



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

WEB COPY

W.P. (MD).No.23875 of 2019
and
W.M.P. (MD).No.20496 of 2019

Sivarama Sethupathy

.. Petitioner

Vs.

- 1.The Joint Registrar of Co-operative Societies,
Thanjavur Zonal Co-operative Societies,
Thanjavur.
 - 2.The Deputy Registrar of Co-operative Societies,
Pattukottai,
Thanjavur District.
 - 3.The Special Officer,
TA.73 Thiruchitrabalam Thuravikadu Primary Agricultural
Co-operative Loan Society,
Thiruchitrabalam,
Pattukkottai Taluk,
Thanjavur District.
 - 4.M.Ekambaram,
Joint Registrar of Co-operative Societies,
Thanjavur Zonal Co-operative Societies,
Thanjavur.
- .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari calling for the records pertaining to the impugned order, dated 19.08.2019 of the 1st respondent in Na.Ka.3330/2018/Sapa and quash the same.

For Petitioner : Mr.J.Anandkumar

For Respondents : Mr.J.Gunaseela Muthaiah
for R1 and R2
Additional Government Pleader
Mr.M.Jeyaraman for R3



ORDER

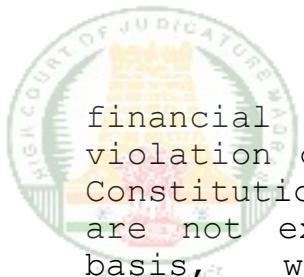
Challenging the proceedings of the first respondent under Section 36 (1) of the Tamilnadu Co-operative Societies Act, the present writ petition has been filed.

2.The petitioner was elected as President of the third respondent society on 07.05.2013 and held the office till 08.05.2018. During 2015, a resolution was passed to regularize a casual employee of the society, who was working from 2010 onwards. The said employee was brought on regular time scale of pay with effect from 03.08.2015. After the period of three years, on 12.01.2018 an enquiry under Section 81 of the Tamilnadu Co-operative Societies Act was initiated for fixing the time scale of pay. After receiving the objections and after affording personal hearing to the petitioner, the first respondent had disqualified the board members and imposed the punishment of permanent disqualification for causing revenue loss to the society and for not adopting recruitment procedure under Section 74 r/w Rules 150 and 151 of the Tamilnadu Co-operative Societies Acts and Rules.

3.Controverting the facts, the respondents would submit that Section 74 of the Tamilnadu Co-operative Societies Act provides for recruitment by promoting eligible ration shop employee or through District Recruitment Bureau. As per By-law Nos.7(A) and 7(B) of the Society, the procedure of recruitment is by Direct Recruitment and promotion. However, without following this procedure, the Board has directly regularized the casual employee in time scale of pay and thereby caused loss to the society. Apart from this, they have granted a loan of Rs.2,00,000/- to the said regularized employee. Hence, their acts are contrary to Acts and Rules and therefore the disqualification order is correct.

4.I considered the rival submissions on either side.

5.From the perusal of the impugned order, it is seen that one casual labour was regularized and brought to the time scale of pay on 03.08.2015. Thereafter, an enquiry under Section 81 of the Tamilnadu Co-operative Societies Act was initiated in the year 2018 against the said regularization. There is no whisper about the Annual audit conducted by the respondents and remarks made there on for the years 2015 - 2016 & 2016 - 2017 and reason for the delay. Even though it is considered as an irregular procedure, even now the respondents have not taken any steps to cancel the illegal order or to remove the employee from service. It is not in dispute that the payment of salary will be lesser to the casual employee than one now disbursed to the regularized employee. Further, the proposition made by the respondent that by regularizing a casual employee



financial loss caused to the society cannot be accepted as it is violation of fundamental rights under Articles 14, 16 & 19 of the Constitution of India. Another reason is that the Government organs are not expected to exploit workers by engaging them on casual basis, without filling up regular vacancies. If at all the respondents wanted to fill up the regular post, they should have done it immediately. But the said employee was kept on casual basis for five years. Such kind of casual employment for the purpose of saving the money of the society amounts to violation of human rights. Apart from this, no other reason was given by the respondent for disqualifying the petitioner permanently. If at all as per Section 36, the petitioner is said to have committed Gross misconduct, the Gross misconduct should have been specifically mentioned, discussed and a finding should have been given on that. Other than saying that the petitioner incurred financial loss and violated By-law, there is no other reason adduced. It cannot be said that the petitioner indulged in illegal activity warranting capital punishment. The reasons given by the respondent without specific details show that punishment imposed is disproportionate, that too, when the said employee continue in the very same time scale of pay and continue to repay the loan amount. There is no answer about dereliction of duty by the higher echelons in the department. For the incident that took place in the year 2015, action was initiated after a period of three years and punishment was imposed at the fag end of his tenure. To sum up, the impugned order is vague, violative of principles of natural justice and is not sustainable in the eyes of law.

6. Accordingly, this writ petition is allowed and the impugned order of the first respondent, dated 19.08.2019, is hereby quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To

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+1 CC to Mr.J. ANANDKUMAR, Advocate (SR-101317[F]dated 26/11/2019)
+1 CC to SPL GP (SR-101479[F] dated 26/11/2019)

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VB(13.12.2019) 4P 6C