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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

W.P. (MD) No. 12602 of 2013

and

M.P. (MD) Nos. 1&2 of 2013 and 1 of 2014

R. Sambath Chandra

... Petitioner

Vs.

1. The Registrar of Cooperative Societies,
170, Periyar EVR Highways,
Chennai 600 010.

2. The Chief Election Commissioner,
Cooperative Societies,
Teynampet,
Chennai.

3. The Joint Registrar,
Cooperative Societies,
Nagercoil,
Kanyakumari District.

4. Vee. Ma. Kalaiselvan, M.A.H.D.C.,
The Joint Registrar,
Cooperative Societies,
Nagercoil, Kanyakumari District.

5. The Election Officer / Deputy Registrar,
(Public Distribution Section),
Kanyakumari District Central Cooperative Bank,
Alexandra Press Road,
Nagercoil 629 001.

6. The Special Officer,
Kanyakumari District Central Cooperative Bank,
Alexandra Press Road,
Nagercoil 629 001.
Kanyakumari District

... Respondents

Prayer: The Writ petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the 3rd respondent dated 19.07.2013 in Na.Ka.No.9503/2009 and quash the same.



For Petitioner : Mr.Balamurugan (Enrol.No.2205/2011) for
Mr.J.Ashok

For Respondents : Mr.S.Kumar, AGP for R4 to 5
Mr.S.Mohan Dos for R6

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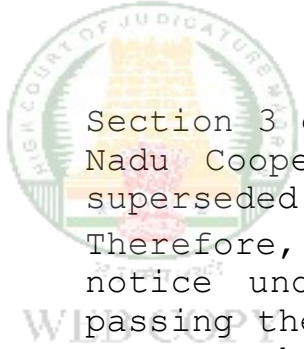
O R D E R

When the matter is posted today for hearing, Mr.J.Ashok, learned counsel submitted that he has filed vakalat for the petitioner. Mr.Balamurugan, learned counsel representing Mr.J.Ashok, learned counsel seeks time. As advance list is published on 20.02.2016, time is not granted.

2.The only point raised in the Writ petition is that the impugned order has been passed in a hasty manner and the petitioner has not been given any notice or opportunity of hearing. Further, it is stated that Section 81 r/w Rule 104 of the Tamil Nadu Cooperative Societies Rules, 1988, contemplates that any enquiry initiated under Section 81 should be completed within 3 months period from the date of ordering enquiry not exceeding 3 months at a time as may be permitted by the next higher authority and in any event the extended period shall not be exceeded 6 months in aggregate. Therefore, the impugned order is not correct.

3.The learned Additional Government Pleader appearing for the respondents 4 to 5 mainly contended that before passing of the impugned order a notice was issued based on a direction of this Court dated 14.07.2011 passed in W.P.No.226 of 2006. Therefore, the petitioner was given all opportunity at the time of passing the impugned order which the petitioner has not availed. Therefore, the question of violation of principles of natural justice does not arise in this case.

4.The 6th respondent has filed a detailed counter affidavit. In the counter affidavit they have clearly pointed out that on the date of giving promotion to employee, he is not competent to get such promotion in the 6th respondent Bank. The disqualification for the promotional post was subsisting on 31.12.1998 to one R.Hendry Thangam. Therefore, the said promotion given by the petitioner to Mr.R.Hendry Thangam is absolutely not maintainable and the order of disqualification made under Section 36 is valid. In fact the disqualification notice has been served upon the petitioner on 07.12.2005 in R.C.No.13279/2008 Sa.Pa. by the 3rd respondent and as per G.O.(2D).No.108 Cooperation Food and Consumer Protection Department, dated 31.08.2005 the 3rd respondent is conferred with the powers of the Registrar under



Section 3 of the Act, to take action under Section 36 of the Tamil Nadu Cooperative Societies Act. The G.O. dated 31.08.2005 is superseded all the earlier G.Os., which are issued in this regard. Therefore, the 3rd respondent is empowered to give show cause notice under Section 36 and hence, there is no illegality in passing the order of disqualification made under Section 36. Even as per the order made in W.P.No.226 of 2006 the power of the Registrar, therefore, is also vested in the Joint Registrar under the provisions of the Act. Therefore, it cannot be said that the notice is without jurisdiction.

5.It is also stated in the counter affidavit that after making due enquiry, the Enquiry Officer has submitted his enquiry report on 30.09.2005, which is within a period of 3 months from the date of ordering the enquiry and the enquiry report itself has been filed by the Enquiry Officer. Therefore, the allegation of violation of Section 81(4) does not apply, which is nothing to do with this. In fact, the petitioner sent a reply on 24.12.2005 seeking for extension of time for submitting explanation to the show cause notice issued under Section 36 of the Act. Thereafter, the petitioner filed the Writ petition in W.P.No.226 of 2005 and an order of interim stay was granted. Later the Writ petition was dismissed on 14.07.2011 as the Writ petition is premature with a direction to reply to the said show notice. Even thereafter, the petitioner has not chosen to take any steps to defend the disqualification notice issued by the 3rd respondent. Therefore, the present Writ petition seeking the above said relief cannot be granted.

6.Though an impleading petition in M.P.(MD)No.1 of 2014 was filed by a member of the association, it has not been entertained as the petitioner in this petition under the guise of holding the post as Administrative Committee member of the Central Cooperative Society Bank, he has planned to enter into the other committee, which is not an issue at this point of time. Therefore, the impleading petition is not necessary and the same is dismissed.

7.As far as the main Writ petition itself is concerned, the ground which has been raised by the petitioner has been very clearly answered in the counter affidavit filed by the 6th respondent. In fact, a reading of the impugned order itself very clearly indicated that the petitioner is taking steps by approaching one forum or the other and successfully dragging on the matter. The impugned order has been passed for a long time. When there is a clear provision is available, then the violation of principles of natural justice does not arise. Therefore, the impugned order passed by the 3rd respondent is legal and I do not find any reason to interfere with the same as the same is passed



based on the direction of this Court in W.P.No.226 of 2006 by order dated 14.07.2011.

8. In view of the above, the Writ petition is dismissed. No costs. Consequently, connected M.Ps. are closed.

Sd/-

Assistant Registrar(C.O Dept I/C)

/True Copy/

Sub-Assistant Registrar

To

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170, Periyar EVR Highways, Chennai 600 010.

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Nagercoil 629 001., Kanyakumari District

+One cc to M/s.J.Ashok, Advocate, SR.No.10674

+One cc to M/s.S.Mohandoss, Advocate, SR.No.10751

+One cc to Mr.T.Lajapathi Roy, Advocate, SR.No.10718

+One cc to The Special Government Pleader, SR.No.10972

nbj

RL/11C/SK/SKN/4/3/2016

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