

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.3929 of 2011

A.G.Mathivanan

.. Petitioner

Versus

1. The Special Officer,
H.H.464, Kattampoondi Primary
Agricultural Co-operative Bank,
Thiruvannamalai Taluk, Thiruvannamalai Dist.

2. The Joint Registrar of Co-op. Societies,
Thiruvannamalai Taluk, Thiruvannamalai Dist.

3. The Deputy Registrar of Co-op. Societies,
Thiruvannamalai Taluk, Thiruvannamalai Dist.

4. The Additional Registrar,
(Sales Scheme and Development) Registrar Office,
Chennai-10.

.. Respondents

[4th Respondent is impleaded, as per the order
of this Court dated 29.10.2012 in
M.P.No.2 of 2012 in W.P.No.3929 of 2011]

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondents in connection with the impugned orders issued by the 2nd & 3rd respondents in Na.Ka.No.8218 / 08 PACB dt. 17.06.2009 & Na. Ka. No.74656 / 2009/ Sa. Pal, dt. 27.07.2010, respectively and quash the same.

For Petitioner : Mr.R.Dhineshkumar
For RR1 : Mr.M.S.Palaniswamy
For RR2 to 4 : Mr.V.Selvaraj

O R D E R

The petitioner has filed this Writ Petition to call for the records of the respondents in connection with the impugned

orders issued by the 2nd & 3rd respondents in Na.Ka.No.8218/08 PACB dt.17.06.2009 & Na.Ka.No.74656/2009/Sa.Pa1, dt.27.07.2010, respectively and quash the same.

2. The learned counsel for the petitioner has submitted that the petitioner has entered into service as Secretary through the Employment Exchange on 22.11.1989 in the 3rd respondent society. The first respondent has framed a charge memo on 31.05.2004, against the petitioner. The petitioner was initiated surcharge proceedings U/s. 81 of the Co-operative Societies Act, Enquiry was initiated on 08.04.2004 and concluded on 21.06.2004, wherein Rule 104(6)(a) contemplates that an enquiry u/s.81 has to be concluded. The petitioner was simultaneously proceeded under the criminal proceedings in C.C.No.164-66 of 2007 for the very same charges. After the trial, the Trial Court has acquitted him from charges in respect of Sec.468, 471 of IPC and in respect of Section 408, 477 of IPC and discharged the petitioner from charge under the Probation of Offenders Act with a direction to remit Rs.1000/- to the 1st respondent bank.

3. The petitioner again charged with a memo on 27.06.2008 by the 2nd respondent for the same charge, whereas an enquiry under Section 81 of the Co-operative Societies Act, was initiated and the petitioner remitted the entire amount of loss Rs.10,15,000/- as directed by the respondents. As there was a violation of the rules of natural justice, the petitioner challenged the charge memo issued by the second respondent before this Court in W.P.No.29604 of 2009. The said Writ Petition was dismissed on 01.04.2009 with a direction to conclude the Disciplinary proceedings within three months from the date of receipt of the copy of the order. Thereafter, the second respondent passed an order dated 17.06.2009, in pursuant to the charge memo dated 27.06.2008 by imposing multiple punishments against the petitioner. Hence, the petitioner has filed the present Writ Petition.

4. The learned counsel for the respondents has submitted that in the impugned order, petitioner was awarded punishment of stoppage of increment with cumulative effect. But in the light of order passed by the respondents, the contention of the petitioner is not correct. The petitioner is still working as Secretary. Therefore, there is no question of multiple punishments awarded as contended by the petitioner.

5. The learned counsel for the petitioner also relied upon a decision of this Court reported in 2009 (3) CTC 388 in the case of V.Arulkumar Vs. Housing and Urban Development Corporation Limited and others.

....32. It is not in dispute that in respect of the other officials, who were instrumental in giving opinions,

like the legal opinion of the Law Officer in respect of the format of Bank Guarantee, apart from the financial appraisal report given by the Assistant Finance Officer, meagre punishment of censure was awarded. In Akhilesh Kumar Singh v. State of Jharkand and Others, 2008 (2) SCC 74, under similar circumstances, the Supreme Court has held as follows:

15. It is true that delinquent officers similarly situated should be dealt with similarly and, thus if the charges against the employees are identical, it is desirable that they be dealt with similarly.....

Based on the above decision of the Supreme Court, this Court has set aside the punishment awarded, which is imposed for both the minor and major penalties.

6. In the light of the above judgment, it is seen that the impugned order passed by the respondents does not clearly indicate whether only minor punishment has been imposed against the petitioner. It is not clear from orders passed by the authorities, as to whether it is a minor punishment or major punishment, since petitioner has been continuing as Secretary in the said Department.

7. In view of the submission of both parties, I am inclined to quash the impugned orders, based on the judgment of this Court in the case of V.Arulkumar vs. Housing and Urban Development Corporation Limited and others reported in 2009 (3) CTC 388, and remitted back to the respondents to pass orders so far as imposing of the punishment to the petitioner is concerned, on merits and in accordance with law, as expeditiously as possible i.e., within three months. No costs. Consequently, the connected Miscellaneous Petition are closed.

Sd/-
सत्यमेव जयते

Assistant Registrar

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Sub Assistant Registrar

pvs

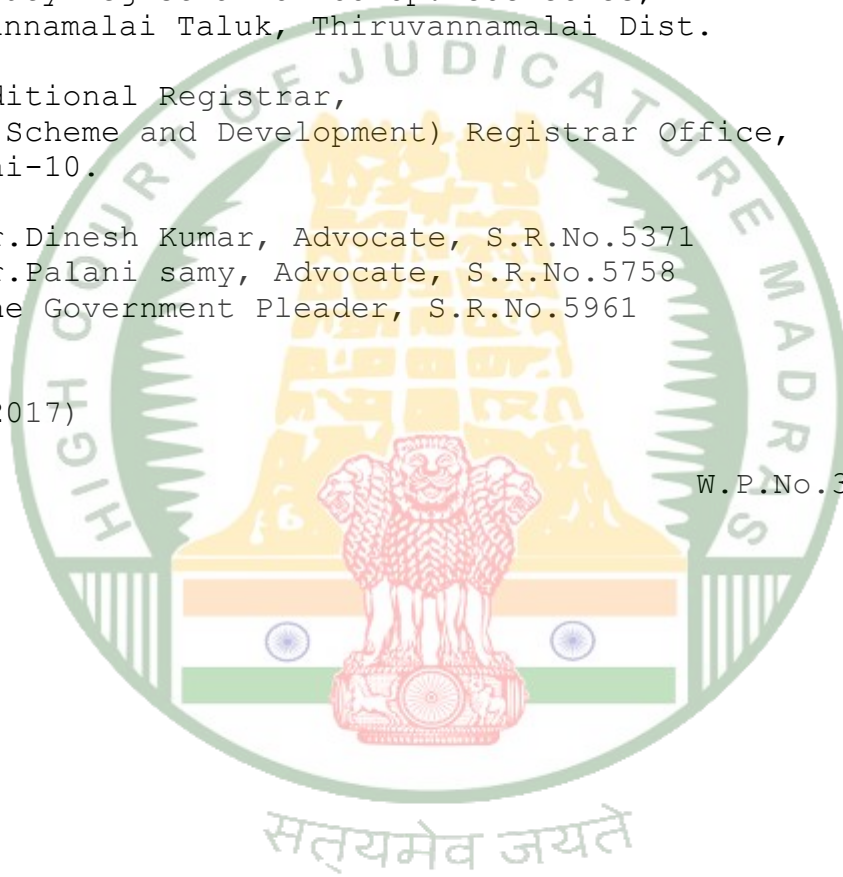
To

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4. The Additional Registrar,
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Chennai-10.

+1cc to Mr.Dinesh Kumar, Advocate, S.R.No.5371
+1cc to Mr.Palani samy, Advocate, S.R.No.5758
+1cc to the Government Pleader, S.R.No.5961

NM(CO)
RS(17/03/2017)

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