

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.17359 of 2019

K.Sugumar

... Petitioner

vs

1.The Additional Registrar of Cooperative Societies,
No.170, E.V.R.Periyar Road,
Kilpauk, Chennai- 600 010.

2.The Joint Registrar of Cooperative Societies,
Cuddalore Region, Cuddalore-607 001.

3.P.Renugambal
Joint Registrar of Co-operative Societies
Cuddalore Region, Cuddalore-607 001.

4.The President,
E.2584, Thillaividangan Primary Agricultural,
Cooperative Credit Society, Cuddalore.

5.S.Vaithiyanathasamy ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to consider and transfer the Revision Petition filed by the fifth respondent pending on the file of the second/third respondent to any other equivalent cadre officer to be decided on merits and as per law and within a time to be stipulated by this Court.

For Petitioner : Mr.L.Chandrakumar

For Respondents: Ms.T.Girija

Government Advocate for R1 to R3

Mr.L.P.Shanmugasundaram

Special Government Pleader (Co-op.)

for R4

Ms.P.D.Selvaraj for R5

O R D E R

Writ Petition is filed for issuance of a Writ of Mandamus, directing the first respondent to consider and transfer the

Revision Petition filed by the fifth respondent pending on the file of the second/third respondent to any other equivalent cadre officer to be decided on merits and as per law and within a time to be stipulated by this Court.

2. The case of the petitioner is that the petitioner is the Ex-President of E.2584, Thillaividangan Primary Agricultural Co-operative Society, Cuddalore. On 28.03.2018, the fifth respondent herein had committed various financial irregularities as well as that of falsification of official records and thereby caused huge loss to the respondent society. Thereafter, after conducting enquiry, the fifth respondent imposed punishment of removal of service to the petitioner. Aggrieved over the said order of the fifth respondent, the petitioner has filed a Revision under Section 153 of the Co-operative Societies Act before the second respondent on 22.05.2018. While the statutory revision was under active consideration by the first respondent, the fifth respondent has filed a writ petition before this Court in W.P No.17223 of 2018, suppressing the pendency of the Revision before the competent authority. However, there was change in the Revisional authority. The fifth respondent had chosen to withdraw the writ petition seeking liberty to finalise the revision petition before the second respondent. Hence the petitioner has filed the present writ petition seeking to direct the first respondent to consider and transfer the Revision petition filed by the fifth respondent pending on the file of the second and third respondent to any other equivalent cadre officer to be decided on merits and in accordance with law.

3. Mr.L.Chandrakumar, the learned counsel for the petitioner would submit that admittedly, the petitioner is the Ex-President who conducted an enquiry against the fifth respondent and after enquiry, imposed punishment of removal of service to him. The order of the petitioner was challenged before the second respondent by way of revision. Since the earlier officer was changed, new officer was assumed the office of the Joint Registrar of Co-operative Societies. The fifth respondent withdrew the writ petition and agitated before the second respondent, is unsustainable one and the second respondent is already having the grudge against the petitioner while the petitioner was in official duty.

4. Mrs.T.Girija, the learned counsel appearing for the respondent would submit that the petitioner is the Ex-President and in his capacity, he passed orders. She would further submit that once he passed order, he is not entitled to canvas before the revisional authority. In the catena decisions, this Court held that the officer who passed order cannot be challenged or canvased before any other Higher authority. In the present

case, the petitioner has acted as adjudicating authority in respect of the fifth respondent. When the fifth respondent filed revision, the second respondent has to pass orders. The petitioner has no right to transfer the case from the second respondent to any other officer and this writ petition is misconceived.

5. The short issue involved is whether the adjudicating Authority who initially adjudicated the matter have right to canvas his decision either before the Appellate Authority or any other Authority. Similar type of issue was considered by the Supreme Court of India in the case of Mohtesham Mohd. Ismail v. Spl. Director, Enforcement Directorate and another reported in (2007) 8 Supreme Court Cases 254 in which it has been held as follows:

16. An adjudicating authority exercises a quasi-judicial power and discharges judicial functions. When its order had been set aside by the Board, ordinarily in absence of any power to prefer an appeal, it could not do so. The reasonings of the High Court that he had general power, in our opinion, is fallacious. For the purpose of exercising the functions of the Central Government, the officer concerned must be specifically authorised. Only when an officer is so specifically authorised, he can act on behalf of the Central Government and not otherwise. Only because an officer has been appointed for the purpose of acting in terms of the provisions of the Act, the same would not by itself entitle an officer to discharge all or any of the functions of the Central Government. Even ordinarily a quasi-judicial authority cannot prefer an appeal being aggrieved by and dissatisfied with the judgment of the appellate authority whereby and whereunder its judgment has been set aside. An adjudicating authority, although an officer of the Central Government, should act as an impartial tribunal. An adjudicating authority, therefore, in absence of any power conferred upon it in this behalf by the Central Government, could not prefer any appeal against the order passed by the Appellate Board.

17. The Madras High Court in Rama Aranganna opined: (AIR P.81, para 4)

"4. On the question as to the maintainability of the appeal, it is seen that the Explanation to Section 54 of the Foreign Exchange Regulation Act, 1973 treats only the

Central Government as an aggrieved party for the purpose of filing an appeal to the High Court in respect of orders passed by the Foreign Exchange Regulation Appellate Board under that section. Therefore, only the Central Government can file and prosecute an appeal against the order of the Appellate Board, and not any other authority. In this case, the appeal has been filed by the Director of Enforcement, who is the initial authority who passed the adjudication order against the respondents and whose order has been set aside by the Appellate Board on an appeal filed by them. Therefore, the Director of Enforcement cannot be said to be aggrieved by the order of the Appellate Board merely because its order of adjudication has been set aside by the Appellate Board".

6. On perusal of the above decision, adjudicating authority cannot be aggrieved by dissatisfaction with the judgment of the appellate authority. In the present case, the petitioner has acted as a quasi-judicial authority and passed order against the private respondent and the private respondent filed revision before the second respondent. Hence, the relief sought for by the petitioner cannot be granted since the petitioner is not being an aggrieved person to canvas all those things before this Court and hence the writ petition deserves to be dismissed.

7. In the result, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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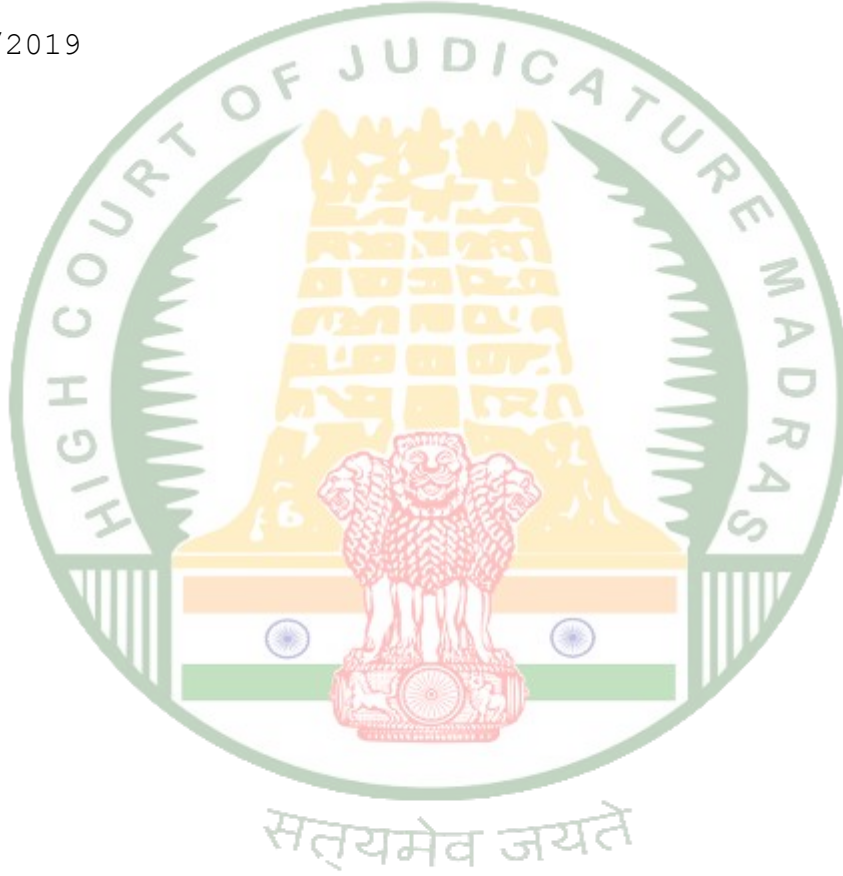
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+1cc to Mr.L.Chandrakumar, Advocate Sr.82578
+1cc to Mr.L.P.Shanmugasundaram, Advocate Sr.82761
+1cc to the Special Government Pleader Sr.83174

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