

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.13159 of 2014 and
M.P.Nos.1 and 2 of 2014

C.Ragupathy

... Petitioner

Vs.

- 1.The Director of Handlooms and Textiles
(functional Registrar under Tamil Nadu
Cooperative Societies Act)
Office of the Director of Handlooms and
Textiles,
Chennai 600 108.
- 2.The Assistant Director of Handlooms and
Textiles,
Office of the Assistant Director of Handlooms
and Textiles, Erode.
- 3.The Management of Myladi Weavers Cooperative
Society Ltd.,
Rep.by its President,
Myladi Weavers Cooperative Society Ltd.,
Chennimalai,
Erode District.
- 4.Mr.K.Thirumoorthy,
President,
Myladi Weavers Cooperative Society Ltd.,
Chennimalai, Erode District.
- 5.Mr.R.Thangarasu,
Vice-President,
Myladi Weavers Cooperative Society Ltd.,
Chennimalai, Erode District.
- 6.Mr.V.R.Periyasamy,
Director,
Myladi Weavers Cooperative Society Ltd.,
Chennimalai, Erode District.
- 7.Mr.R.Muthusamy,
Director,
Myladi Weavers Cooperative Society Ltd.,
Chennimalai, Erode District.

8.Mr.S.Thangarasu,
Director,
Myladi Weavers Cooperative Society Ltd.,
Chennimalai, Erode District.

9.Mr.R.Jothimani,
Director,
Myladi Weavers Cooperative Society Ltd.,
Chennimalai, Erode District.

10.Mrs.P.Sumathi,
Director,
Myladi Weavers Cooperative Society Ltd.,
Chennimalai, Erode District.

11.Mr.M.Puthiyaraj,
Textile Control Officer formerly Managing
Director,
Myladi weavers Cooperative Society Ltd.,
Chennimalai, Erode District.

12.Mr.M.Kanagaraj,
Handloom Officer/Managing Director,
Myladi Weavers Cooperative Society Ltd.,
Chennimalai, Erode District.

13.Mr.P.Marappan,
S/o.C.N.N.Periyasamy Gounder,
No.3, Vakkil Street, Kalimedu,
Kangeyam, Tiruppur District. ... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the order made in Rc.No.41321/2013/H 2-1 dated 21.04.2014, on the file of the Director of Handlooms and Textiles/first respondent herein and quash the same.

For Petitioner : Mr.D.Ashok Kumar for
Mr.C.Munusamy

For Respondents: Mr.L.P.Shanmuga Sundaram
for R1 to R3

: No appearance for R4 to R13

O R D E R

Heard Mr.D.Ashok Kumar, learned counsel appearing for the petitioner and Mr.L.P.Shanmuga Sundaram, learned counsel appearing for the respondent Nos.1 to 3.

2.The petitioner has approached this Court for seeking the following relief,
<https://hcservices.ecourts.gov.in/hcservices/>

"To issue a Writ of Certiorari, to call for the records relating to the order made in Rc.No.41321/2013/H 2-1 dated 21.04.2014, on the file of the Director of Handlooms and Textiles/first respondent herein and quash the same."

3. The case of the petitioner is as follows:

The petitioner was working as Manager in the third respondent Society since 1987. In the year 2008-09, on the basis of certain complaint, the petitioner came to be suspended from service pending enquiry on 29.10.2010. Thereafter, some charges came to be framed by the Special Officer and the Enquiry Officer found that the charges were partly proved. However it was held that there was no corruption or misappropriation on the part of the petitioner but he was only negligent in maintaining the records. On the basis of the findings recorded by the Enquiry Officer, the second respondent passed an order on 25.02.2011, imposing the penalty of reversion of the petitioner from the post of Manager to the post of Senior Clerk.

4. The petitioner had worked in the lower post of Senior Clerk from 25.02.2011, till August 2013. According to the petitioner, the Society was suffering a huge financial loss and the members of the Society were affected by the loss. In the said circumstances, the Board of Directors, took a decision to bring many changes in the Management. In the Board meeting, it was decided to appoint the petitioner as Manager once again, in view of the long service from 1987 as Manager and in view of his ability and efficiency in running the Society under his stewardship. In the said circumstances, the petitioner came to be appointed once again as Manager by way of board resolution dated 02.09.2013 and since his appointment, the petitioner has been working as such effectively with the satisfaction of one and all.

5. While matter stood thus, at the instance of the thirteenth respondent who is the third party, the first respondent by suo motu revision under Section 153 of Tamil Nadu Cooperative Societies Act, 1983, to review the resolution passed by the Board of Directors on 02.09.2013, in promoting the petitioner as Manager once again. The first respondent without any notice to the petitioner, by proceedings dated 21.04.2014, suo motu revised the punishment imposed on the petitioner on 25.02.2011 and imposed the penalty of dismissal from service. The first respondent passed the order by invoking the suo motu power or revision after two years from the date of the punishment imposed to the petitioner on 21.04.2014.

6. According to the first respondent, the punishment originally imposed was inadequate and the Board of Directors has no power for ordering of promotion to the petitioner as Manager in 2013 in contravention of the order of penalty

passed by the second respondent as per the Tamil Nadu Cooperative Societies Act and Rules. The said suo motu revision order dated 21.04.2014 is put to challenge in the present writ petition.

7. Upon notice, the learned counsel for the respondents entered appearance and filed a detailed counter affidavit.

8. The learned counsel appearing for the petitioner would contend that the first respondent invoking the power of suo motu revision after a period of two years, that too without any notice to the petitioner is illegal, arbitrary and unjust and therefore, liable to be interfered with. According to him, the power of revision of suo motu or otherwise has to be exercised within a reasonable time and it cannot be invoked after a long passage of time, particularly, when the petitioner had already undergone the punishment and the petitioner was once again considered and promoted in 2013 as Manager in the overall interest of the Society.

9. In the said circumstances, the first respondent's impugned order is not only illegal, arbitrary and the same is also opposed to the public interest, since the petitioner was promoted as Manager only in order to revamp the Management of the Society for its effective functioning towards the members. The learned counsel for the petitioner would also submit that the revision by the authority at the instance of some third party who had no connection with the Society, cannot be held to be valid. Moreover, he would submit that originally in the enquiry there was a clear finding that there was no misappropriation on the part of the petitioner and in the said circumstances, the punishment which was imposed on him, reverting him from the post of Manager to the post of Senior Clerk was more than adequate. Therefore, he would contend that the writ petition is liable to be allowed for all the said facts and reasons.

10. At this, the learned counsel appearing for the respondents would submit that the power is vested with the first respondent under the provisions of the Tamil Nadu Cooperative Societies Act and therefore, exercise of such power cannot be faulted with. He would also submit that when the punishment is found to be inadequate, the same can be rectified at any point of time by the revisional authority and in this case, the first respondent has precisely done that and therefore, the same cannot be assailed validly before this Court.

11. This Court has given its anxious consideration to the rival submissions of the learned counsels and perused the relevant records and pleadings placed before this Court. At the outset, this Court is of the considered view that suo motu revision exercised by the first respondent under Section 153 of the Tamil Nadu Cooperatives Society Act, without giving any

notice to the petitioner is per se illegal and cannot be sustained in law at all. This was more so, when the first respondent has chosen to impose the severest penalty of dismissal from service on the petitioner. It is needless to state that when it gave civil consequences, in the result of any punishment to the employee concerned as to be notified before any such order has passed. In the absence of any notice to the petitioner prior to the passing of the proceedings by the first respondent dated 21.04.2014, is therefore, liable to be declared as illegal and cannot be countenanced in law.

12. This Court also finds considerable force in the contention of the learned counsel for the petitioner that without any reason, suo motu power of revision has been invoked after two years, particularly, at the instance of third party who had no connection whatsoever with the third respondent Society. Such exercise of power lacks in bona fide and liable to be interfered with. Moreover, it has to be seen that the power of suo motu revision has to be exercised within a reasonable time and the same cannot be invoked after a passage of considerable time without any valid and acceptable reason. In the instant case, no such explanation could be seen, particularly, when no notice was issued to the petitioner as to why such power was being invoked at a belated stage.

13. Further it has to be seen that originally the enquiry report itself as absolved the petitioner from a severe charge of misappropriation and the Enquiry Officer held only a partly proved and in such circumstances, imposing the severe penalty of dismissal from service is quite inappropriate and the same cannot be countenanced in law.

14. For the above said reasons, this Court has no hesitation in setting aside the impugned proceedings of the first respondent dated 21.04.2014. The respondent Nos 1 to 3 are directed to reinstate the petitioner in service with all other attendant benefits. The above direction shall be complied with by the competent authority within a period of two months from the date of receipt of a copy of this order. Hence, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Director of Handlooms and Textiles
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Chennimalai,
Erode District.

+5cc to Mr.C.Munusamy, Advocate SR.No.63616
+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.64058
+1cc to Government Pleader SR.No.64531

W.P.No.13159 of 2014

SCD(CO)
GN(15/09/2017)



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