

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.9178 of 2016 & 2039 of 2015

W.P.No.9178 of 2016

S.Vijayalakshmi .. Petitioner

-vs-

1. The Joint Registrar of Coop.Societies
Villupuram Region
Villupuram District

2. The President
Kazhumaram Primary
Agricultural Cooperative Society
Kazhumaram
Tirukoilur Taluk
Villupuram District

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, to direct the first respondent to consider the petitioner's revision petition dated 29.02.2016 filed under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983 against the order of the President of Kazhumaram Primary Agricultural Cooperative Society dated 19.01.2015 by which the petitioner was terminated from service and pass orders thereon within the time frame fixed by this Hon'ble Court.

For Petitioner :: Mrs.N.Kavitha Rameshwar

For Respondents :: Mr.L.P.Shanmughasundaram
Special Government Pleader

W.P.No.2039 of 2015

S.Vijayalakshmi .. Petitioner

-vs-

1. The Joint Registrar of Coop.Societies
Villupuram Region, Villupuram,
Villupuram District
 2. The Deputy Registrar of Coop.Societies
Tirukoilur Circle, Tirukoilur,
Villupuram District
 3. The President
I.I.572 Kazhumaram Primary
Agricultural Coop.Societies
Kazhumaram Village & Post
Tirukoilur Taluk
Villupuram District
 4. G.Mahendran
 5. The Inspector of Police
CCIW CID, Villupuram,
Villupuram District
- ... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the third respondent in his proceedings No.Nil dated 19.01.2015 and quash the same and consequently direct the respondents 1 to 3 to reinstate the petitioner into service as Clerk in the third respondent society with all attendant benefits, back-wages and other monetary benefits.

For Petitioner :: Mrs.N.Kavitha Rameshwar

For Respondents :: Mr.L.P.Shanmughasundaram
Special Government Pleader for
RR1 to 3 & 5
No appearance for R4

ORDER

Writ Petition No.2039 of 2015 is directed against the impugned order dated 19.1.2015 passed by the third respondent, the President of Kazhumaram Primary Agricultural Cooperative Society, terminating the services of the petitioner from the post of Clerk. As against the said order, the petitioner has preferred a revision petition before the Joint Registrar of Cooperative Societies under Section 153 of the Tamil Nadu Cooperative Societies Act and the same is pending. Therefore, she has filed the Writ Petition No.9178 of 2016 seeking for a direction to dispose of the revision petition in accordance with

law. Hence, both the writ petitions were directed to be listed together.

2. Assailing the impugned order of termination, the learned counsel for the petitioner has submitted that the third respondent, without following the principles of natural justice, while differing from the report of the enquiry officer dated 17.1.2015 dropping all the charges in favour of the petitioner, has passed the order of termination on 19.1.2015. She has further contended that when the enquiry officer submitted a detailed report on 17.1.2015 holding that the charges levelled against the petitioner are not proved, the disciplinary authority, at this stage, it is pleaded, while taking a differing view from the report of the enquiry officer, has to afford an opportunity to the delinquent officer to give his explanation before proceeding further. This is the law laid down by the Apex Court in the decision in Punjab National Bank and others v. Kunj Behari Misra, (1998) 7 SCC 84, holding that whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. Thereafter, the report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. In the case on hand, she pleaded that the disciplinary authority has failed to follow the principles of natural justice, since, on receipt of the report of the enquiry officer on 17.1.2015, the disciplinary authority has not given sufficient opportunity to the petitioner to represent her case. On this basis, it was contended that when the report of the enquiry officer has already gone in favour of the petitioner, the disciplinary authority ought not to have passed the impugned order of termination without following the principles laid down by the Apex Court in the aforementioned judgment. Therefore, the impugned order is liable to be set aside.

3. The learned Special Government Pleader, taking notice on behalf of the respondents 1 to 3 & 5, submitted that when the petitioner has already filed a revision petition under Section 153 of the Tamil Nadu Cooperative Societies Act against the very same impugned order, a direction may be given to the revisional authority to dispose of the pending revision petition on merits and in accordance with law within a reasonable time.

4. This Court is not able to accept the contention of the learned Special Government Pleader. The reason is that the petitioner was admittedly made to face the departmental proceedings pursuant to the charge memo dated 13.9.2014 and

finally the enquiry officer, on completion of the enquiry, submitted his report on 17.1.2015 holding that the charges levelled against the petitioner are not established. Therefore, when the report dated 17.1.2015 clearly indicates that no charge is proved, at this stage, as per the law laid down by the Apex Court in Punjab National Bank and others v. Kunj Behari Misra, (1998) 7 SCC 84, although the disciplinary authority is legally entitled to differ from the report of the enquiry officer, while differing from the report, it has failed to follow the principles of natural justice by not giving the petitioner a reasonable opportunity to submit her explanation. In this context, the law laid down by the Apex Court in the aforementioned judgment may be usefully referred to as follows:-

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

5. In the light of the aforesaid ratio laid down by the Apex Court, in the case on hand, the disciplinary authority, on receipt of the report of the enquiry officer on 17.1.2015, while differing from the report of the enquiry officer on 19.1.2015, has passed the impugned order of termination on the very same day, which is in gross violation of the principles of natural justice. On this score, the impugned order is liable to be set aside. Accordingly, the impugned order is set aside and the matter is remitted back to the file of the disciplinary authority to re-do the exercise from the place where the flaw has occurred. It is made clear that based on the report of the enquiry officer dated 17.1.2015, the disciplinary authority is

directed to issue a show cause notice to the petitioner calling for her explanation as to why the disciplinary authority should not differ from the report of the enquiry officer and that the petitioner is entitled to submit her explanation. On receipt of the explanation from the petitioner, the disciplinary authority shall consider the matter, on the basis of the report of the enquiry officer dated 17.1.2015, the explanation offered by the petitioner, the evidence considered by the enquiry officer during the enquiry, and pass appropriate orders on merits and in accordance with law. In any event, the said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Needless to mention that the respondents shall allow the petitioner to join the service. With this observation, Writ Petition No.2039 of 2015 stands allowed. Consequently, M.P.No.2 of 2015 is closed. No costs. In view of the above order, no order is necessary in Writ Petition No.9179 of 2016 and the said writ petition stands closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

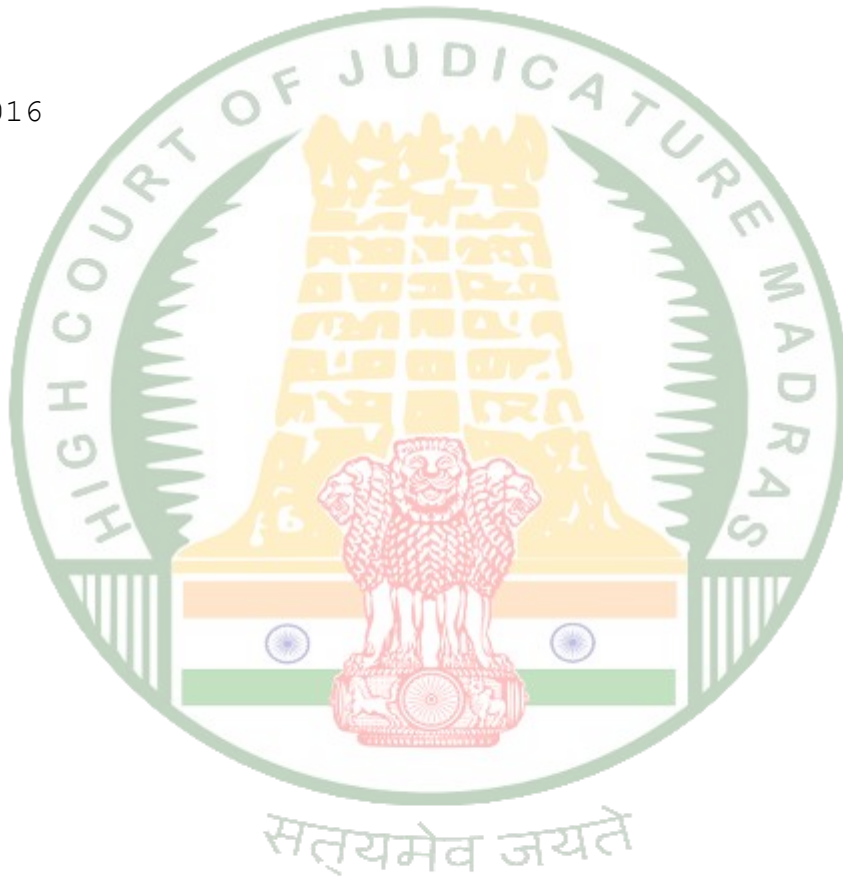
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To

1. The Joint Registrar of Cooperative Societies
Villupuram Region, Villupuram,
Villupuram District
2. The Deputy Registrar of Cooperative Societies
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Villupuram District
4. The Inspector of Police
CCIW CID, Villupuram,
Villupuram District

+1 cc to Mr.N.Kavitha Rameshwar Advocate sr.22847
+1 cc to LP.Shanmughasundaram Advocate sr.23536

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