

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.10897 OF 2013

K.Palani

..Petitioner

- Vs -

1. The Joint Registrar of Co-operative Societies-cum-Revisional Authority
Cuddalore Region, 3, Beach Road
Cuddalore 607 001.
 2. The Administrator/President
Parvathipuram Primary Agricultural
Co-operative Credit Society Ltd.
Neyveli Main Road, Vadalur & Post
Kurinjpadi Taluk, Cuddalore District.
- ..Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the 1st respondent bearing Na. Ka. En.1046/2012 Thu.Va.Tha.I dated 14.08.2012 and quash the same as the same being patently illegal, erroneous without justification and invalid and consequently direct the 2nd respondent to reinstate the petitioner herein in service with continuity of service, with backwages and with all other attendant and consequential benefits within a time frame.

For Petitioner : Mr. K.M.Ramesh

For Respondents: Mr. T.Girija, AGP for R-1
Mr. L.P.Shanmugasundaram,
Spl. GP for R-2

ORDER

It is the case of the petitioner that while he was working as Secretary of the 2nd respondent society, he was placed under suspension and, thereafter, charge memo was issued making allegations of misappropriation that he had not discharged duties in a responsible manner. Enquiry was initiated against the petitioner by appointing enquiry officer and after enquiry, the enquiry officer filed report holding that the charges framed

against the petitioner stood proved. After following the procedural formalities of issuing further show cause notice, for which explanation was submitted by the petitioner, an order of dismissal from service was passed against the petitioner. In the interregnum, the petitioner raised an industrial dispute questioning the order of dismissal from service, which was ultimately dismissed by the Tribunal which, on being questioned before this Court in W.P. No.21014/17 was confirmed. Thereafter, the petitioner filed revision petition before the 1st respondent, which was dismissed by the 1st respondent confirming the order of dismissal against which the present petition has been preferred.

2. Learned counsel appearing for the petitioner, though submits that very many grounds have been raised, however, at the first instance, limited his argument to the fact that though as per By-law No.13 of the society, the competent authority to impose punishment on the petitioner, who was functioning as the Secretary, is the Committee and the 2nd respondent has no power to pass the order of dismissal, as the petitioner was functioning in a Managerial capacity. It is therefore contended that major punishment having been inflicted on the petitioner, the Committee is alone competent to pass an order and though the 2nd respondent is a member of the Committee, acting alone as the President of the Society, the 2nd respondent is not empowered to pass any major penalty against the petitioner, which is wholly impermissible and unsustainable.

3. This Court heard the learned Addl. Government Pleader and the Special Government Pleader appearing for the respondents on the submissions advanced by the learned counsel appearing for the petitioner, who contended that the 2nd respondent, being the President of the Society and also in the capacity of being a member of the Committee had passed the order of dismissal, which has been approved by the Committee and, therefore, there is no violation of any of the by-laws of the society.

4. This Court gave its anxious consideration to the contention advanced by the learned counsel on either side and also perused the materials available on record.

5. A perusal of the by-law No.13, to which this court's attention was drawn by the learned counsel for the petitioner, reveals that insofar as imposing any penalty on the Secretary, the petitioner herein, the Committee alone is competent. However, in the present case, it is evident from the records that the order of dismissal has been passed by the 2nd respondent, in the capacity of President of the Society. Though it is the contention of the respondents that the President being a member of the committee is clothed with power to pass the

order, more the punishment of dismissal from service having been approved by the committee, however, the said contention cannot be accepted for more than one reason. When the by-law categorically envisages that the major penalty could be imposed on a person, holding the post of Secretary, only by the Committee, delegation of power in the absence of rules/by-laws on the 2nd respondent is wholly impermissible. Further, it is to be pointed out that even if such a power had been delegated on the 2nd respondent, which is not the case on hand, such an exercise is unsustainable as there is no whisper in the by-law that such delegation can be made. Further, even according to the respondent, the order has been passed by the 2nd respondent, which has received the approval of the Committee. From the above stand it is clear that it is only a post-facto approval by the Committee, which is not the intent in the by-law and that the by-law clearly mandates that it is only the committee, which could pass orders pertaining to any major penalty that could be imposed on the Secretary, the petitioner herein. In such view of the matter, this Court is of the considered view that the imposition of punishment of dismissal from service passed by the 2nd respondent is per se unsustainable and deserves to be set aside.

6. For the reasons aforesaid, this writ petition is allowed by setting aside the impugned order of dismissal passed by the 2nd respondent and remanding the matter back to the competent authority, viz., the Committee for passing appropriate orders on the enquiry report. It is further made clear that the matter is remitted back only on the question of jurisdiction and, therefore, the petitioner would not be entitled to claim any monetary benefits for the interregnum period. The Committee is directed to consider the enquiry report independently and pass appropriate orders in accordance with the by-laws of the society.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

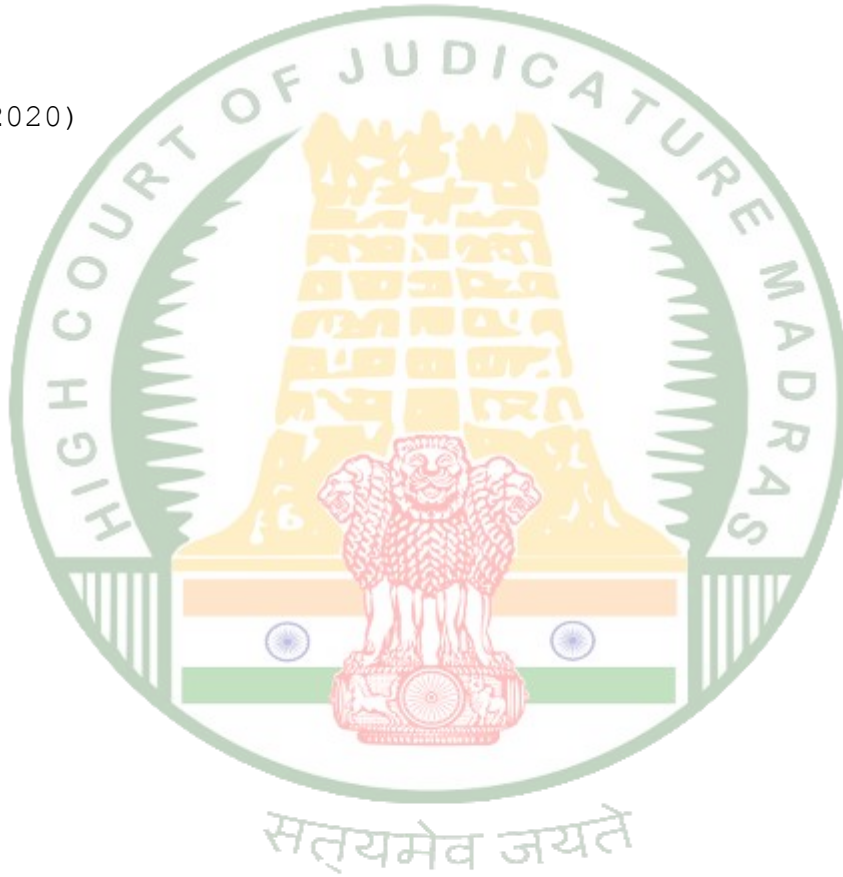
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+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.33570
+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.33560
+1cc to the Government Pleader, S.R.No.33509

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JP (CO)
RV(11/11/2020)



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