

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.11.2016

Delivered on: 17.11.2016

Coram

The Honourable **Mr.Justice HULUVADI G.RAMESH**

and

The Honourable **Mr.Justice V.PARTHIBAN**

W.A. No. 1680 of 2014 and
MP No.1 of 2014 and C.M.P.No.5759 of 2016

K.Mathialagan

.. Appellant

Vs.

1. E.2594, Vadakailasam Primary Agricultural
Co-operative Credit Society Ltd.,
rep. by its Secretary,
Kamaraj Nagar, Panruti-607 106,
Cuddalore District.

2. The Additional Registrar of
Co-operative Societies,
(Statutory and Development),
No.170, N.V.N.Maligai,
Kilpauk, Chennai-10.

3. The Joint Registrar of Co-operative Societies/
The Chairman, Common Cadre Committee,
Cuddalore Region,
Cuddalore.

...Respondents

This Writ Appeal is filed under Clause 15 of the Letters Patent, seeking to set aside the order dated 13.10.2014 passed in W.P.No.17182 of 2013 by the learned single Judge of this Court.

For Appellant : Mr. S.Balasubramanian

For Respondent : Mr.S.Palaniswamy for R1
Mr.L.P.Shanmugasundaram,
Spl.G.P.(Co.op)
for R2 and R3

JUDGMENT

V.PARTHIBAN, J.

This appeal has been directed against the order passed by the learned single Judge dated 13.10.2014 in W.P.No.17182 of 2013, directing the the first respondent herein, to decide the review petition filed by the appellant herein, by passing a fresh order within a period of three months from the date of receipt of a copy of the order in accordance with law, after issuing notice to the first respondent society after providing sufficient opportunity.

2. Heard the learned counsel appearing for the appellant

and the respondent No.1 and learned Government Advocate for respondent Nos. 2 and 3.

3. The appellant was working as a Secretary in the first respondent society. By charge memo, dated 29.9.2004, the appellant was charge sheeted for certain acts of misconduct during the period of service as Secretary of the first respondent society. A domestic enquiry was conducted into the charges and after affording full opportunity to the appellant, the enquiry was concluded and the charges were held to be proved. On the basis of the enquiry report and on consideration of all relevant materials and the explanation, the 3rd respondent herein who was the disciplinary authority, passed an order on 11.1.2010 removing the appellant herein as the Secretary of the first respondent society by way of punishment.

4. As against the above order of punishment, the appellant herein preferred a revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 (in short, 'the Act') challenging the order passed by the disciplinary authority on the various grounds. On consideration of the revision petition,

the authority concerned/second respondent who was the competent authority, dismissed the petition vide order dated 11.5.2011. Thereafter, it appears that the appellant has filed a review petition under Section 154 of the Act on 22.8.2011. Since no order was forthcoming on the review petition, the appellant approached this Court in W.P.No.17172 of 2012, seeking a direction to dispose of the review petition. This Court, vide order dated 6.7.2012, while disposing of the said writ petition, directed the review petition to be disposed of within a period of four weeks from the date of receipt of a copy of the said order.

5. On the strength of the above direction passed by this Court, the second respondent herein passed an order on 3.10.2012 setting aside the order of punishment of removal from service and replacing the said punishment with punishment of reduction of pay, i.e. to the minimum scale of pay, which will be in force for a period of five years. The period between the date of termination and the date of joining duty by the appellant is treated as loss of pay and regularized the same.

In pursuance of the modified penalty, further consequential order was passed by the 3rd respondent on 3.5.2013 towards implementation of the revised penalty order. It is to be noted herein that in both the proceedings before the revisional and review authorities, the first respondent society was not made as a party.

6. In these circumstances, the first respondent society approached this Court by way of Writ Petition in W.P.No.17182 of 2013, seeking to quash the order of the second respondent herein, dated 3.10.2012, modifying the original order of penalty. The first respondent herein who was the writ petitioner in the said writ petition, contended in the writ petition *inter alia* that the society was not heard by the authorities concerned as they were not made as party in the proceedings and the decision taken by the second respondent herein, namely, the Additional Registrar of Co-operative Societies, modifying the penalty order in a review petition without hearing the interested party, namely, the society, was bad in law and cannot be sustained.

7. A counter affidavit was filed on behalf of the appellant herein, who was arrayed as 3rd respondent in the writ petition, stating that during the relevant time, there was no Board of elected members and only the Special Officer was placed as in charge of the society. Moreover, the Special Officer of the society had participated in the proceedings before the disciplinary and appellate authorities and therefore, the society cannot complain that it was not heard when the order in review was passed.

8. Be that as it may, the appellant herein also approached this Court by way of writ petition in W.P.No.17488 of 2013, seeking to implement the order passed by the second and third respondents herein dated 3.10.2012. Both the writ petitions were taken up together for hearing by the learned Judge and impugned order was passed on 13.10.2014 disposing the writ petitions.

9. The learned Judge, while disposing the writ petition filed by the society, set aside the impugned order passed by the

second and third respondents herein dated 3.10.2012 and 3.5.2013 respectively and directed fresh orders to be passed on the review petition within a period of three months from the date of receipt of a copy of the said order in accordance with law and after giving notice to the society by affording sufficient opportunity.

10. The learned Judge, in his findings, held that the Special Officer, representing the Society at the relevant point of time was not represented and no such reference is found in the proceedings pending before the authorities concerned. While disposing of the Writ Petition filed by the respondent society, the learned Judge dismissed the other writ petition filed by the appellant herein (W.P.No.17488 of 2013) as having become infructuous since the prayer seeking to implement the order passed by the second respondent herein dated 3.10.2012 has already been set aside by the learned Judge in the other writ petition filed by the respondent society. As against the said order, the present appeal has been filed by the appellant.

11. Mr.C.S.Balasubramanian, learned counsel appearing for the appellant strenuously contended that the impugned order passed by the learned Judge is liable to be interfered with since no prejudice was caused to the society. He reiterated the submissions that the society was represented by the Special Officer during the subject proceedings and only after hearing all the parties, an order was passed by the second respondent dated 13.10.2012 and as such, the learned Judge overlooked the said fact and directed re-hearing of the review after giving opportunity to the society.

12. In support of his submissions, the learned counsel appearing for the appellant placed reliance upon the decision of the Hon'ble Supreme Court, reported in (1999) 6 SCC 237 (***M.C.Mehta versus Union of India and others***).

13. On behalf of the first respondent, it was contended that the review jurisdiction cannot be exercised by the authority in the absence of employer being made as party in the proceedings and exercise by the authority under Section 154 of the Act without notice to the society, cannot be countenanced in

law.

14. The learned counsel reiterated his submissions on the grounds canvassed in the writ petition filed before this Court in W.P.No.17182 of 2013. According to the learned counsel, the order in review was also passed in violation of Rule 170(5) of the Tamil Nadu Co-operative Societies Rules, 1988 which is extracted as under:

“170.Application for Review:

(1) to (4)

(5) The application shall, so far as it may be necessary, be disposed of by the Co-operative Tribunal or Registrar or the Government in such manner as it or they may deem fit provided that no order prejudicial to any person shall be passed unless such person has been given an opportunity of making his representation.”

15. As far as the submission of the learned counsel made on behalf of the appellant herein, it is to be noted that at the relevant point of time, there were no elected members of the

society and only Special Officer was placed in-charge of the society. Further, the society was represented by the Special Officer in respect of the subject proceedings and therefore, there is no scope for any complaint by the society of not being heard. In the absence of elected member, the Special Officer who is put in charge of the society is competent enough to take care of the interest of the society in all matters and therefore, absence of elected members cannot be the reason for not hearing the society.

16. As regards the submission that the society was represented by the Special Officer in the proceedings, this Court does not find any reference of such representation in the proceedings pending in review and in the order passed in review by the second respondent. Therefore, the learned single Judge has rightly allowed the writ petition filed by the society and directed the review petition to be heard afresh with full opportunity to the society. If the matter is re-heard when the society is party to the proceedings, no prejudice will be caused to the appellant herein as the society is most interested party in

defending its action, taken against its secretary, the appellant herein. From all fours, this Court does not find any infirmity in the order passed by the learned single Judge and for the above said reasons, the writ appeal is liable to be dismissed.

17. As regards the reliance placed by the learned counsel for the appellant upon the decision of the Hon'ble Supreme Court reported in (1999) 6 SCC 237 (cited supra) is concerned, what has been held in that case is that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the principles of natural justice. However, this decision cannot be applied to the facts of the present case for more than one reason, that in this case, there is no such indisputable factual position where, only one conclusion was possible and another that, grave prejudice would be caused to the society if no opportunity of being heard was provided.

Accordingly, the Writ Appeal is dismissed as devoid of

merits. There shall be no orders as to costs.

Suk

(H.G.R., J.) (V.P.N., J.)
17.11.2016

HULUVADI G.RAMESH, J.

and

V.PARTHIBAN, J.

Pre delivery Judgment
in W.P.No.1680 of 2014

17.11.2016