the maintenance of society building*
- *For the purchase of calculator for society*

*Received Rs.1500/- and repaid Rs. 908/- on 30.03.1990-
counted temporary misappropriation*

*- Went to Chennai along with President on 08.04.1989
and returned to Tirunelveli on 11.04.1989.*

- Furnished Bill after 3 months (ie.) 10.08.1989.

*- Further, went to Chennai on 12.04.1989, reached on
13.04.1989, returned on 13.04.1989 and reached Tirunelveli on
14.04.1989*

*- But, the Form has been wrongly filed as 11.04.1989
went to Chennai and cheated a sum of Rs. 216/- of society funds
and repaid a sum of Rs. 908/- on 30.03.1990. Hence, a
temporary misappropriation of Rs. 908/- (14.04.1989 to
30.03.1990)*

2nd Charge:

- Procured loan for Motor Cycle.

*- Rs. 6,000/- procured as loan from society for purchase
of Moped TVS XL 50.*



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Simultaneously,

- Rs.5,000/- loan procured from SBI Perumalpuram Branch for purchase of vehicle.

- Furnished bill of same vehicle No. T 72 2368 TVS XL 50 before society and bank. Thereby created records and committed cheating.

3rd Charge:

- Without collecting caution, deposit of Rs.250/- from one Nambi Asari, delinquent jointly with President and impersonated President by misusing his seal and sign, sent a report to Electricity Board.

4th Charge:

- Conveyance allowance - Allowed as per Resolution dated 29.12.1990. Took conveyance allowance Rs.120/- for 12th month 1990 and thereby committed misappropriation.

5th Charge:

- Not allotting the houses as per seniority of waiting list from 01.05.1986 to 31.09.1989 joint hands with Special Officer allotted the houses without following the seniority, thereby committed irregularity.



6th Charge:

- Allotted houses in Tamil Nagar and Sriram Nagar instead of New Colony by joint hands with Special Officer and committed irregularity.

7th Charge:

- Notice sent by delinquent to 14 members who failed to pay the entire amount within the stipulated time for the purchase of house site and send notice to receive the deposit amount by impersonating Special Officer sign and seal.

8th Charge:

- The refund made by 2 members were just deposited in savings and failed to act upon, thereby committed dereliction of duty.

9th Charge:

- Failed to issue notice who did not construct house within 5 years got excuse made relaxation for them and enriched himself.

10th Charge:

- Helped one member Rajan who failed to pay the entire amount in stipulated time. But, 15 days time given onerously and unwarranted time given to him alone, thereby delinquent got benefited and committed dereliction of duty.



11th Charge:

- *Joint hands with Special Officer and committed fraud by fixing wrong boundaries in 2 plots (138 and 139) by adding 3 ft. in 139 and decreasing 3 ft. in 138 for personal favour and advantage.*

12th Charge:

- *Change in signatures in the papers were not properly looked into by collecting gratification and committed negligence.*

13th Charge:

- *House site allotment were not proper acting as Special Officer; no instructions made regarding official notes and against the bye-laws several for and against decisions taken onerously.”*

6. The writ petitioner submitted his explanation on 27.05.1991. One Mr.Balakrishnan, an Advocate was appointed as the Enquiry Officer. The enquiry was fixed for 20.06.1991. The writ petitioner was not furnished with the list of witnesses, nor was he given sufficient time for preparation. No oral evidence was recorded and the Enquiry Officer has written a report that the petitioner was guilty as charged.



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7. The said enquiry was a subject matter of a suit in O.S.No.75 of 1996 on the file of the learned Principal District Munsif, Tirunelveli. This suit was filed for a declaration that the enquiry conducted by Mr.Balakrishnan is illegal and void and for a consequential injunction restraining the defendant Society from passing any order as against the petitioner. This suit was contested and it came to be decreed on 24.06.1996. Aggrieved by the same, a regular appeal was preferred before the learned Additional Subordinate Judge, Tirunelveli. This appeal suit too ended in favour of the writ petitioner. However, the Lower Appellate Court was pleased to pass the following order:

□முடிவாக கீழமை நீதிமன்றத்தின் தீர்ப்பும், தீர்ப்பாணையும் மாற்றி அமைக்கப்பட்டு விசாரணை அதிகாரியின் நடவடிக்கை 6.7.91 தேதிய வா.சா.ஆ.9 வாக்கு மூலம்..... தேதியிலிருந்து சட்டப்படியும், இயற்கை நியதிபடியும் சரியானதில்லை என்பதால் அதன் அடிப்படையில் விசாரணை அதிகாரி வழங்கிய விசாரணை அறிக்கை (Enquiry Report) சட்டப்படி செல்லுபடியாகக்கூடியதில்லை என்றும் இல்லா நிலையதும் என்று விளம்புகை செய்யப்படுகிறது. மேற் கூறியவாறு நிர்வாகம் பிறப்பித்த 27.7.91 தேதிய எ.சா.ஆ.3 உத்தரவு செயல்படக்கூடியதில்லை என்று எதிர்வாதிக்கு எதிராக நிரந்தர உறுத்துக் கட்டளை பிறப்பிக்கப்படுகிறது. ஆனால் இயற்கை நியதிகளும், சட்ட நடைமுறைகளும்



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சரியாக பின்பற்றப்பட்டு 9.5.91 தேதிய வா.சா.ஆ.2 குற்ற குறிப்பாணையின் பேரில் வாதியின் மீது மீண்டும் விசாரணை நடத்தப்பட எதிர்வாதி நிர்வாகத்திற்கு தடை ஏதும் இல்லை. இம்மேல்முறையீட்டின் தன்மை மற்றும் சூழ்நிலைகளை கருத்தில் கொண்டு அவரவர் செலவுத் தொகையை அவரவர் பொறுத்துக் கொள்ள வேண்டும்.□

8. Pursuant to this decree, a fresh enquiry was conducted by the fifth respondent Society. It is pertinent to point out the Enquiry Officer has not gone into the charges at all and there is absolutely no discussion on the charges against the petitioner. The said report reads as follows:

□என்.ஜி.ஓ. கூட்டுறவுக் கட்டிடச் சங்கம் 0.1847 திருநெல்வேலி-7ல் 13.02.1999 நடைபெற்ற உள் விசாரணையின் முடிவுகள்:-

மனுதாரர் தரப்பில் திரு. கொண்டு ரெட்டி அவர்கள் மீது சுமத்தப்பட்ட குற்றச் சாட்டுகளுக்கும் அதற்கு திரு.கொண்டு ரெட்டி அவர்கள் கொடுத்த விளக்கவுரையின் அடிப்படையிலும் என் முன்னால் ஆய்வுக்கு இருந்து வழங்கப்படும் முடிவு:-

நிர்வாகத் தரப்பில் வழங்கப்பட்டுள்ள குற்றச்சாட்டு ஒவ்வொன்றுக்கும் திரு. கொண்டு ரெட்டி அவர்கள் தரப்பில் அளிக்கப்பட்டுள்ள விளக்கவுரையும் பரிசீலனைக்கு எடுத்துக் கொள்ளப்பட்டது.

குற்றச்சாட்டு 1ல் காட்டப்பட்டுள்ள குற்றங்களுக்கு திரு.



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கொண்டு ரெட்டி அவர்கள் தரப்பில் கொடுக்கப்பட்டுள்ள விளக்கவுரையில் காட்டப்பட்டிருக்கும் விளக்கங்கள் போதுமானதாக இல்லை. மேலும் அவற்றை எடுத்துரைக்க திரு.ஆர். கொண்டு ரெட்டி ஆஜராகவில்லை. ஆகவே குற்றச்சாட்டு 1 நிரூபணமாகிறது என முடிவு செய்கிறேன்.

குற்றச்சாட்டு 2 முதல் 13 வரை காட்டப்பட்டுள்ள குற்றச்சாட்டுகளுக்கு திரு. கொண்டு ரெட்டி தரப்பில் கொடுக்கப்பட்ட விளக்கப்பட்ட விளக்க அறிக்கையை எடுத்துரைக்க ஆஜரில்லாததால் குற்றச்சாட்டுகளுக்கு கொடுக்கப்பட்டுள்ள விளக்க அறிக்கை போதுமானதாக இல்லை என்ற முடிவுக்கும் வந்து அவர் மீது சுமத்தப்பட்டுள்ள குற்றச்சாட்டுகள் நிரூபணம் செய்யப்பட்டுள்ளது என்றும் முடிவுக்கு வந்து அவரை நிரந்தர பணி நீக்கம் செய்ய சிபாரிசு செய்கிறேன்.

ஒப்பம்

-/Seal/- ”

9. The purpose of sending the matter back for re-enquiry by the Court was to give an opportunity to both sides to place their respective cases before the Enquiry Officer and further, for the enquiry officer to submit a report on the charges that have been framed against the petitioner. A perusal of the aforesaid enquiry report shows that the Enquiry Officer came to a conclusion that the petitioner is guilty as charged, since the petitioner had



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not appeared before the Enquiry Officer. Even if it was an ex-parte enquiry, it is the duty of the Enquiry Officer to go into the charges and come to a conclusion on the same.

10. When charges are made against the petitioner, it is expected of the Enquiry Officer to at least receive a report from the Presenting Officer and give a finding on the same. In order to give an opportunity to the respondents to produce the record, I adjourned the matter on 06.11.2023 and 09.11.2023. I finally posted the matter today.

11. Mr.M.Saravanakumar, learned counsel appearing for the Society states that there is no record available with the Society that the Enquiry Officer had submitted a report, other than what has been produced by the petitioner in Page Nos.87 to 90 of the typed set of papers.

12. In the previous paragraphs, I have already found that the report of the Enquiry Officer does not answer the requirements of law. Apart from this, no action had been taken either against the previous President of the Society or against the Special Officer, to whom the writ petitioner is



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supposed to have assisted, which invited the charges. The Manager of the Society when charged of assisting the Special Officer and the President in allotment of houses and not following the seniority list, the least that is expected is that some finding be given on those topics. Charge No.3 is specifically against the previous President. Yet, there is nothing on record to show that the President had been proceeded against. No witnesses have been examined to substantiate any of the charges that have been made against the petitioner. In other words, the entire enquiry seems to have been proceeded as an empty formality. This is not a case of want of evidence, but it is a case of total lack of evidence on the part of the respondents 4 and 5. These aspects have escaped the attention of the third and first respondents. Therefore, when the charges have not been substantiated by evidence and when the enquiry report is lacking, I have no other option than to interfere with the order of punishment.

13. Apart from the aforesaid fact, on the very same set of charges, the said Mariappan, who was formally a Deputy Superintendent of Police, had instituted a criminal complaint against the writ petitioner. This criminal complaint was taken on file as C.C.No.114/1992 on the file of the learned



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Judicial Magistrate No.1, Tirunelveli. After a detailed trial, the learned Judicial Magistrate came to a conclusion that the petitioner was not guilty as charged and passed an order of acquittal on 29.01.1997. In the meantime, the petitioner attained the age of superannuation on 31.08.1998.

14. On the basis of the enquiry report, an order of termination was passed on 28.10.1999. Challenging the same, the petitioner preferred an appeal before the third respondent/Registrar of Co-operative Societies (Housing), which ended in dismissal on 10.10.2007. That order was confirmed by the first respondent on revision on 28.07.2015. It is these orders that were put in challenge before me.

15. The narration of the aforesaid facts would go to show that there is nothing in the enquiry report in order to come to the conclusion that the petitioner was guilty as charged. Apart from that, a perusal of the counter filed by the State respondents would show that Mr.Mariappan had been searching for a reason in order to proceed against the employees of the Co-operative Society. The aspect that the enquiry report is shoddy and does not have any discussion, was not properly considered either by the third respondent or by the first respondent. The ground on which the revision



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was rejected was that the petitioner had received subsistence allowance pending the enquiry and therefore, cannot take a plea that he had retired from service. The reading of the charges would show that they are vague and apart from that, as pointed out, the Enquiry Officer's report also is not in consonance with the principles of natural justice or the principles that govern the law relating to domestic enquiry. Furthermore, for a person, who had rendered 26 years of service, to visit him with the charges of dismissal from service is shockingly disproportionate.

16. Therefore, in the light of the above discussion and also considering the fact that the petitioner today is aged about 82 years old, I am inclined to allow the Writ Petition. The impugned order dated 28.07.2015 passed by the first respondent is quashed and the Writ Petition stands allowed. The respondents 4 and 5 are directed to settle the arrears of backwages, less the subsistence allowance already paid to the petitioner pending the proceedings, within a period of twelve (12) weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.



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To

- 1.The Secretary,
State,
The Housing and Urban Development and Co-operative Department,
Secretariat,
Government of Tamil Nadu,
Chennai-9.
- 2.The Deputy Registrar (Housing),
Office of the Deputy Registrar of Co-operative Societies,
Singam Building (Upstairs),
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V.LAKSHMINARAYANAN,J.

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