

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.03.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

W.P.Nos.35094 of 2016 & 946 of 2017

&

W.M.P.No.30245 & 30246 of 2016 & 890 & 891 of 2017

S.Santhanaraman

...Petitioner in both WPs

Vs.

1. The Additional Registrar of Co-op. Societies (MPD),
N.V.N. Natarajan Maligai,
No.170, E.V.R. Periyar High Road,
Kilpauk,
Chennai-600 010.
- 2.T-1344, Neetamangalam Primary Agricultural
Co-operative Credit Society Limited,
Rep. By its President,
Neetamangalam,
Tiruvavur District-614 404.
- 3.M.Kumarasamy,
Co-operative Sub Registrar/Field Officer,
O/o. The Deputy Registrar of Co-operative Societies,
Mannarkudi,
Thanjavur District.

E.Shajahan

...3rd Respondent in
WP.946/2017

Prayer in W.P.No.35094 of 2016 : Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari Mandamus calling for the records relating to the passing of the impugned orders by the 1st respondent in his proceedings in Na.Ka.No.35091/2016/Tha.Pu.Ku.1(1) dated 23.05.2016 and Na.Ka.No.35091/2016/Tha.Pu.Ku.1 dated 29.07.2016 and quash the same and consequently forbear the respondents from passing any order of suspension of the service of the petitioner.

Prayer in W.P.No.946 of 2017 : Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records relating to the impugned order passed by the second respondent vide his proceedings dated

26.12.2016 and quash the same.

For Petitioner in both WPs: Mrs.T.P.Savitha

For Respondents in both WPs: Mr.S.T.S.Murthi,
Additional Advocate General
assisted by Mr.V.Selvaraj,
Addl. Govt. Pleader (Co-op)
for R1

Mr.L.P.Shanmughasundaram
for R2

Mr.K.Rajendran for R3
in WP.946/17

COMMON ORDER

W.P.No.35094 of 2016 has been filed seeking for issuance of Writ of Certiorarified Mandamus calling for records relating to the passing of the impugned orders by the 1st respondent in his proceedings in Na.Ka.No.35091/2016/Tha.Pu.Ku.1(1) dated 23.05.2016 and Na.Ka.No.35091/2016/Tha.Pu.Ku.1 dated 29.07.2016 and quash the same and consequently forbear the respondents from passing any order of suspension of the service of the petitioner. During the pendency of the said writ petition, since the petitioner was suspended from service by order dated 30.9.2016, he has challenged the said order in W.P.No.36420 of 2016 and the same was dismissed as infructuous on the ground that the said suspension order was revoked by order dated 18.10.2016. Thereafter, the respondents have passed one another order dated 26.12.2016 directing the petitioner to handover charge to one Mr.C.Anbazhagan and the said order has been challenged by the petitioner in W.P.No.946 of 2017 and obtained an order of stay. Hence they are taken up together and disposed of by this common order.

2.Learned counsel for the petitioner taking a ground that, as the petitioner only joined duty on 13.05.2013 as Secretary, without even looking into the irregularities occurred in the second respondent society prior to his joining duty as Secretary, the first respondent Additional Registrar of Co-operative Societies, (MPD), Kilpauk, Chennai has arbitrarily chosen the period of which the petitioner has taken charge and he has not chosen to extend the period to the irregularities that happened prior to the petitioner joining under the second respondent Society. Adding further, she would submit that when the first order dated 23.05.2016 was passed by the first respondent directing the enquiry officer Mr.K.Ramalingam (Co-operative Sub Registrar), Kollidam, to conduct an enquiry with regard to the lapses caused by the petitioner, no where the nature of enquiry or lapses or irregularities to be looked into

by the enquiry officer have been mentioned. This part, the period during which the alleged irregularities had taken place, has been completely omitted to be mentioned in the said order dated 23.05.2016. However, explaining the nature of loss occurred in the second respondent society and the period during which the loss had occurred, a subsequent proceedings dated 29.07.2016 have been issued. That shows that the respondents are not clear in their mind with regard to the nature of loss and period of loss occurred in the society and it shows that the first respondent has mechanically ordered an enquiry to be conducted under Section 81 of the Tamil Nadu Co-operative Society Act. Therefore, the said arbitrary exercise of power is liable to be interfered with, she pleaded.

3. In support of her submissions, it is also submitted that when an order of suspension was passed on 30.09.2016, hurriedly the same was revoked by order dated 18.10.2016. Once again, when the work, responsibilities and functions to be discharged by the petitioner were allotted to another person, the same was once again revoked by another order dated 13.01.2017. These two things, viz., suspension order and the subsequent revocation order and allotting the work of the petitioner to another person and the subsequent revocation of the same also shows that the respondents are attempting to victimize the petitioner. Therefore, the enquiry ordered under Section 81 is a clear case of victimising the petitioner with a mala fide intention and hence the same is liable to be quashed, she pleaded again.

4. Learned Additional Advocate General appearing for the respondents, reiterating the stand taken in the detailed counter affidavit filed by the respondents, would submit that although the petitioner was suspended on 30.09.2016, finding that the said suspension order should be revoked, as he has to participate in the enquiry initiated under Section 81, the same was revoked by order dated 18.10.2016 enabling the petitioner to participate in the enquiry. The subsequent order allotting the work of the petitioner to another officer has been questioned in W.P.No.946 of 2017. But now the said order also has been revoked by order dated 13.01.2017 and that would not give any impetus to the petitioner to contend that by passing two subsequent orders viz., revoking of suspension and revoking the allotment of his work to another person, would amount to mala fide intentions. When the respondents have fairly revoked both suspension order and allotment of the work of the petitioner to another officer, it shows that fairly they have not shown any interest for victimising the petitioner in respect of 81 enquiry. It is also submitted that when Section 81 enquiry was initiated by order dated 23.05.2016, an objection was raised by the petitioner stating that the enquiry officer Mr. Ramalingam, Sub Registrar of Co-operative Society, Kilpauk, was not in a position to proceed under Section 81, as the scope

of enquiry has not been properly mentioned in the order dated 23.05.2016, pursuant to which the first respondent has rightly passed the subsequent order dated 29.07.2016, clearly demarcating the areas and also the scope of enquiry to be conducted under Section 81. Now, therefore, it is the duty of the petitioner to face the enquiry and come out successfully as an innocent officer, as the proceedings dated 29.07.2016 has indicated several lapses and irregularities said to have been committed by the petitioner, and the enquiry officer has also been appointed, the writ petition questioning the correctness of the order is liable to be dismissed.

5.I also find merits in the submission of the learned Additional Advocate General appearing for the first respondent. The reason is that when the petitioner was subjected to face an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, a reading of the said proceedings dated 23.05.2016 failed to throw any clear light on the nature of lapse/irregularities and also the scope of enquiry including the period of enquiry. When an objection was raised by the petitioner over the scope of enquiry, in the proceedings dated 29.07.2016, the first respondent has rightly opined by explaining the scope of enquiry and also the period during which the irregularities are said to have been occurred, therefore, I find no merits in the writ petition, as there is no infirmity for initiating the enquiry to be conducted under Section 81 by order dated 23.05.2015 and subsequently followed by another order dated 29.07.2016. It is also submitted by the learned counsel for the petitioner that there is no joint liability loan given during the period 2014-15 and 2015-16, therefore, it is for the petitioner to establish that no lapses had occurred during his tenure by producing the relevant documents and it is open to the petitioner to raise the said issue in the said 81 enquiry.

6.Accordingly, W.P.No.35094 of 2016 fails and the same is dismissed. W.P.No.946 of 2017 has been filed challenging the order dated 26.12.2016 passed by the second respondent has become infructuous since the impugned order dated 26.12.2016 was revoked by order dated 13.01.2017 reallothing the work back to the petitioner. In view of the same, the writ petition in W.P.No.946 of 2017 is dismissed as infructuous. Consequently, connected miscellaneous petitions are dismissed. No costs.

-s/d-

Assistant Registrar(CSVII)

True Copy

Sub-Assistant Registrar

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To

1. The Additional Registrar of Co-op. Societies (MPD),
N.V.N. Natarajan Maligai,
No.170, E.V.R. Periyar High Road,
Kilpauk,
Chennai-600 010.

2.T-1344, Neetamangalam Primary Agricultural
Co-operative Credit Society Limited,
Rep. By its President,
Neetamangalam,
Tiruvavur District-614 404.

3.M.Kumarasamy,
Co-operative Sub Registrar/Field Officer,
O/o. The Deputy Registrar of Co-operative Societies,
Mannarkudi,
Thanjavur District.

+1 cc to M/s.K.Rajendran Advocate sr 14231

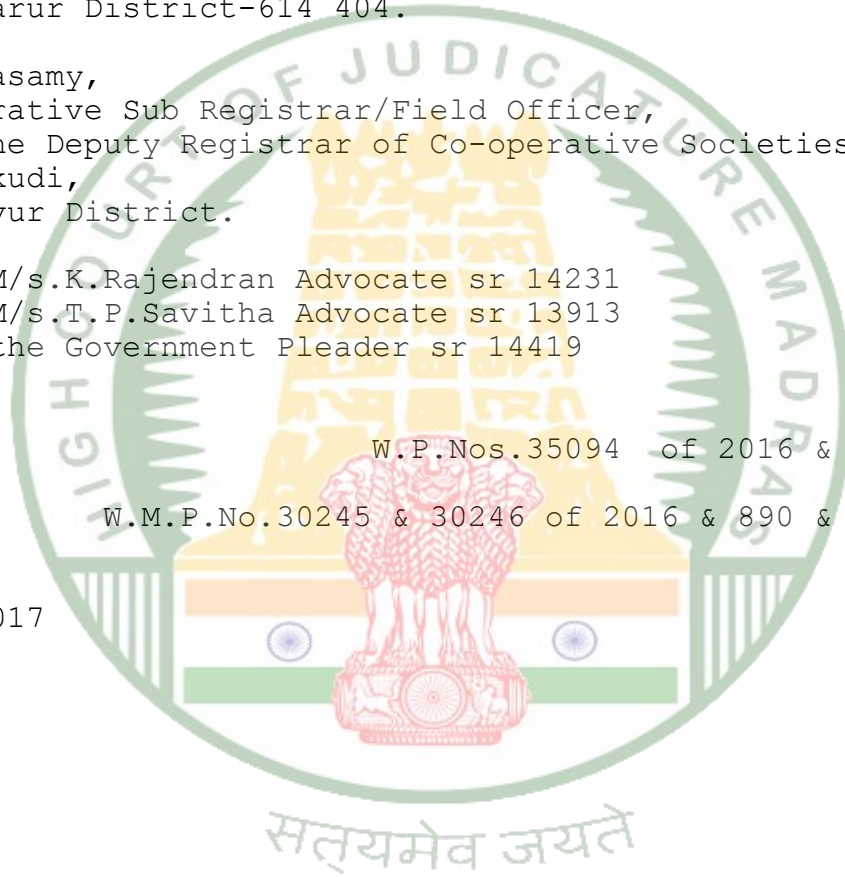
+1 cc to M/s.T.P.Savitha Advocate sr 13913

+1 cc to the Government Pleader sr 14419

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