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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition (MD) No.19133 of 2015

and

M.P (MD) Nos.1 and 2 of 2015

S.Boopalan

...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Principal Secretary,
Co-operation, Food and Consumer Protection Department,
Secretariat, Chennai 600 009.

2.The Joint Registrar of Co-operative Societies,
Dindigul Region,
Dindigul.

3.The Special Officer,
DD 596, Palapatti Primary Agricultural Co-op.,
Credit Society, Vallipatti, Dindigul District.
(now represented by The Board of Directors,
through its President)

...Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent in connection with the impugned order of dismissal from service passed in Na.Ka.No.1/2007 Tha.A.dated 24.10.2007 and consequential impugned rejection of appeal by the 2nd respondent and impugned rejection of revision and review by the 1st respondent in their Proceedings in Na.Ka.10103/2008/Sa.Pa. dated 30.08.2011 and G.O.(2D)No.56 Co.operation Food and Consumer Protection (CN2) Department dated 1.9.2014 and Letter No.27839/CN2/2014-2, dated 16.04.2015 respectively and quash all as illegal and arbitrary and consequently direct the respondents to reinstate the petitioner in service with all service and monetary benefits within the time limit that may be stipulated by this Court.

For Petitioner

: Mr.G.Thalaimutharasu

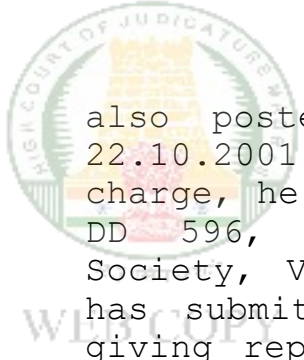
For Respondents

: Mr.T.R.Janarthanam,

Additional Government Pleader.

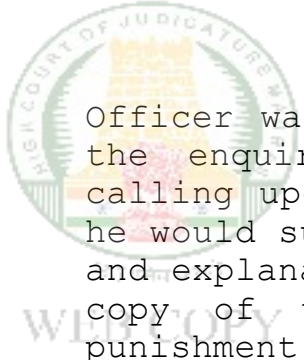
ORDER

Mr.S.Boobalan, joined the third respondent co-operative Society as a clerk on 21.09.1988 and after about two years promoted as Assistant Secretary on 01.09.1990 by a resolution passed by the then third respondent dated 19.09.1990 and he was



also posted in charge of the Secretary from 13.05.2000 and 22.10.2001. While he was working in the post of Secretary in-charge, he was issued with the charge memo by the Special Officer, DD 596, Palapatti Primary Agricultural Co-operative Credit Society, Vallipatti levelling serious allegations. Therefore, he has submitted his explanation denying the charges specifically giving reply that there was no misappropriation because most of the losses identified were made good by way of repayment by the concerned individuals as well as by the petitioner. However, the third respondent who has no authority or jurisdiction to impose punishment of dismissal in view of Sections 75 (3) and 77 of the Tamil Nadu Co-operative Societies Act, 1983 as well as in the light of G.O.Ms.No.55, Co-operation, Food and Consumer Protection Department, dated 24.03.2000, imposed a punishment of dismissal from service vide his proceedings dated 24.10.2007. Challenging the same, the petitioner has filed a revision before the Joint Registrar of Co-operative Societies, the second respondent herein, with a prayer to set aside the punishment with a consequential relief of reinstatement. The same was also rejected on 30.08.2011. Challenging the orders of the respondents 2 and 3, the petitioner has come to this Court with the present writ petition.

2.Learned counsel for the petitioner submitted that the Special Officer, DD 596, Palapatti Primary Agricultural Co-operative Credit Society, Vallipatti, the third respondent herein, has no jurisdiction to issue charge memo against the petitioner. Inasmuch as G.O.Ms.No.55, Co-operation, Food and Consumer Protection Department, dated 24.03.2000, has been given a complete go bye, for, as Section 75 (3) of the Tamil Nadu Co-operative Societies Act, 1983 clearly contemplates that only an officer in the rank of Joint Registrar or above can be empowered by the State to function as cadre authority in the absence of a committee and no officer below such rank including the Special Officer can exercise the power of the cadre authority. In view thereof, it is pleaded that the Special Officer is not empowered to act as a cadre authority. Moreover, in the case on hand, the charge memo has been issued as against G.O.Ms.No.55, Co-operation, Food and Consumer Protection Department, dated 24.03.2000 and also against Section 75(3) of the Tamil Nadu Co-operative Societies Act, 1983, secondly the charge memo issued against the petitioner also does not speak anything clear on the nature of allegation against the petitioner. A reading of the charge does not convey any indictment at all. Thirdly, it was further contended that when the third respondent-Special Officer has no authority to issue charge memo and the petitioner who had submitted his explanation on 09.05.2007 denying all the charges specifically replied to the statements of charges found at annexure II stating that neither any misappropriation nor any loss had been caused to the society since most of the losses identified were made good by way of repayment of the concerned individuals as well as by the petitioner, without even considering the explanation, the Enquiry

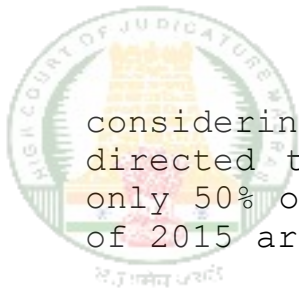


Officer was appointed. On completion of the enquiry, a copy of the enquiry report was not even furnished to the petitioner calling upon him to give further explanation. Explaining further he would submit that when the charge memo was issued on 23.04.2007 and explanation was given on 09.05.2007, without even furnishing a copy of the enquiry report, all of a sudden the impugned punishment of dismissal from service was issued on 24.10.2007 violating the principles of natural justice. Therefore, on the ground of violation of principles of natural justice also the impugned order is liable to be set aside.

3.Mr.T.R.Janarthanam, learned Additional Government Pleader fairly conceded that so far as the grievance of the petitioner is concerned with regard to the jurisdiction for issuing the charge memo, the Special Officer-the third respondent has no authority for the simple reason that the petitioner is a cadre employee, therefore, either the Joint Registrar or the Registrar of the Co-operative Society alone has got power in view of G.O.Ms.No.55, Co-operation, Food and Consumer Protection Department, dated 24.03.2000. He would further plead that the petitioner has not taken up the above issue either in his appeal or in the revision. In any event, the matter may be remanded back to the file of the Joint Registrar, the second respondent herein with a direction to consider the case of the petitioner on merits and in accordance with law.

4.This Court finds no merits on the submission made by the learned Additional Government Pleader for three reasons. Firstly, G.O.Ms.No.55, Co-operation, Food and Consumer Protection Department, dated 24.03.2000, speaks about the cadre authority, therefore, as per the said Government Order, only an Officer in the rank of Joint Registrar or above alone is empowered by the State to function as cadre authority in the absence of a committee and no officer below such rank including the Special Officer can exercise the power of cadre authority. Further, the charge memo itself has been issued totally on a wrong footing by the incompetent authority, namely, the third respondent-the Special Officer herein who does not have any jurisdiction to issue charge memo against the Secretary in terms of G.O.Ms.No.55, Co-operation, Food and Consumer Protection Department, dated 24.03.2000. Therefore, when the Special Officer has no authority whatsoever to issue the charge memo, no purpose would be served by remitting the matter back to any other authority when the issuance of charge memo itself is without jurisdiction.

5.In such view of the matter, the writ petition stands allowed and the impugned orders of dismissal from service passed by the third respondent which was subsequently affirmed by the second respondent without any application of mind are set aside. Since the petitioner was removed from service on 24.10.2007 for which no fault can be attributed against the petitioner and also



considering the condition of the society, the respondents are directed to reinstate the petitioner in service with payment of only 50% of back wages. No costs. Consequently, M.P(MD)Nos.1 and 2 of 2015 are closed.

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Sd/-

Assistant Registrar(CS-II)

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

- 1.The Principal Secretary,
State of Tamil Nadu
Co-operation, Food and Consumer
Protection Department,
Secretariat, Chennai 600 009.
 - 2.The Joint Registrar of Co-operative Societies,
Dindigul Region, Dindigul.
 - 3.The Special Officer,
DD 596, Palapatti Primary Agricultural Co-op.,
Credit Society, Vallipatti, Dindigul District.
- +1cc to M/s.G.Thalaimutharasu, Advocate in SR.35677
+1cc to the Special Government Pleader, in SR.36351

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sms

PBK/NGM-MP 20/07/2016 ::4P-6C::