



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.04.2017

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

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W.P. (MD) .No.7203 of 2017

Nehru

.. Petitioner

Vs.

The Joint Registrar of Co-operative Societies,
Tiruchirappalli Region,
Tiruchirappalli-20.

.. Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent in Rc.No.2482/2016/SF, dated 27.06.2016 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently directing the respondent to reinstate the petitioner in service in the light of the Judgment of the learned Judicial Magistrate No.V, Tiruchirappalli, in C.C.No.69 of 2002, dated 21.04.2015.

For Petitioner

: Mr.M.Sridharan

For Respondent

: Mr.C.Selvaraj

Special Government Pleader

O R D E R

This Writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent in Rc.No.2482/2016/SF, dated 27.06.2016 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently directing the respondent to reinstate the petitioner in service in the light of the Judgment of the learned Judicial Magistrate No.V, Tiruchirappalli, in C.C.No.69 of 2002, dated 21.04.2015.

2. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

3. The brief facts that are necessary for the purpose of disposal of this petition are as follows:-

The petitioner was appointed as Salesman in Ty.spl.Alunthalpur

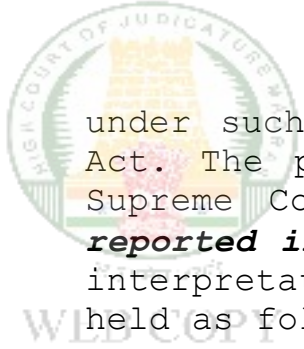


Primary Co-operative Society Limited., Alunthalpur, on 01.05.1989. Subsequently, the petitioner was promoted in the year 1996 as Secretary of the Society. The petitioner was suspended by the President of the Society on 28.01.1999 on the allegation that the petitioner and two others caused loss to the Society to the tune of Rs.6,21,802/- and also for falsification of accounts. In connection with the same charges, a criminal complaint was also registered against the petitioner and two others. In the criminal case, charge sheet was filed under Section 408 and 477(A) of I.P.C. During the course of trial, the petitioner himself filed a petition to accept his guilt and produced proof for the reimbursement of the amount allegedly misappropriated from the Society. Hence, the criminal Court after finding the petitioner guilty of the above offences, released him under Section 4 of the Probation of offenders Act. The petitioner was given job guarantee, monetary benefits and service benefits as per Section 12 of Probation of offenders Act. Even against the surcharge proceedings, the petitioner has preferred C.M.A.No.49 of 2015 before the Principal District Court, Thiruchirappalli, and the same is also pending.

4. However, on the ground that the petitioner was discharged from the criminal case, the petitioner made a representation to the respondent to re-instate him in service. Since the respondent did not respond to the representation of the petitioner, the petitioner preferred a Writ petition in W.P.No.8553 of 2016, wherein this Court had directed the respondent to consider the petitioner's representation, dated 07.08.2015. Pursuant to the order of this Court, dated 28.04.2016, the respondent passed the impugned order, dated 27.06.2016, rejecting the request of the petitioner for re-instatement. The respondent concluded that as per Rule 149(4) of Tamil Nadu Co-operative Societies Rules, 1988, convicted employee cannot be appointed. Further, reading of the order impugned, specifically refers to the nature of irregularity committed by the petitioner and the misconduct.

5. As a matter of fact, having regard to the admitted facts, the petitioner was dismissed from service by the order, dated 02.08.1999, pursuant to the disciplinary proceedings initiated against him for the misconduct alleged against the petitioner. It is only against the rejection of the petitioner's request for re-instatement, the present Writ petition has been filed.

6. The learned counsel for the petitioner submitted that the order is in contravention of Section 12 of Probation of Offenders Act, hence, it is liable to be set aside. The contention of the petitioner is that a person found guilty of the offence and dealt with under Section 3 or Section 4 shall not suffer any disqualification, if any, attached to conviction of the offence

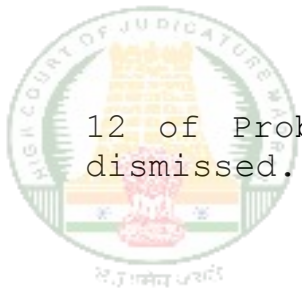


under such Law, in view of Section 12 of Probation of Offenders Act. The petitioner further relies upon the Judgment of Hon'ble Supreme Court, in **Shankar Dass Vs. Union of India and another, reported in 1986 SCC (Cri.) 242**. The Hon'ble Supreme Court on the interpretation of Section 12 of Probation of Offenders Act, has held as follows:-

"Section 12 of the Probation of Offenders Act must be placed out of way first. It provides that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or 4 " shall not suffer disqualification" attaching to a conviction for an offence under such law. The order of dismissal from service consequent upon a conviction is not a "disqualification" within the meaning of Section 12. There are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications. For example, Chapter III of the Representation of the People Act, 1951, entitled "Disqualifications for membership of Parliament and State Legislatures" and Chapter IV entitled "Disqualifications for Voting" contain provisions which disqualify persons convicted of certain charges from being members of Legislatures or from voting at elections to Legislatures. That is the sense in which the word "disqualification" is used in Section 12 of the Probation of Offenders Act. Therefore, it is not possible to accept the reasoning of the learned Single Judge of the Delhi High Court."

That was a case where the employee therein was dismissed from service without offering an opportunity of being heard, as required by Article 311(2) of the Constitution. From the reading of the Judgment of the Hon'ble Supreme Court it is demonstrable that the Judgment is against the petitioner. Further that was a case where the punishment was on account of delinquent's involvement in a criminal case. Even then Section 12 of the Probation of Offenders Act was held not applicable to such reinstatement.

7. In the present case, the petitioner was removed from service earlier by the order of the Society, dated 28.01.1999. The removal of the petitioner was not on the basis of any disqualification but for his involvement in criminal misappropriation. Hence, in this case, it is not necessary for the respondent to re-instate the petitioner relying upon Section



12 of Probation of offenders Act. Hence, the Writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(P&A)

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Sub Assistant Registrar

To

The Joint Registrar of Co-operative Societies,
Tiruchirappalli Region,
Tiruchirappalli-20.

+1cc to Mr.M.Sridharan,Advocate,SR.53596

+1cc to M/S THE SPECIAL GOVERNMENT PLEADER, SR.NO.53436

W.P. (MD) .No.7203 of 2017
20.04.2017

PMU
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