

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.33739 of 2017 and
WMP.Nos.37371 to 37373 of 2017

P.Arumugam

...Petitioner

Versus

1.The Registrar of Co-operative Societies,
No.170, N.V.N.Maligai,
Kilpauk, Chennai-10.

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

3.The Deputy Registrar of Co-operative Societies,
Namakkal Circle, Namakkal.

4.President,
S.1443, Naraikinaru Primary Agricultural
Co-operative Credit Society Limited,
Naraikinar Post, Rasipuram Taluk,
Namakkal District.

.... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the order of suspension passed by the 4th respondent dated 31.10.2016, quash the same and consequently, direct the respondents to reinstate the petitioner in service as Secretary-in-charge and pay the Subsistence Allowance to the petitioner from 31.10.2016 till date and all other attended benefits.

For Petitioner : Mr.M.S.Palaniswamy

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

O R D E R

The Writ Petition has been filed, questioning the correctness of the order of suspension issued by the 4th respondent dated 31.10.2016 against the petitioner.

2. The case of the petitioner is that he was initially appointed as Salesman in the 3rd respondent Society on 16.12.2009. Thereafter, he was promoted as Clerk on 01.04.2015 and subsequently, as Secretary-in-charge on 17.10.2015. While so, the elected Board of management assumed office on 09.05.2013. From the said date, the 4th respondent has committed so many manipulation in the affairs of the society to his own benefits. Since the petitioner is not co-operative with him, he was suspended from service on 03.10.2016. According to the petitioner, till date, no charge memo has been issued to him. Therefore, the order of suspension passed against the petitioner is contrary to the Statutory Circular issued under Section 181 of the Tamil Nadu Co-operative Societies Act which says that no suspension order can be passed by the Board of Management without approval of the 1st respondent. Further, the Registrar of Co-operative Societies issued a Circular in Na.Ka.17933/2013/Tho.Ve.Sal(1) dated 9.2.2016 in this regard. But the 4th respondent has not followed the same also. In the meanwhile, there was an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was ordered by the 3rd respondent into the affairs of the society. Pursuant to the report submitted by the Enquiry Officer, the 3rd respondent issued a Surcharge Notice dated 28.04.2017 under Section 87(1) of the Act to the petitioner. Though the petitioner requested to furnish the documents relied upon in the Surcharge Notice, the same has not been furnished to the petitioner. But the 3rd respondent by letter dated 25.09.2017 informed that the petitioner should pay Rs.2/- per page towards copy charges and an advance of Rs.10,000/- to be deposited with the Society and on production of the receipt for the same, the copies of the documents will be furnished to him. Though the petitioner filed W.P.No.26589/2017 and this Court issued a direction to the 3rd respondent to furnish the copies of the documents on 11.10.2017, till date no documents have been furnished. Since the 4th respondent has not paid the subsistence allowance, the petitioner sent several representations to the 3rd respondent and as per the reply of the 3rd respondent in his letter dated 6.9.2017, the petitioner approached the 4th respondent seeking subsistence allowance by giving a representation dated 9.9.2017. But, there was no response for the same. The petitioner has also informed the said position to the respondents 1 and 2 by way of representation dated 9.10.2017. Since, there was no reply for the same also, the petitioner is before this Court with this Writ Petition.

3. Heard the learned Counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

4. A perusal of the Letter dated 25.04.2017 sent by the President, namely, the 4th respondent herein to the Chief

Minister and others clearly shows that the petitioner, who belongs to opposite party, is not co-operative with them as contended by the learned Counsel for the petitioner and based on the same, the suspension order came to be passed by the 4th respondent on 31.10.2016 without any basis. That apart, it appears that the petitioner has been under prolonged suspension for the past more than one year and till date no subsistence allowance has been paid to him.

5. The Hon'ble Supreme Court of India reported in 2015 [7] SCC 291 [Ajay Kumar Choudhary V. Union of India through its Secretary and another] has considered the issue relating to prolonged suspension and held that the currency of suspension order should not extend beyond three months and within this period, if the memorandum of charge sheet is not served on the delinquent/accused, a reasoned order must be passed for extension of suspension. In this regard, it is relevant to extract paragraphs 8 and 9 of the said decision hereunder:

'8. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

9. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that

both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Article 12 of the Universal Declaration of Human Rights, 1948 assures that - "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". More recently, the European Convention on Human Rights in Article 6(1) promises that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time..." and in its second sub article that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

6. The Personnel and Administrative Reforms Department of the Government of Tamil Nadu in Letter [Ms]. NO.43/N/2015-3 dated 26.04.2016 issued administrative instructions giving certain guidelines for consideration of the issue relating to prolonged suspension in respect of persons whoever involved in criminal cases.

7. In view of all the above and more particularly, the fact that since the basis of the complaint dated 25.04.2017 given by the President of the 4th respondent Society to the Chief Minister and Others clearly shows that it is a clear case of victimisation, this Court is of the view that the impugned order is liable to be set aside.

8. Accordingly, the impugned order of suspension dated 31.10.2016 issued by the 4th respondent against the petitioner is set aside and the respondents are directed to reinstate the petitioner and also to pay him the salary including the arrears of Subsistence Allowance for which he is entitled to. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this Order.

9. With the above observation and direction, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

tsi

To

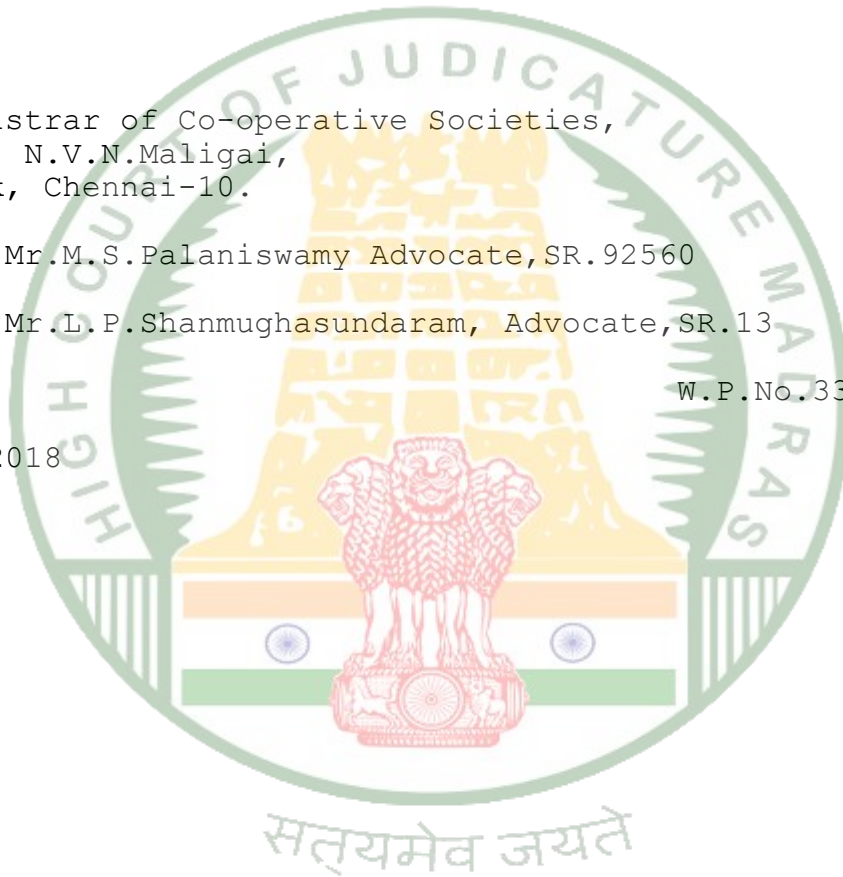
1.The Registrar of Co-operative Societies,
No.170, N.V.N.Maligai,
Kilpauk, Chennai-10.

+ 1 cc to Mr.M.S.Palaniswamy Advocate,SR.92560

+ 1 cc to Mr.L.P.Shanmughasundaram, Advocate,SR.13

W.P.No.33739 of 2017

nr 02/02/2018



WEB COPY