



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) .No.1560 of 2011
and M.P. (MD) .No.2 of 2011 and W.M.P. (MD) .No.16627 of 2017

R.Venkataramanan

.. Petitioner

Vs.

1.The Secretary to Government,
Food and Co-operative Department,
St. George Fort,
Chennai.

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

3.The Special Officer,
The Srirangam Co-operative Urban Bank,
No.43, South Chithirai Street,
Srirangam, Trichy - 6.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records and quash the impugned order passed by the 1st respondent in G.O.Ms.No.147, dated 12.10.2010 and 3rd respondent's proceeding in Na.Ka.No.32/2005-2006. Tha.Aa(1) dated 04.05.2006.

For Petitioner : Mr.S.Karthik

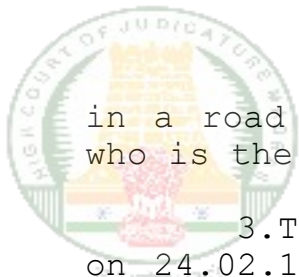
For Respondents: Mr.M.Jeyakumar for R1 & R2
Additional Government Pleader
Mr.K.M.Vijaiyakumar for R3

ORDER

This writ petition has been filed for issuance of writ of Certiorari, to call for the records and quash the impugned order passed by the 1st respondent in G.O.Ms.No.147, dated 12.10.2010 and the 3rd respondent's proceeding in Na.Ka.No.32/2005-2006.ThA.Aa(1), dated 04.05.2006.

2.The petitioner's wife namely Mrs.T.A.Hemalatha was working under the third respondent society as a Clerk cum Typist. She died

<https://hcservices.ecourts.gov.in/hcservices/>



in a road accident in the year 2009 and therefore, the petitioner who is the husband of the delinquent has filed the writ petition.

3.The petitioner's wife was appointed as a Clerk-cum-Typist on 24.02.1988 in the third respondent society. In the year 2002, the Secretary of society by name R.Manoharan was charged for misappropriation and for misusing the funds of Bank by creating loan documents in the names of several persons. An enquiry under Section 81 of the Tamilnadu Co-operative Societies Act was completed in the year 2002 and based on the enquiry report disciplinary proceedings was initiated against the then secretary of the society, the then Cashier and the then Loan Clerk. The petitioner's wife Smt.T.A.Hemalatha was working as Cashier at the relevant point of time. A charge memo was issued to the Secretary and the loan clerk for misappropriation of a sum of Rs.42,000/-. Similar charge memo was also issued to the petitioner. The allegation is that the petitioner's wife was also hand in glove with the Secretary and the Loan Clerk for the misappropriation of amount which was supposed to be disbursed to the persons who are entitled to the loan under the scheme of State. Though the petitioner's wife was designated as a Clerk-cum-Typist, it is stated that the petitioner was expected to perform the duties and responsibilities of Cashier.

4.Stating that the petitioner's wife was only a Clerk-cum-Typist, the charges of misappropriation against the petitioner along with others is improper. The enquiry officer submitted his report after enquiry. It is the case of the petitioner's wife that she being a lady, believing the words of the then Special Officer and Supervisor, attended the enquiry casually. Based on the enquiry report, a second show cause notice was issued mentioning the proposed punishment. Thereafter, the punishment of reduction of the salary of petitioner's wife in basic pay from Rs.2,170/- to Rs.700/- with effect from 04.05.2006 was imposed. Originally, the petitioner's wife filed a writ petition in W.P.(MD).No.4582 of 2006 challenging the order, dated 04.05.2006. However the writ petition was dismissed as not maintainable, in view of the alternative remedy. Accordingly, the petitioner was also given liberty to file appeal under the provisions of Tamilnadu Co-operative Societies Act, 1983.

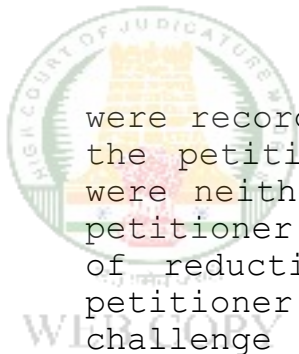
5.Thereafter the petitioner filed a revision petition under Section 153 of the Tamilnadu Co-operative Societies Act before the Joint Registrar of Societies. The Joint Registrar, however by order dated 16.10.2007, remitted the matter to the third respondent. Thereafter, the third respondent passed an order on 15.12.2008, imposing the punishment of dismissal of petitioner's wife from service. Once again, the petitioner's wife filed a revision petition under Section 153 of Tamilnadu Co-operative Societies Act, before the Joint Registrar and the Joint Registrar dismissed the revision petition by order, dated 15.06.2009. It was thereafter,



Government. Pending revision petition before the Government, the petitioner's wife died. Thereafter, getting legal opinion, the Government disposed of the second revision without hearing the petitioner who is the legal heir of the deceased delinquent. The Government reduced the punishment, instead of dismissing from service, by reduction of pay scale to the lower stage i.e., from Rs.2,170/- to Rs.700/- with effect from 04.05.2006. Aggrieved by the same, the present writ petition has been filed by the petitioner.

6.Learned counsel appearing for the petitioner submitted that the petitioner's wife has not committed any misappropriation or illegality. It is submitted that the enquiry officer has also accepted that the wife of petitioner had not committed misappropriation in any manner. The petitioner was found guilty as an abettor. Admitting guilt, who had swindled the money from the Co-operative Bank had paid the amount to the Bank. It is contended that the petitioner's wife was not a cashier and she was only working as a Clerk cum Typist. Though it is admitted that she was the cashier in-charge on the day of misappropriation, it is contended by the counsel that she disbursed the amount only to the persons for whom she received pass slip. Since it is not the job of the petitioner's wife to look into the papers to find out whether the loan amount was sanctioned and disbursed to the real persons or not, it is submitted that the enquiry officer and the Government have committed an error by holding the petitioner's wife responsible for the loss. Learned counsel further submitted that the main persons who are found guilty of misappropriation were not given any major punishment and therefore, the punishment of reduction of pay to the petitioner's wife is disproportionate to the findings of the enquiry officer. Learned counsel for the petitioner, further contended that the amount alleged to have been misappropriated by the persons was actually recovered from them. Since the persons who are involved in the misappropriation have admitted their guilt, the punishment of reduction of pay-scale drastically is opposed to law. Learned counsel also submitted that the petitioner's wife was not given a fair opportunity. It is alleged that during enquiry petitioner's wife was cheated as if she did not commit any mischief.

6.This court considered the counter affidavit filed by each of the respondent independently reiterating the same contentions. As seen from the impugned order the original authority namely the Special Officer has imposed the punishment of reduction of pay which was later modified and enhanced to one of dismissal after remand. The Government has reduced the punishment by ordering reduction of pay to a lower grade. The impugned order of third respondent specifically refers to the opportunity that was given to the petitioner's wife during enquiry and there is no objection from the petitioner's wife pointing out any regularities or denial of fair opportunity. From the impugned order of first respondent, it is



were recorded in order. Further, it is seen that the contentions of the petitioner raised in the grounds of second revision petition were neither considered nor dealt with in the impugned order. The petitioner's wife was drawing the salary of Rs.2,170/- and by virtue of reduction, it was from Rs.2,170/- to Rs.700/-. Though the petitioner's wife is no more, the petitioner is entitled to challenge the order which has serious financial consequences. The enquiry is not an empty formality. The petitioner's wife had raised specific grounds. Admittedly, the petitioner's wife was not found guilty of misappropriation. The enquiry officer assumed the petitioner's wife as an abettor. It is not in dispute that one of the accused by name Sundara Ragavan was allowed to retire by accepting the explanation offered. With regard to the other delinquents who were also found guilty along with petitioner's wife, it is stated that one of them namely the third accused was allowed to work as General Manager. The petitioner is the 5th one to be accused who was found guilty for abetting misappropriation. It is in the said circumstances, the grounds raised by the petitioner's wife before the Government cannot be ignored. However, the order of first respondent impugned in the writ petition without considering the grounds of revision is an irregularity and this court is able to see that the revision petition has been disposed of by the government without an application of mind to the grounds of revision raised by the petitioner's wife. Unless there are reasons, this court is unable to appreciate the legal mind of the first respondent while passing the impugned order. It is admitted that the petitioner's wife died when revision was pending. Admittedly no opportunity was given to petitioner on the basis of opinion received from legal department. It is not in dispute that the petitioner wanted to participate but no hearing was given to petitioner based on legal opinion. The opinion is to the effect that opportunity need to be given to petitioner only if punishment is enhanced. That is not acceptable.

7.As a result, this writ petition is allowed and the impugned order passed by the 1st respondent in G.O.Ms.No.147, dated 12.10.2010 and 3rd respondent's proceeding in Na.Ka.No.32/2005-2006. Tha.Aa(1) dated 04.05.2006 is set aside. However, the matter is remitted to the government for passing appropriate order after giving adequate opportunity of hearing to the petitioner. The petitioner shall be furnished copy of records if any, that may be relied upon for the purpose of passing fresh order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //



To

1.The Secretary to Government,
Food and Co-operative Department,
St. George Fort,
Chennai.

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

3.The Special Officer,
The Srirangam Co-operative Urban Bank,
No.43, South Chithirai Street,
Srirangam, Trichy - 6.

+1 CC to M/s.GP (SR-85913[F] dated 09/09/2019)

+1 CC to M/s.S.KARTHIK, Advocate (SR-86037[F] dated 10/09/2019

W.P.(MD).No.1560 of 2011
06.09.2019

TM

MS/30.09.2019/5P.6C