

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 02.12.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.19049 of 2010

V.Thangavel

... Petitioner

Vs

- 1.The Joint Registrar of Cooperative Societies,
Salem Region,
Salem.
- 2.The Deputy Registrar of Cooperative Societies,
Salem Zone,
Salem.
- 3.The Special Officer,
S.402, Yercaud Hill Tribes Large Sized
Multipurpose Co-operative Society,
Yercaud, Salem District. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records in connection with the Order in Na.Ka.No.3771/08 sa.ba dated 23.03.2010 on the file of the first Respondent confirming the order of termination passed by the 3rd Respondent in his proceedings dated 07.12.2002, quash the same and consequently direct the Respondents to reinstate the Petitioner as Assistant Secretary with all consequential service and monetary benefits.

For Petitioner : Mr.C.Selvaraju, senior counsel
for M/s.C.S.Associates

For Respondents : Mr.L.P.Shanmugasundaram
Spl.G.P. for R1 and R2.
Mr.M.S.Palanisamy for R-3

O R D E R

By this writ petition, the Petitioner challenges the order of termination dated 23.03.2010 in the revision petition filed by the Petitioner.

2. The Petitioner herein was originally appointed as a salesman in the Yercaud Hill Tribes Large Sized Multi-Purpose Cooperative Society (the Society), the third Respondent herein, and was promoted from time to time. Eventually, he was promoted as an Assistant Secretary on 01.06.2000. During that period, he was placed under suspension on 07.02.2002 and a charge memo was served on him on 28.03.2002 in connection with the sanction and disbursal of loans by the Society. He submitted his explanation thereto on 13.06.2002 and, pursuant thereto, a domestic enquiry was conducted and the enquiry officer submitted his report on 01.10.2002. Upon consideration of his explanation to the said enquiry officer's report, the third Respondent passed an order dated 07.12.2002 terminating the Petitioner from service. The Petitioner filed W.P.No.45700 of 2002 to challenge the said order of termination and this Court, by order dated 28.11.2007, set aside the order and directed that the Petitioner's termination be reconsidered. Pursuant thereto, the impugned order dated 23.03.2010 came to be issued.

3. I heard the learned senior counsel, Mr.C.Selvaraju, for the Petitioner; Mr.L.P.Shanmugasundaram, the learned Special Government Pleader for Respondents 1 and 2; and Mr.M.S.Palanisamy, the learned counsel for the third Respondent.

4. The learned senior counsel contended that the disciplinary proceedings are beyond the jurisdictional authority of the Special Officer, who acted as the disciplinary authority, inasmuch as Section 75(1)(iv) read with sub-section (3) of the Tamil Nadu Co-operative Societies Act, 1983 (the TN Cooperative Societies Act) is applicable to the Petitioner, whereas the disciplinary proceedings were conducted in contravention thereof. In specific, he contends that in terms of Section 75(3), the Special Officer does not have jurisdiction over an Assistant Secretary, who is part of the common cadre and that disciplinary control is required to be exercised by an officer not below the rank of Joint Registrar. The learned senior counsel for the Petitioner next contended that the principles of natural justice should be adhered to not merely as a formality but in substance. In the present case, he submits that a proper opportunity was not provided to the Petitioner during the enquiry. He further submits that the original order of dismissal is a non-speaking order and is arbitrary in nature. An additional submission is made that the time limit prescribed in Section 81(4) of the TN Cooperative Societies Act for the conclusion of an enquiry has been exceeded and, therefore, the disciplinary proceedings are vitiated.

5. In response and to the contrary, the learned counsel for the third Respondent contended that the Petitioner was provided with a reasonable opportunity both before the

enquiry officer and the revisional authority. Consequently, the principles of natural justice were fully complied with. As regards the contention that Section 75(3) of the TN Cooperative Societies Act was contravened, Mr.Palanisamy contended that the said provision makes it clear that it only applies to the notified class or category of registered societies. Pursuant to Section 75, he submits that G.O.Ms.No.55, Cooperation, Food and Consumer Protection Department, dated 24.03.2000 (G.O.Ms.No.55), was issued and that G.O.Ms.No.55 makes it abundantly clear that it is applicable only to primary agricultural cooperative banks, whereas the Society is a multi-purpose cooperative society. In this connection, he invited the attention of the Court to paragraph 8 of the counter affidavit wherein it is stated that G.O.Ms.No.55 would only apply to the Secretary of a primary agricultural co-operative bank, whereas the third Respondent Society is a multipurpose co-operative society. Moreover, he submits that the Petitioner does not come under the common cadre of service as defined in G.O.Ms.No.55 because it is applicable only to the post of Secretary and not to an Assistant Secretary such as the Petitioner.. His next contention is that the time limit specified in Section 81(4) would not apply in this case and, in any event, the said time limit has been held to be directory and not mandatory in the judgment of a Division Bench of this Court in S.V.K.Sahasraman v. Deputy Registrar of Co-operative Societies (Sahasraman), 2008 (8) MLJ 231. The last contention of Mr.Palanisamy is that the impugned order in the revision petition is a well reasoned order and cannot be said to be perverse by any stretch of imagination.

6. The learned counsel for Respondents 1 and 2, Mr.Shanmugasundaram, made brief submissions concurring with the submissions of Mr.Palanisamy to the effect that G.O.Ms.No.55 does not apply to the Society, which is a multipurpose co-operative society, and only applies to the primary agricultural co-operative banks.

7. I considered the submissions of the learned senior counsel/counsel for the respective parties and examined the materials on record.

8. The question that arises for consideration is whether the impugned order of termination is liable to be interfered with. At the outset, the contention that Section 75(3) of the TN Cooperative Societies Act was contravened is dealt with. On this issue, the learned counsel for the first and second Respondents and the learned counsel for the third Respondent contended that G.O.Ms.No.55 applies only to a primary agricultural co-operative bank and not to a multi-purpose co-operative society, such as the Petitioner. Upon perusal of Section 75(1)(iv), I find that it is made applicable to a class or category of registered societies as

may be notified by the Government. G.O.Ms.No.55 prescribes, inter alia, as under in paragraph 2 thereof:

"Accordingly, the Government in exercise of the powers conferred under Section 75 of the Tamil Nadu Cooperative Societies Act, 1983, constitute Common Cadre of Service in respect of the post of Secretary of the Primary Agricultural Cooperative Banks in the State from the date of issue of this order."

From the above, it is abundantly clear that it applies to the post of Secretary of primary agricultural cooperative banks. Thus, I concur with the contentions of the learned counsel for the Respondents. Accordingly, the jurisdictional objection is overruled.

9. On the scope of judicial review of disciplinary proceedings, the settled legal position, as held in judgments such as B.C.Chaturvedi v. Union of India (1995) 6 SCC 748, is that this Court does not sit in appeal over such disciplinary proceedings. The scope of judicial review is largely confined to examining whether the principles of natural justice were complied with, whether the order is in violation of statutory rules pertaining to the mode of enquiry and whether the order is liable to be interfered with on the ground of perversity. Therefore, the impugned order should be tested on the above said basis.

10. The contention of the learned senior counsel for the Petitioner is that the principles of natural justice were not complied with. Upon perusal of the affidavit of the Petitioner, it is evident that the Petitioner submitted an explanation to the charge memo and also participated in the domestic enquiry. Pursuant to the domestic enquiry, he once again submitted an explanation, which was taken into consideration by the disciplinary authority while passing the order of termination dated 07.12.2012. Therefore, this contention is untenable.

11. His next contention is that the original order of termination dated 07.12.2012 does not contain reasons. In this connection, it is pertinent to note that the said order of termination was set aside by order dated 28.11.2007 in W.P.No.45700 of 2002. The present impugned order was issued after proceedings were conducted before the authority in revision pursuant to the aforesaid order of this Court. Therefore, the question to be decided is whether the impugned order in revision contains reasons. Upon perusal of the impugned order in revision dated 23.03.2010, I find that the authority has set out, in reasonable detail, the 10 charges against the Petitioner and the explanation offered in respect of each charge by the Petitioner before recording conclusions at internal pages 10 to 14 of the order (pages 13 to 17 of the typed set of papers). Upon carefully perusing the findings in respect of each of the charges, I find that the revision

authority has considered the evidence produced and has cited adequate reasons to justify the findings. In this regard, it may be noted that the charges pertain to loans that were extended and the complicity of the Petitioner as the Assistant Secretary of the Society in aiding and abetting these loan transactions. In my view, the authority has considered the evidence on record before recording the findings by citing reasons therefor. As such, it cannot be said that the order is on the basis of no evidence or that material evidence was disregarded or that irrelevant evidence was relied upon. Indeed, even the learned senior counsel for the Petitioner does not contend that there was perversity. Consequently, it cannot be said that the order under challenge in this writ petition is perverse.

12. An ancillary contention was advanced that Section 81(4) of the TN Cooperative Societies Act was contravened as regards duration of the enquiry. On this issue, as pointed out by Mr.Palaniswamy, the Division Bench of this Court concluded in Sahasraman that Section 81(4) is directory and not mandatory and in C.Bright v. District Collector, Nagercoil, 2020 (2)CTC 768, a Division Bench of this Court concluded that time limits for performance of statutory duties would be construed as directory and not mandatory and this judgment was affirmed by the Hon'ble Supreme Court.

13. For the reasons aforesaid, I conclude that the Petitioner has failed to make out a case to interfere with the impugned order. Accordingly, this writ petition is dismissed. No costs.

-sd-

Assistant Registrar (CS)

//True copy//

Sub Assistant Registrar

WEB COPY

To

1.The Joint Registrar of Cooperative Societies,
Salem Region,
Salem.

2.The Deputy Registrar of Cooperative Societies,
Salem Zone,
Salem.

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

3.The Special Officer,
S.402, Yercaud Hill Tribes Large Sized
Multipurpose Co-operative Society,
Yercaud, Salem District.

+1 C.C. to MR.P.GANESAN, Advocate SR.NO. 38600

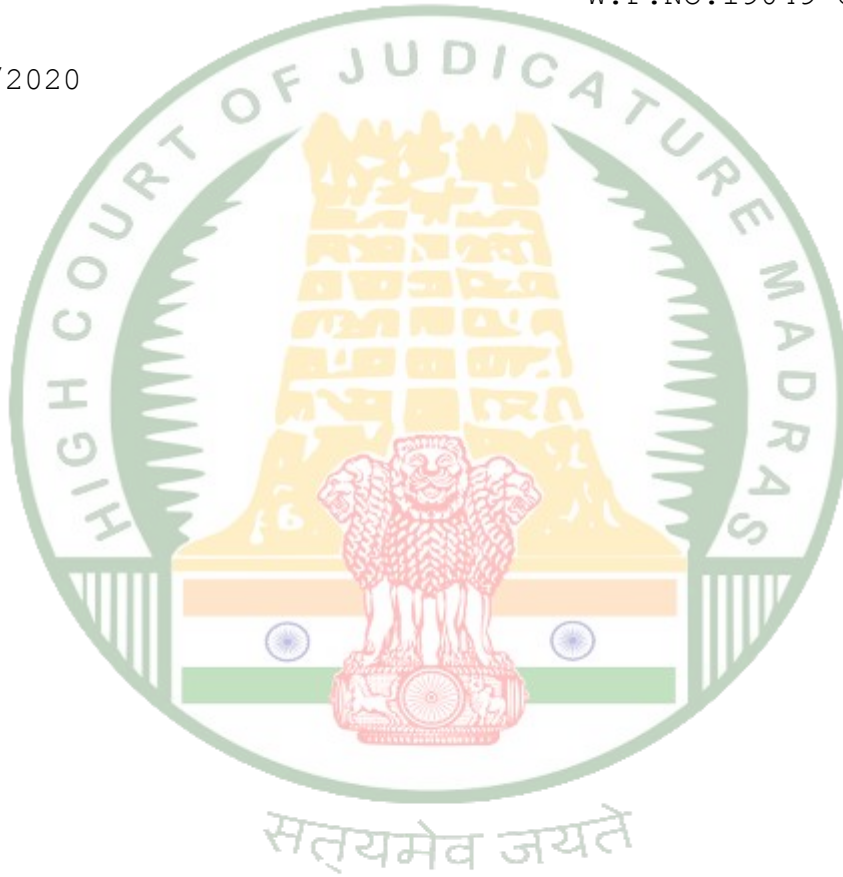
+1 C.C. to MR.M.S.PALANISAMY, Advocate SR.NO. 38725

+1 C.C. to The Government Pleader SR.NO. 38884

W.P.No.19049 of 2010

VSN-II (CO)

RRI 22/12/2020



WEB COPY