

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.Nos.26008 & 26009 of 2014 and
W.M.P.Nos.1 and 2 of 2014

R.Duraisamy ... Petitioner in both W.Ps
Vs.

1. The Deputy Registrar of Co-operative Societies,
Namakkal Circle,
Namakkal.
2. S.1141, Kurukkapuram Primary
Agricultural Co-operative Credit Society,
Rep by its President,
Kurukkapuram,
Rasipuram Taluk,
Namakkal District. ... Respondents in both W.Ps

Prayer : Petitions filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent in his proceedings in Na.Ka.4706/2013/ThoVasa (1) & (3) dated 02.06.2014 and consequential charge memo issued by the second respondent dated 17.07.2014, quash the same in W.P.26008/2014 calling for the records of the 1st Respondent in his proceedings in Na.Ka. no 4706/2013/Thovasa(1) Dated 02.06.2014 in W.P.26009/2014

For Petitioner : Mr.C.K.Chandra Sekhar

For Respondents: Mr.Balaramesh,
Additional Government Pleader for R1
: Mr.R.Ashraf khan for R2

O R D E R

Heard Mr.C.K.Chandrasekhar, learned counsel for the petitioner and Mr.Balaramesh, learned Additional Government Pleader appearing for the first respondent and Mr.R.Ashraf Khan, learned counsel appearing for the second respondent.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorari, to call for the records of the first respondent in his proceedings in Na.Ka.4706/2013/ThoVasa (1) & (3) dated 02.06.2014 and consequential charge memo issued by the second respondent dated 17.07.2014, quash the

same."

The case of the petitioner is as follows:

3. The petitioner joined the second respondent Society as jewel appraiser on 12.03.1984. During the period of employment as jewel appraiser, a disciplinary action was initiated against him and he was dismissed from service in culmination of such proceedings with effect from 05.09.1996. The dismissal order was the subject matter of dispute before the Labour Court, Salem in I.D.No.93 of 1997. The Labour Court, by its award, dated 26.03.2002, directed the second respondent to reinstate the petitioner with continuity in service but without back wages.

4. The Society challenged the award before this Court in W.P.No.38927 of 2002 and the petitioner also approached this Court in W.P.No.19232 of 2003, in respect of denial of back wages to him. During the pendency of the writ petition, the petitioner filed W.V.M.P.No.729 of 2004 and W.P.M.P.No.12898 of 2004, in W.P.No.38927 of 2002 and this Court has directed the second respondent Society to reinstate the petitioner in service by its order dated 17.09.2004, in the said miscellaneous petitions.

5. In pursuance of the direction, the petitioner came to be reinstated in service on 26.10.2005, however, he was entitled to be reinstated in service with effect from the award dated 26.03.2002. After being re-instated on 26.10.2005, the petitioner was paid an amount of Rs.410/- only per month. In the said circumstances, the petitioner filed another W.P.M.P.No.2743 of 2007, in W.P.No.38927 of 2002, seeking a direction to the Society to pay the current wages payable to the jewel appraiser.

6. This Court has passed an order on 27.02.2008, stating that after being re-instated in service, the petitioner is entitled to get the salary as admissible to the said post. When the matter was taken up, both petitions in W.P.No.38927 of 2002 and W.P.No.19232 of 2003, were disposed of by this Court, confirming the award passed by the Labour Court, by its order dated 21.09.2010. Thereafter, the Society by its proceedings dated 15.02.2013, passed an order after calculating the amount payable to the petitioner, as per his entitlement from 26.03.2002 to 26.10.2005, at Rs.2,17,056/-. This amount had not been paid since 26.03.2002, as it was withheld by the Society, in view of the pendency of the writ petitions before this Court.

7. In the proceedings dated 15.02.2013, the second respondent Society has stated that the amount payable to the petitioner could be credited to the Provident Fund account of the petitioner. While so, the first respondent over looking the proceedings of the second respondent Society, has ordered inspection under Section 82 of the Tamil Nadu Co-operative

Societies Act, alleging some irregular payment has been made to the petitioner by the Administrator of the second respondent Society.

8. The report was prepared on the basis of inspection and on the basis of the inspection report dated 29.04.2014, surcharge notice was issued on 02.06.2014 and also directed the second respondent to take disciplinary action against the petitioner in his proceedings dated 02.06.2014. Thereafter, a charge memo was issued on 17.07.2014, alleging that the petitioner ought not to have conferred with the undue benefits in the form of wages payable from 26.03.2002 to 26.10.2005 (amount Rs.2,17,056).

9. The learned counsel appearing for the petitioner, would submit that the amount which is payable to the petitioner was only credited to the account of the petitioner towards Provident Fund and that cannot be a basis for surcharge proceedings and for disciplinary action, since the same has been only in compliance of the award passed by the Labour Court, Salem in I.D.No.93 of 1997 dated 26.03.2002.

10. According to the learned counsel for the petitioner, the authority has misconstrued the award passed by the Labour Court, which denied the back wages to the petitioner during the period of non-employment from 05.09.1996 and till the disposal of the award on 26.03.2002. According to the learned counsel for the petitioner, the surcharge proceedings and charge memo suffered from total non application and misapplication of mind, as no surcharge proceedings and disciplinary action can be initiated against the petitioner when no undue benefit has been conferred on him.

11. The learned counsel would further submit that the proceedings of the second respondent Society dated 15.02.2013, was only in compliance of the award passed by the Labour Court, Salem in I.D.No.93 of 1997 dated 26.03.2002 and such proceedings cannot be termed to be conferring any undue benefits on the petitioner. The payment was calculated in the said proceedings, towards the entitlement of the petitioner. As regards the second charge is concerned, the petitioner was entitled to enhance the house rent allowance based on G.O.Ms.No.131 dated 04.09.1999. In any event, the entire charge memo and surcharge proceedings has to be seen as fall out of mala fide consideration on the part of the first respondent. The learned counsel for the petitioner would contend that the action of the first respondent initiating the surcharge proceedings and disciplinary action against the petitioner, cannot stand the test of judicial scrutiny and the same is liable to be interfered with.

12. Upon notice, the learned counsel for the respondent entered appearance and filed a detailed counter affidavit and merely submitted that in view of the denial of back wages to

the petitioner, the amount which was calculated by the proceedings of the Administrator of the Society on 15.02.2013, was not legally admissible and payable to the petitioner. As contended by the learned counsel for the petitioner, the authority had completely misconstrued the award of the Labour Court to the extent that denial of the back wages during the period of non-employment, ought to be extended to the period when the petitioner was not re-instated in service in terms of the award passed by the Labour Court, Salem. Such view adopted by the first respondent is preposterous and the same lacks bona fide.

13. In the above circumstances, this Court has considered the rival submissions of the learned counsels and perused the materials and pleadings placed before this Court. This Court finds that there is a merit in the contention put forth by the learned counsel for the petitioner that the proceedings which conferred certain financial benefits to the petitioner on the basis of his entitlement, in terms of the award of the Labour Court dated 26.03.2002, cannot be the basis for any surcharge proceedings and disciplinary action.

14. The officials, particularly the first respondent has completely mis understood and misread the situation while initiating surcharge proceedings against the petitioner, either wittingly or unwittingly. In any event, such surcharge proceedings and disciplinary action namely the charge memo cannot stand the test of judicial scrutiny and the same cannot be legally sustained.

15. In view of the above discussion, this Court has no hesitation in allowing these writ petitions. The impugned orders are set aside. The amount of Rs.2,17,056/- which is credited to the Provident Fund account of the petitioner shall be paid to the petitioner, in view of the entitlement of wages for the period from 26.03.2002 till 26.10.2005. The said payment shall be made with a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

gsk

To

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

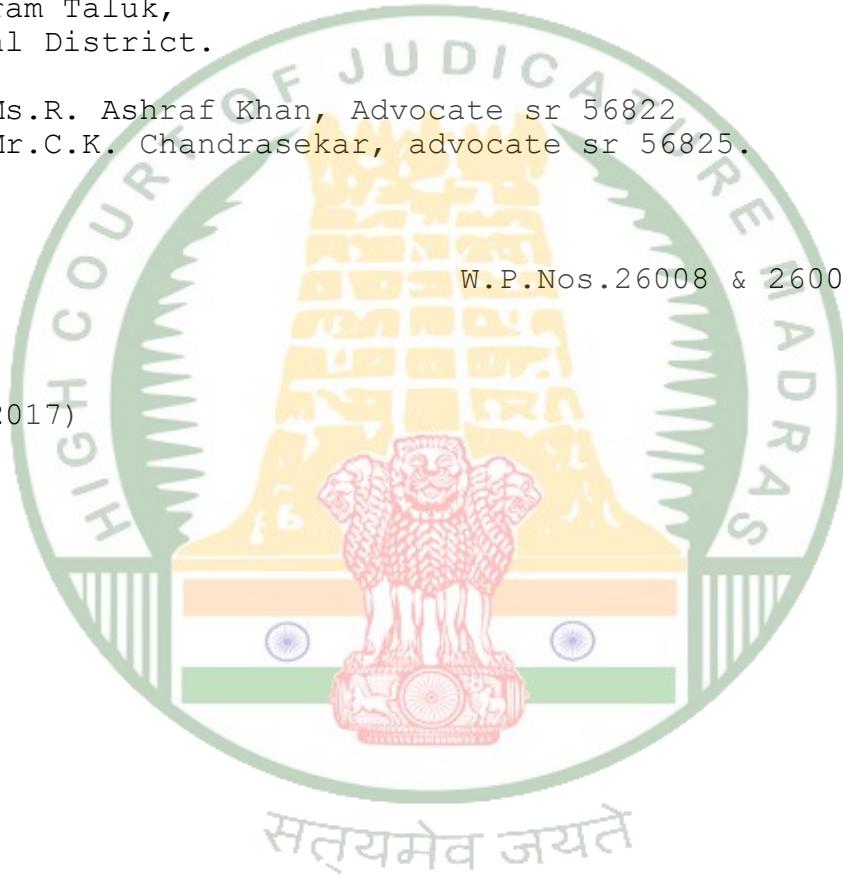
2.The president,
S.1141, Kurukkapuram Primary
Agricultural Co-operative Credit Society,
Kurukkapuram,
Rasipuram Taluk,
Namakkal District.

+1 CC to Ms.R. Ashraf Khan, Advocate sr 56822

+1 Cc to Mr.C.K. Chandrasekar, advocate sr 56825.

W.P.Nos.26008 & 26009 of 2014

RSI (CO)
sp(18/09/2017)



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