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WP.No.32986 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

W.P.No.32986 of 2012

and

MP.No.1 of 2012

K.Shanthi

...

Petitioner

Vs.

1. The Joint Registrar of Co-operative
Societies, Krishnagiri.

2. The Special officer,
S.1945 madagondapalli Primary Agricultural
Co-operative Bank, Madagondapalli,
Denkanikottai Taluk,
Krishnagiri District.

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the orders in (1) Pro.Na.Ka. No. 2016/2010/Sa.Pa. dated 16.07.2012 of the first respondent (2) Proceedings dated 30.04.2010 of the second respondent dismissing the petitioner from service, and to quash the same; consequently direct the respondents to disburse the



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terminal benefits due to her.

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For Petitioner : No appearance
For respondents : Mrs.P.Vijaya Devi,
Govt.Advocate for R1

ORDER

The Proceedings in Na.Ka.No.2016/2010/Sa.Pa. dated 16.07.2012 of the first respondent and the Proceedings dated 30.04.2010 of the second respondent dismissing the petitioner from service are under challenge.

2. Heard Mrs.P.Vijaya Devi, the learned Government Advocate appearing for the first respondent. There is no representation on behalf of the petitioner.

3. The brief facts, which are necessary for the disposal of this Writ

Petition are as follows:

The petitioner was serving as a Senior Assistant in S.1945, Madagondapalli Primary Agricultural Co-operative Bank at Madagondapalli, Denikanikettai Taluk, Krishnagiri District. The second



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respondent herein issued an order of suspension against her on 25.02.2009. Thereafter, a charge memo was issued to her by the second respondent in respect of certain irregularities in the discharge of her duties. She submitted her explanation, dated 21.12.2009, denying the said charges. A final order was passed on 31.12.2009, imposing the punishment of stoppage of increment for 3 months without cumulative effect.

3.1. She rejoined duty in the society on 2.1.2010. In the mean time her husband Thiru.R.Gunalan, who was working as Sub-Inspector of Survey at Hosur died on 27.05.2008 while in service. In order to take up the appointment on compassionate grounds in the survey and land records department, she applied for resignation and it was accepted on 05.01.2010. She was relieved from duty by the Society on the same date. From that date the relationship of Master & Servant between the above co-operative society with her, ceased to exist.

3.2. The second respondent herein, without any authority or jurisdiction, ordered to conduct domestic enquiry into the charges



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framed on 16.11.2009, and a final order was passed on 31.12.2009 against her by the second respondent. The second respondent also cancelled the relieving order dated 05.01.2010 issued to her and placed her under suspension. The second respondent issued ex-parte final orders in the matter, dismissing her from service on 30.04.2010. Against the said order of dismissal dated 30.04.2010, she preferred a revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act-1983, contending that the entire proceedings culminating in the order dated 30.04.2010 are void and without jurisdiction, in view of the fact that the charges framed against her on 16.11.2009 had already been disposed of on 31.12.2009. She had also resigned from her job on 04.01.2010, and it was accepted by the second respondent on 05.01.2010.

3.3.The first respondent passed orders in the Revision petition in Na.Ka.No.2016/2010/Sa.Pa. dated 16.07.2012, dismissing her revision petition, by confirming the order dated 30.04.2010 of the second respondent. As the second respondent acted without jurisdiction and the first respondent has also not considered this aspect, she has filed



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this Writ Petition.

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4. A counter affidavit has been filed on behalf of the second respondent and it has been stated that when the flying squad inspected and verified the accounts of the 2nd respondent society on 24.08.2009, there was a deficit in stock of chemical manure in the godown and deficit in the cash balance was found. The total amount misappropriated is Rs.1,28,279/-. She was suspended from service on 25.08.2009 and charge memo was issued her on 16.11.2009. The petitioner submitted her explanation on 19.12.2009. Her explanation was found to be not satisfactory, enquiry was ordered and an enquiry officer was appointed on 31.12.2009.

4.1. The then special officer of the society in his proceedings dated 31.12.2009, revoked the suspension order, demoted her as senior clerk and imposed punishment of stoppage of increment for three months without cumulative effect.



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4.2. The petitioner accepted the punishment and rejoined duty on 02.01.2010. She resigned from her job on 04.01.2010, and her resignation was accepted by the then special officer on 05.01.2010 without considering the loss caused by her to the society. The resignation of an employee of the society shall not be accepted by the Special Officer independently. The resignation letter submitted by the employees of the society must be placed before the Deputy Registrar for approval, and only thereafter the society may act on it. It was not the enquiry officer who found the petitioner guilty of the charges. Without an enquiry, the then special officer imposed a punishment, and the petitioner meekly accepted the punishment without any murmur.

4.3. The collusion between the then special officer and the petitioner is more vivid by the succeeding incidence; the petitioner rejoined the duty on the very next day, resigned her job, and her resignation was accepted by the then special officer the day after.

4.4. The then special officer, having become conscious of this



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error and revoked the acceptance of the resignation by the petitioner.

The petitioner, due to the revocation, has become an employee of the 2nd respondent society, and the then special officer suspended the petitioner from service.

4.5 The then special officer was committing error one after another and broke all laws and rules of the Society. His misdeeds have caused loss to the Society, which cannot be compensated. The Society did not recover the amount mentioned in the charge memo but paid the gratuity, provident fund, and other benefits to a person, namely, to the petitioner who caused loss to the Society.

4.6. The Special Officer perused the enquiry report, upon issuance of notice to the petitioner, passed an order dated 30.04.2010 dismissing her from service. A revision petition was filed by the petitioner before the 1st respondent against the order of dismissal dated 30.04.2010, was also rejected. Despite issuing several notices to the petitioner, she did not appear before him, and the 1st respondent, after



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verifying the entire records, dismissed the revision petition on 16.07.2012.

4.7. It was made clear that the petitioner was safeguarded by the then special officer for having misappropriated the funds of the Society and also received the entire retirement benefits. It is relevant to note that on a super filicial look at the facts of the case, it would appear as if wrong was done to the petitioner. An examination of the details of the case, would clearly show the collusion between the petitioner and the then special officer. The department instituted the disciplinary proceedings by issuing a charge memo dated 13.01.2010 against the then special officer, Mr.K.Murugesan, under Rule 17(b) of the Tamilnadu Civil Service (Discipline & Appeal) Rules. Unfortunately, the then Special Officer not able to bear the weight of the guilty, committed suicide on 23.11.2010.

5. Mrs.P.Vijaya Devi, the learned Government Advocate



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appearing for the first respondent, vehemently contended that the original authority and the revisional authority concurrently found that the charges against the petitioner are proved and dismissed her from service. She would further add that when the authorities found that the charges against the petitioner are proved, the petitioner is not permitted to canvass the question of fact before this Writ Court and sought for dismissal of the Writ Petition.

6. This Court heard the submission made by the learned Government Advocate appearing on behalf of the first respondent and perused the materials available on record.

7. The petitioner has stated in her affidavit that the then special officer did not have any power to review the disciplinary proceedings that were initiated against the petitioner on 16.11.2009 and in which the penalty was imposed against her already on 31.12.2009 and hence the entire proceedings culminating in the order of dismissal dated



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30.04.2010 are unsustainable in law.

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8.It has been further stated that the second respondent has no jurisdiction, power, or authority to conduct the enquiry against the petitioner into the charges, while the petitioner had resigned her job from the society and the same had been accepted on 05.01.2010 and she has further stated that the respondents failed to consider that if the petitioner had caused any loss to the society, appropriate proceedings have to be initiated under Section 87 of the Tamil Nadu Co-operative Societies Act 1983. This was not stated by the first respondent.

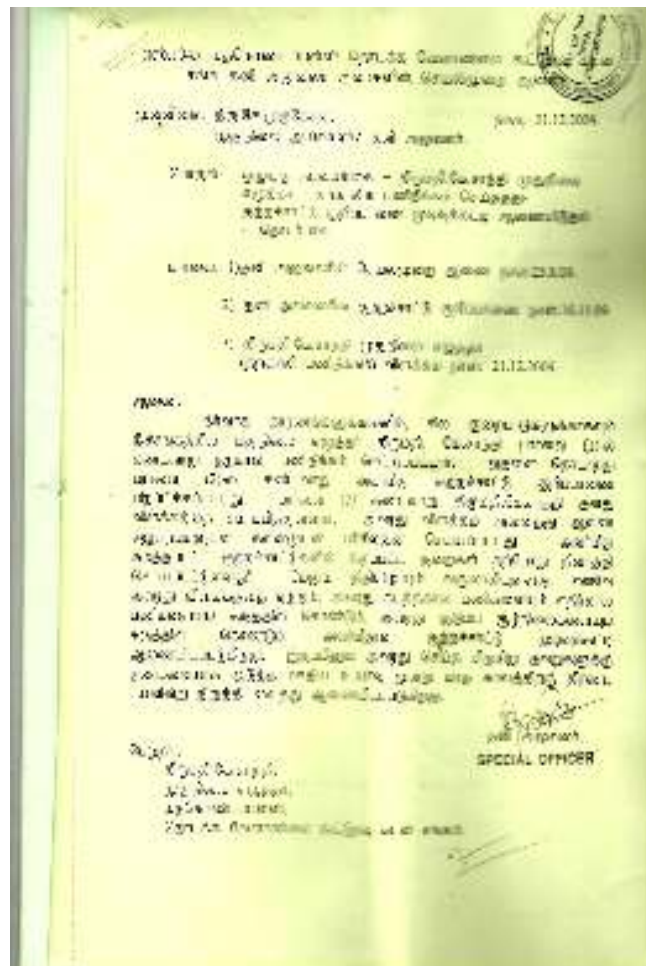
9. On a careful perusal of the orders passed by the special officer dated 31.12.2009, she was upon something missing when the flying squad inspected and verified the accounts of the 2nd respondent society on 24.08.2009, it was found that there was a deficit in stock of chemical manure in the godown and a deficit in the cash balance. The total amount misappropriated is Rs.1,28,279/-. On the next day of such inspection, on 25.08.2009, she was suspended from service. A charge



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memo was issued to her on 16.11.2009. Her explanation was submitted on 19.12.2009. Without appointing any enquiry officer, the then special officer, Mr.K.Murugesan, has straightaway passed the order dated 31.12.2009 and the said entire order is extracted hereunder:



10.It has been stated in the said order that the monetary loss

caused is compensated [அவர் மீதான குற்றச்சாட்டு குறிப்பாணை



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முடிவுகட்டப்பட்டுள்ளது. எனவே அவரது தற்காலிக பணிநீக்கத்தை விலக்கிக்கொண்டு அவரை மீண்டும் இச்சங்கத்தில் முதுநிலை எழுத்தராக பணியமர்த்தி ஆணையிடப்படுகிறது.] and without conducting any proper enquiry, the order dated 31.12.2009 was passed in flagrant violation of established legal principles.

11. The principle of natural justice would also apply to the government. In this case, by this order dated 31.012.2009, the aggrieved person is not the petitioner but only the government. When the flying squad pointed out that the petitioner is an employee of the society, namely a senior clerk, and she did not give sufficient explanation for the deficit in the stock of chemical manure and in the cash balance, the total amount of misappropriation was quantified as Rs.1,28,279/-.

12. On the same day, the order of suspension was passed against the petitioner was recalled, and she was ordered to join the duty. Pursuant to the said order, she rejoined the duty on 02.01.2010.



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By a requisition dated 04.01.2010, the petitioner has sought permission to accept her resignation. On the next day, namely, on 05.01.2010, Mr.K. Murugesan, the Special Officer, passed an order permitting the petitioner's resignation.

13.The order dated 05.01.2010 passed by Mr.K.Murugesan, the special officer is extracted hereunder:

"இச்சங்கத்தில் முதுநிலை எழுத்தராக பணிபுரிந்து வரும் திருமதி, கே. சாந்தி தனது கணவர் அரசு துறையான நில அளவை துறையில் சார் ஆய்வாளராக பணிபுரிந்த போது விபத்தில் காலமாகி விட்டதால். கருணை அடிப்படையில் அரசுப்பணி சேருவதற்காக இந்த தனது பணியை இராஜினாமா செய்து பார்வை (1)-ல் கண்டவாறு விண்ணப்பம் அளித்துள்ளார், அவரது மனுவை பரிசீலனை செய்தும் அவரது கோரிக்கை நியாயமானது என்பதால் பார்வை (2)-ல் கண்ட தீர்மானத்தின் படி அவரது இராஜினாமா ஏற்கப்பட்டு அவரை இச்சங்க முதுநிலை எழுத்தர் பொறுப்பிலிருந்தும், சங்கப் பணியில் இருந்தும் விடுவிக்கப்படுகிறார், அவருக்கு சேர வேண்டிய நிதி பலன்கள் விதிகளுக்கு உட்பட்டு வழங்கப்படும்.

இனி இவருக்கும் சங்கத்திற்கும் எவ்வித தொடர்பும் கிடையாது. எதிர்காலத்தில் மீண்டும் வேலை கோரி விண்ணப்பிக்கவும் தகுதியற்றவராகிறார் "

14. Thereafter, the second show cause notice dated 06.03.2010 was issued by the then special officer. On receipt of the explanation of



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the petitioner dated 18.03.2010, the order of dismissal from service was passed on 30.04.2010. Five charges were framed against the petitioner by the 2nd respondent, the then Special Officer, dated 16.11.2009 as follows:

- "a) that this Applicant had derelicted in her duties by causing stock deficit thereby misappropriated amounts when the Flying Squad headed by the Joint Registrar of Cooperative Societies, Dharmapuri Region conducted the inspection of the said Society on 24.08.2009;
- b) that that this Applicant had failed in her duties in maintaining the Registers then and there and failed to produce them for inspection by the Flying Squad headed by the Joint Registrar of Cooperative Societies, Dharmapuri Region;
- c) that that to this Applicant had failed produce the stock book, sales chitta, etc.. to the Final Audit 2000-2001 thereby failed in her duties and caused shortage to the tune of Rs.51,055.10 and failed to remit the sale proceeds to the Society but misappropriated;
- d) that that this, Applicant had caused loss to the said Society by expending a sum of Rs.67,223.90 in 2001-2002, 2002-2003 and 2003-2004 by failing to obtain the permission of the special Officer of the said Society; and
- e) that that this Applicant had caused loss to the said Society a sum of Rs. 10,000/- by not handing over charge of KVP bonds to the Secretary(in-charge)."



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15. Floating the rules and laws, the then Special Officer passed the order on 31.12.2009 and without conducting a detailed enquiry a *non quo* order was passed by awarding punishment of stoppage of increments for a period of three months without cumulative effect. Only after due inquiry alone, the requisite authority may pass orders in the disciplinary proceedings as mentioned supra. As the orders were passed according to laws and rules, the subsequent orders were passed by the then special officer, Mr.P.Pondiyan on 30.04.2010 which cannot be found fault with.

16. The petitioner has preferred revision before the Joint Registrar, Krishnagiri, under Section 152 of the Tamil Nadu Cooperative Societies Act 1983. It is inferable that despite notice sent to the petitioner for her appearance, as she did not appear before the Reviewing Authority, order was passed by the then Special Officer on 30.04.2010. It has been observed by the Reviewing Authority that the stock deficit is to the tune of Rs.15,894.24 and the deficit in cash is Rs.1,44,170.65. Herein the petitioner has caused monetary loss to the



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tune of Rs.1,60,064.89, out of which she has repaid an amount of Rs.15,891.65, she has to repay of Rs.1,28,279/-. But the order dated 31.12.2009 reads that there is no amount, repayable by the petitioner.

17. Based on the afore stated discussions and submissions made by the learned counsel for the 1st respondent, I am of the considered view that the impugned orders have been passed after due consideration of established legal principles. Therefore, this Writ Petition stands dismissed as devoid of merits. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Speaking order/Non-speaking order
Neutral: Yes /No
jrs



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To

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1. The Joint Registrar of Co-operative Societies, Krishnagiri.
2. The Special officer,
S.1945 madagondapalli Primary Agricultural
Co-operative Bank, Madagondapalli,
Denkanikottai Taluk,
Krishnagiri District.
3. The Section Officer,
V.R.Section, High Court, Madras.



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R.KALAIMATHI, J.

jrs

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