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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.20635 of 2017

and

W.M.P. (MD) Nos.16901 and 18913 of 2017

and

W.M.P. (MD) Nos.5462 and 5547 of 2018

P.Sunrendran Nair,
Son of M.Padmanabhan Thampy,
Board Member,
Malayadi Primary Agricultural Co-Operative Credit
Society Ltd., Y.No.149,
Malayadi 629 153,
Via Kaliyakkavavilai,
Kanyakumari District.

... Petitioner

-Vs-

- 1.The Registrar of Co-operative Societies,
Chennai - 600 010.
- 2.The Deputy Registrar of Co-operative Societies,
Thuckalay, Kanyakumari District.
- 3.The Field Officer of Malayadi Primary Agricultural
Co-Operative Credit Society Ltd.,
Thuckalay,
Kanyakumari District.
- 4.The Malayadi Primary Agricultural Co-Operative
Credit Society Ltd., Y.No.149,
Malayadi 629 153,
Via Kaliyakkavavilai,
Kanyakumari District,
Represented by its Secretary.

5.S.Chithra Lekha

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the 4th respondent pertaining to its order in proceedings order No.Nil, dated 25.09.2017 on its file and its consequential order in No.Nil, dated 27.09.2017, on its file, regarding reinstatement of the 5th respondent in service, quash the same.

<https://hcsa.mca.gov.in/hcsa-services>

(Prayer amended vide Court order dated 11.09.2018
in W.M.P. (MD) No.5463 of 2018)



For Petitioner : Mr.N.Thampi
For Respondents : Mr.J.Gunaseelan Muthiah for R1 to R3
: R.Velmurugan for R4
: G.Manivannan for R5

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ORDER

The petitioner herein was the President of the fourth respondent Society. According to him, some of the staff of the Society had committed certain irregularities and he wanted to initiate action against them. The disgruntled staff induced the fifth respondent herein to give a false complaint of woman harassment against him. Hence, Crime No. 57 of 2014 was registered against the petitioner on the file of the Palukal Police Station. The Joint Registrar of the Co-operative Society also initiated action against the petitioner for disqualifying against him from holding the post of President of the Society. The petitioner filed W.P.(MD)No.277 of 2015, challenging the communication dated 10.12.2014, issued by the Joint Registrar of the Co-operative Society. The prosecution initiated against the writ petitioner ended in acquittal on 11.03.2016 in C.C.No.89 of 2014, on the file of the learned Judicial Magistrate No.I, Kuzhithurai. Of course, Criminal Appeal has been filed by the fifth respondent questioning the acquittal and the same is still pending. According to the petitioner, the Board of the fourth respondent had authorised him to take disciplinary action against the fifth respondent. The fifth respondent was suspended from service by an order dated 23.06.2017 and ultimately dismissed on 30.06.2017.

2.The petitioner was removed from the post of President of the Society on 29.07.2017. Likewise, the Vice President of the Society namely., Mrs.Glory, was also removed. The post of President and Vice President of the Society were lying vacant. In such situation, the Board of the Society can authorise any member to exercise the powers of the President, but the said person cannot do so for more than three months without the special permission of the Registrar. There is no scope for election of any person as President or Vice President in such situation. But by excluding the writ petitioner, eight member of the Board illegally convened a meeting and elected L.Nadarajan and Y.Rani as the President and Vice-President respectively. The petitioner was informed of these developments by a communication dated 22.09.2017. The petitioner filed W.P.(MD)19348 of 2017, questioning the same. An interim order was also granted on 13.10.2017 in the said writ petition.

3.While so, the fifth respondent, who was dismissed from service of the Society was illegally reinstated in the meeting held on 25.09.2017. Questioning the reinstatement of the fifth respondent, by an order dated 27.07,2017, this writ petition came to be filed.



4.The learned counsel appearing for the writ petitioner reiterated the contentions set out in the affidavit filed in support the writ petition.

5.The respondents have filed a detailed counter affidavit.

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6.It is seen from the Bye-Laws that the power to initiate disciplinary action lies only with the Board. In this case, the Society has filed a counter affidavit categorically denying the petitioner's claim that he was authorised to take action against the fifth respondent. The fifth respondent has been dismissed from service for commission of misconduct. Therefore, in the very nature of things an enquiry must have been conducted. This Court posed a specific question to the learned counsel appearing for the writ petitioner, as to whether an enquiry was conducted before throwing out the writ petitioner from service. The petitioner's counsel had to admit that no enquiry was conducted against the fifth respondent. According to him, the fifth respondent was put on notice before passing the order of dismissal. That is patently insufficient. The fifth respondent was a permanent employee of the Society and if she was to be thrown out on the basis of an allegation, obviously, enquiry must have been conducted. Since no enquiry was conducted, the order of dismissal is patently invalid. That apart, as already seen from the averments in the counter affidavit filed by the Society, the Board had not initiated any action against the fifth respondent. It was the petitioner, who issued the proceedings against the fifth respondent. Obviously, the petitioner had an axe to grind against the fifth respondent because the fifth respondent had accused the petitioner of having harassed her. Of course, the petitioner was acquitted but then, challenging the acquittal, the fifth respondent has filed a Criminal Appeal. Therefore, all is not well between the fifth respondent and the petitioner. Hence, this Court will have to take the claim of the writ petitioner that the Board authorised him to take action against her nor with a pinch but a kilo of salt. In any event, the majority of the members of the Board have clarified that they have never authorised the petitioner. In this case, the Board has chosen to reinstate the fifth respondent in service. Since this Court has already given a finding that the fifth respondent could not have been dismissed without holding a proper enquiry, I am of the view that no interference is called for in this case. I find no ground to grant any relief. The writ petition is dismissed with the cost of Rs.5000/- payable to the fifth respondent. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Credit Society Ltd., Y.No.149,
Malayadi 629 153,
Via Kaliyakkavavilai,
Kanyakumari District,
Represented by its Secretary.

+1CC TO MR.R.VELMURUGAN, Advocate Sr. No.53456

+1CC TO MR.K.N.THAMPI, Advocate Sr. No.53468

+1CC TO MR.G.MANIVANAN, Advocate Sr. No. 54115

W.P. (MD) No.20635 of 2017

12.03.2019

TR (05.04.2019) 4P 8C