



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2015

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.4715 of 2011

K.Ayyakannu

... Petitioner

Vs.

1.The Joint Registrar Co-operative Societies
Kajamalai Multi purpose buildings
Tiruchirappalli-20.

2.The Secretary to the Government,
Co-operation and Consumer
Protection Department,
St. George Fort, Chennai.
(R2-impleaded as per order
dated 19.04.2013 in
M.P.No.1 of 2013)

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records on the file of the respondents and quash paragraph 8 of G.O.Ms.No.122, Cooperation, Food and Consumer Protection (CN1) Department dated 04.07.2008 and consequent order of termination in Na.Ka.No.9174/2005 Ve.Sa.Sa.dated 11.04.2011 quash the same.

For Petitioner : Mr.V.O.S.Kalaiselvam

For R1 & R2 : Mr.M.Murugan
Govt. Advocate

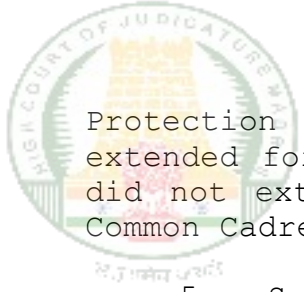
ORDER

The petitioner has come up with this writ petition to call for the records on the file of the respondents relating to the G.O.Ms.No.122, Co-operation, Food and Consumer Protection (CN1) Department, dated 04.07.2008 and the consequent Final order passed by 1st respondent in Na.Ka.No.9174/2005 Ve.Sa.Sa.dated 11.04.2011 and quash the same.

2.The petitioner joined in second respondent society on 01.10.1979 as an Attendar and he was promoted as Assistant in the year 1984 and subsequently promoted as Secretary in the year 1987. Since then he was rendering unblemished services to the utmost satisfaction as a Secretary.

3. The third respondent by G.O.Ms.No.55 dated 24.03.2000 has issued an order placing the Secretary of the Primary Agricultural Co-operatives, under Common Cadre of Service, invoking Section 75 of the Tamil Nadu Co-operative Societies Act, 1983. The first respondent is the President of the Common Cadre Authority. He initiated the disciplinary action against the petitioner and passed final order.

4. Proviso to Section 75(3) of the Tamil Nadu Co-operative Societies Act, 1983 read with G.O.Ms.No.55, the Common Cadre Authority is empowered for a period of three years and after completion of 3 years can be extended by third respondent for further period of completion of three years by the Government Order, for the maximum period stipulated under Section 75 of the Act. By G.O.Ms.No.73, Co-operation, Food and Consumer



Protection Department, dated 05.03.2004 Common Cadre Authority, was extended for a period of three years. Subsequently, the third respondent did not extend the period of Common Cadre Authority. Hence, power of Common Cadre authority came to an end on 04.03.2007.

5. Section 81 enquiry was ordered in respect of alleged irregularities and misappropriation in the Bank. The enquiry officer, after examining witnesses and perusing records, gave a report on 08.09.2005 holding that no misappropriation or irregularities had taken place in the Society. Charge memo, dated 02.05.2005 was issued to the petitioner. He submitted his explanation on 23.05.2005. Without considering his explanation, domestic enquiry was ordered. The enquiry officer submitted his report on 11.07.2005 holding that charge Nos.2,3 and 4 were proved and charge No.1 was not proved.

6. The petitioner has stated that the enquiry officer did not consider the statement of particulars and statement recorded under Section 81 enquiry. Cause of action for Section 81 and domestic enquiry is one and the same. In Section 81 enquiry, it was held that there was no irregularities or misappropriation held in the Society. Hence, the report of the domestic enquiry officer is wrong. In the second show cause notice, proposed punishment was not mentioned. Hence, without understanding the matter, the petitioner submitted his explanation.

7. It is the contention of the petitioner that extension of power of common cadre authority constituted under Section 75 of the Act expired on 04.03.2007 and without extending the power of common cadre authority issuing G.O.Ms.No.122, Co-operation, Food and Consumer Protection (CN1) Department, dated 04.07.2008, is illegal and unlawful and liable to be set aside.

8. The first respondent, by order dated 11.04.2011, terminated the service of the petitioner, after abolition of common cadre authority constituted under Section 75(3) of the Act. The petitioner is seeking quash paragraph 8 of G.O.Ms.No.122 and consequently, the order of termination dated 11.04.2011.

9. The respondents have filed a counter affidavit denying the various allegations made by the petitioner. The respondents stated that the petitioner participated fully in the enquiry. The petitioner also examined the witnesses and marked documents. All the documents were considered and then only, the enquiry officer gave his report. The petitioner was issued with a show cause notice and he submitted his explanation. After following the procedures, the impugned order of termination was passed and therefore, the same is valid and legal. The writ petition is not maintainable in view of the judgment of this Court in *Marappan Vs. Deputy Registrar of Co-operative Societies, Namakkal Circle* reported in 2006(6) CTC 689. The petitioner has effective alternative remedy, under Section 153 of Co-operative Societies Act. Without exhausting the same, the petitioner cannot maintain the writ petition. Paragraph 8 of G.O.Ms.No.122 is valid in order to complete the disciplinary proceedings already initiated.

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



11. The contentions of the petitioner that paragraph 8 of G.O.Ms.No.122 is contrary to and in violation of the nucleus of the said G.O. has no force. The said paragraph 8 has been incorporated for the benefit of both employer and employees. Unless the disciplinary proceedings already initiated were continued, fresh disciplinary proceedings is to be initiated, which will prolong the proceedings. Therefore, the contention that paragraph 8 is illegal is un-sustainable.

12. The petitioner has alternative, effective remedy by way of Revision under Section 153 of Tamil Nadu Co-operative Societies Act, 1983. The petitioner did not avail the alternative, effective, statutory remedy. No reason was given by the petitioner for not availing this remedy.

13. For the above reasons, I hold that para 8 of G.O.Ms.No.122 is valid and legal. Having failed to avail the Revisional power under Section 153 of Tamil Nadu Co-operative Societies Act, 1983, the petitioner is not entitled to maintain the above writ petition to set aside the impugned order, dated 11.04.2011. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Joint Registrar Co-operative Societies
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Tiruchirappalli-20.

2. The Secretary to the Government,
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Protection Department,
St. George Fort, Chennai.

+1CC to M/s.V.O.S.Kalaiselvam, Advocate in SR.No.16089

W.P. (MD) No.4715 of 2011
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