



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.01.2017

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CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.A. (MD) Nos. 1162 and 1241 of 2016

and

M.P. (MD) Nos. 8379, 7431 and 9258 of 2016

W.A. (MD) No. 1162 of 2016

The Special Officer,
DD596, Pallapatti Primary Agricultural
Co-operative Credit Society, Vallipatti,
Dindigul District.

(now represented by the Board of Directors,
through its President)

.. Appellant /
3rd respondent in WP 19133/15

Vs.

1. S. Boopalan

.. 1st respondent/
Petitioner in WP 19133/15

2. The State of Tamil Nadu,
rep. By its Principal Secretary,
Cooperation Food and Consumer
Protection Department,
Secretariat,
Chennai - 600 009.

3. The Joint Registrar of Co-operative Societies,
Dindigul Region,
Dindigul.

.. Respondents 2 & 3/
Respondents 1&2 in WP 19133/15

W.A. (MD) No. 1241 of 2016

1. The State of Tamil Nadu,
rep. By its Principal Secretary,
Cooperation Food and Consumer
Protection Department,
Secretariat,
Chennai - 600 009.



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

.. Appellants/
Respondents 1&2 in WP 19133/15

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Vs.

1.The Special Officer,
DD596, Pallapatti Primary Agricultural
Co-operative Credit Society, Vallipatti,
Dindigul District.

(now represented by the Board of Directors,
through its President)

.. 1st respondent/
3rd respondent in Wp 19133/15

2.S.Boopalan

.. 2nd respondent/
Petitioner in WP 19133/15

COMMON PRAYER: Writ Appeals have been filed under Clause 15 of the Letters Patent, against to set aside the order dated 11.07.2016, made in W.P.(MD).No.19133 of 2015

Prayer in WP(MD) 19133/2015:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To Issue a WRIT OF CERTIORARIFIED MANDAMUS to call for records on the file of the 3rd respondent in connection with the impugned order of dismissal from service passed in Na.Ka.No.1/2007 Tha.A.dated 24.10.2007 and consequential impugned rejection of appeal by the 2nd respondent and impugned rejection of revision and review by the 1st respondent in their Proceedings in Na.Ka.10103/2008/Sa.Pa. Dated 30.08.2011 and G.O. (2D)No.56,Co.operation, Food and Consumer Protection(CN2), Department dated 1.9.2014 and Letter No.27839/CN2/2014-2,dated 16.04.2015 respectively and quash all as illegal and arbitrary and consequently direct the respondents to reinstate the petitioner in service with all service and monetary benefits within the time limit that may be stipulated by this Court.

For appellant in

W.A.(MD).No.1162/2016

& 1st respondent in

W.A.(MD)No.1241/2016

: Mr.G.R.Swaminathan,
for Mr.V.O.C.Kalaiselvam

For 1st respondent in

W.A.(MD).No.1162/2016

& 2nd respondent in

W.A.(MD).No.1241/2016

: Mr.D.Selvam,
for Mr.G.Thalaimutharasu



For 2nd and 3rd respondents in
W.A.(MD).No.1162/2016

& Appellants in

W.A.(MD).No.1241/2016 : Mr.N.S.Karthikeyan,
Additional Government Pleader

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COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH, J.**)

The respondents in the writ petition have filed these appeals as against the order made in W.P.(MD).No.19133 of 2015 whereby and whereunder the learned Single Judge has quashed the impugned order of dismissal from service and consequently directed the respondents to reinstate the petitioner in service with 50% of backwages.

2.Since both the appeals have arisen out of one and the same order, both the appeals were heard together and disposed of by way of this common judgment.

3. For the sake of convenience, the parties are referred to as per their rank in the writ petition.

3.0. The case of the petitioner before the learned Single Judge is that he joined in the third respondent society as a Clerk on 21.09.1988 and was promoted as Assistant Secretary on 01.09.1990. He was given with the additional charge of Secretary from 13.05.2000 to 22.10.2001. While so, after 6 long years, the third respondent issued a charge memo dated 23.04.2007 to the petitioner alleging that while he was holding the post of Secretary-in-Charge, he caused loss to the society, misused the position and thus committed dereliction of duty in the said post of Secretary, for which the petitioner submitted his detailed explanation on 09.05.2007, denying all the charges. The loss identified were made good by way of repayment by the concerned individuals, including the petitioner. Thus, there is no loss to the society. While so, the third respondent dismissed the petitioner from service on 24.10.2007. As per the provision of Sections 75(3) and 77 of the Tamil Nadu Co-operative Societies Act, 1983 as well as G.O.Ms.No.55, Co-operation, Food and Consumer Protection Department, dated 24.03.2000, the third respondent has no authority to impose punishment of dismissal from service.

3.1.As against the dismissal order, the petitioner had filed

appeal before the 2nd respondent, who, in turn, directed the petitioner to submit an application before the third respondent and as such, the petitioner submitted an application, dated 25.09.2008, for setting aside the punishment



and for reinstatement, to the third respondent. The said application was returned by the third respondent. Therefore, the petitioner again approached the 2nd respondent on 10.11.2008 challenging both the dismissal order as well as rejection for reinstatement. But, the same was rejected by the second respondent on the ground of delay. Challenging the impugned dismissal order as well as rejection order passed by the 3rd and 2nd respondents respectively, the petitioner has filed a revision before the 1st respondent. The first respondent dismissed the said revision petition by a non speaking order on 01.09.2014. Again the petitioner preferred a review petition before the first respondent. The first respondent rejected the said review petition as if there is no fresh ground raised. Challenging the said orders, the petitioner has filed the writ petition.

4. After hearing both sides, the learned Single Judge has allowed the writ petition holding that the disciplinary action has been taken by the incompetent authority.

5. We have heard the learned counsel appearing for both sides and perused the materials available on records.

6. The learned counsel for the respondents/appellants submitted that while the petitioner was working as Assistant Secretary, he was given only in charge of the post of the Secretary and that during the relevant period, the power of the common cadre authority has not been extended as per Section 73(3) of the Tamil Nadu Co-operative Societies Act, 1983 to the Joint Registrar and therefore, the third respondent viz., the Special Officer was the competent authority to issue a charge memo. But, the learned Single Judge has come to the conclusion that only an officer in the rank of Joint Registrar or above alone is empowered by the State to function as cadre authority in the absence of a committee and no officer below such rank including the Special Officer can exercise the power of cadre authority. Thus, the learned Single Judge has quashed the impugned orders on the ground of jurisdiction. When the learned Single Judge had chosen to quash the impugned order on the ground of jurisdiction, the learned Single Judge ought to have remitted the matter back with a direction to the competent authority viz., the Joint Registrar to issue fresh charge memo, since the allegation of misappropriation is also there. But, instead of doing so, the learned Single Judge has ordered to reinstate the petitioner in service which is against the settled principle of law.

7. The learned counsel for the petitioner submitted that since, during the relevant period, he was in charge of the post of Secretary, the third respondent has no authority or jurisdiction to issue charge memo and the cadre authority viz., the Joint Registrar alone is competent to frame charge and to impose punishment, as per the provision of Sections 75(3) and 77 of the Tamil Nadu Co-operative Societies Act, 1983 as



well as G.O.Ms.No.55, co-operation, Food and Consumer Protection Department, dated 24.03.2000. He has further submitted that the non extension of the power of the Common Cadre Authority cannot be taken advantage by the third respondent and impose punishment on the petitioner. Thus, he prayed for dismissal of the writ appeals.

8. Irrespective of the submissions made on either side, we are of the view that as rightly contended by the learned counsel for respondents, the learned Single Judge, after quashing the impugned orders on the ground of jurisdiction, ought to have remitted the matter back. In view of the above, the order of the learned Single Judge is modified as follows;

The impugned orders are quashed and the matter is remitted back with a direction to the second respondent viz., the Joint Registrar of Co-operative Societies, Dindigul Region, Dindigul, to issue fresh memo to the petitioner within a period of two weeks from the date of receipt of the order and on receipt of the same, the petitioner is directed to give explanation forthwith and if need be, the second respondent shall proceed with the disciplinary proceedings and complete the same on merits and in accordance with law, within a period of three months from the date of receipt of the explanation.

9. Both the writ appeals are, accordingly, disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar[C]

/True copy/

Sub Assistant Registrar

To

1. The Principal Secretary,
State of Tamil Nadu,
Co-operation, Food and Consumer, protection Department,
Secretariat, Chennai-600 009.

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

+1cc to V.C.S.Kalaiselvam, Advocate in SR.10858

+1cc to Mr.G.Thalaimuthurasu, Advocate in SR.10867

Pre-Delivery Common Judgment made in
Writ Appeal (MD) Nos.1162 & 1241 of 2016
24.02.2017

KK-CMMSA-01.03.2017-5P-5C