



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.10.2018

CORAM:

WEB COPY

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.20901 of 2018

T.Shelly Maraimuthalvan

... Petitioner

Vs.

1.The Registrar,
Tamil Nadu Cooperative Societies,
SH 114, Dhaspuram, Sethupattu,
Chennai.

2.The Joint Registrar of Cooperative Societies,
Kalyanaramapuram,
Pudukkottai.

3.The Deputy Registrar of Cooperative Societies,
Kalyanaramapuram,
Pudukkottai.

4.The President,
Y.P.627, Pudukkottai Town Aided Schools Employees
Cooperative Thrift Society Ltd.,
1364/1, North Raja Street,
Pudukkottai Post and District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to reinstate the petitioner into service as Clerk in the fourth respondent / Society by considering the petitioner's representations dated 23.01.2018 and 23.05.2018.

For Petitioner : Mr.K.Baalasundharam

For Respondents : Mr.M.Pandiyarajan, AGP for R1 to 3
Mr.P.Karthikeyan for R4

O R D E R

The petitioner has come forward with the present Writ petition to issue a Writ of Mandamus, directing the respondents to reinstate the petitioner into service as Clerk in the fourth respondent / Society by considering his representations dated 23.01.2018 and 23.05.2018.



2.The petitioner, who was working as Clerk in the fourth respondent / Society, has been charge sheeted on 07.08.2003 in view of serious misconduct said to have been committed by him. For which, a detailed explanation has been given and after conducting enquiry, which according to the petitioner, is an ex-parte one, he has been dismissed from service on 28.11.2003. For the very same set of fact, a criminal case in Crime No.3 of 2004 has been registered on 01.12.2004 and the same has been taken on file in C.C.Nos.257 to 269 of 2005 by the Judicial Magistrate, Pudukkottai.

3.The petitioner further stated that on 16.09.2017, the Criminal Court gave verdict in his favour and that he has been discharged from the criminal case. According to the petitioner, once the criminal case has ended in acquittal, he should be reinstated into service. To that effect, he has made a representation. Since there is no response to his representation, the petitioner has come forward with the present prayer stating that the fourth respondent / Society may be directed to consider his representation dated 23.01.2018 and the petitioner may be reinstated into service as Clerk.

4.The petitioner submitted that when once criminal proceedings ended in acquittal, it is needless to say that the employee is entitled to get reemployment and hence, it is the duty caste upon the fourth respondent / Management to reinstate the petitioner into service. In support of his contention, the learned counsel relied on a judgment of the Hon'ble Apex Court reported in **1999(3) S.C.C. 679 Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd., and another,**

5.At the admission stage, the learned counsel appearing for the fourth respondent submitted that the petitioner has made an appeal and the same is pending for consideration and that the petitioner was dismissed from service de hors the pendency of the criminal case.

6.Heard both parties.

7.It is not in dispute that the departmental proceedings and criminal proceedings cannot go simultaneously. In this case, the petitioner has been issued with the charge memo as early as in 2003 and the enquiry has been proceeded with and thereafter, he has been dismissed from service. However, the petitioner has not challenged the said dismissal order. The main contention of the petitioner is that once the criminal Court has acquitted him, he should be reinstated into service. The said contention cannot be accepted. Of course, the contention of the petitioner may be correct provided he has been dismissed from service on the basis of the criminal case and instead of taking a chance that the criminal case may go either in the favour of the petitioner or against him, the respondent /



Management has decided to proceed with the departmental enquiry and found the petitioner guilty of charges and dismissed him from service on 28.11.2003.

8. The contention that the petitioner should be reinstated once he is found not guilty in the criminal case, cannot be accepted as the petitioner was not dismissed as stated supra, based on the criminal case pending against him. The **Paul Antony's** case may not be applicable to the facts of this case.

9. If the petitioner has got any other remedy to challenge the dismissal order well within time and not hit by laches, it is open to him to challenge the same in accordance with law. If there are no legal impediments, the departmental appeal can be proceeded with. The Writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Registrar,
Tamil Nadu Cooperative Societies,
SH 114, Dhaspuram, Sethupattu,
Chennai.
2. The Joint Registrar of Cooperative Societies,
Kalyanaramapuram,
Pudukkottai.
3. The Deputy Registrar of Cooperative Societies,
Kalyanaramapuram,
Pudukkottai.

+ 1 CC TO Mr.K.BAALASUNDHARAM, ADVOCATE IN SR No. 89028

NBJ

TE/SV/SAR-4 : 04/12/2018 : 3P/5C

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