

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 09.12.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.9065 of 2010

M.Balakrishnan
Ramanaickanpalayam PO-636108,
Attur Taluk,
Salem District.

...Petitioner

Vs

1. The Joint Registrar of Cooperative Societies,
Salem Zone,
Salem - 7.
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 records pertaining to the order passed by the first Respondent in his proceedings Na.Ka.No.7036/09Sa.ba.dated 28.07.2009 confirming the order passed by the third Respondent in his proceedings No. Nil, dated 07.12.2002 and quash the same, and direct the Respondents to reinstate the Petitioner in service and confer all the consequential benefits.

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

For Respondents : Mrs.T.Girija, AGP for R1 & R2

Mr.M.S.Palanisamy for R-3

O R D E R

This writ petition is filed in order to impugn the proceedings dated 28.07.2009 of the first Respondent whereby the order of termination dated 07.12.2002 of the third

Respondent was affirmed and for a consequential order to reinstate the Petitioner in service.

2. The Petitioner initially joined the services of the S.402, Yercaud Hill Tribes Large Sized Multipurpose Co-operative Society, Salem District (the Society) as a Clerk through the employment exchange on 06.08.1979. He was promoted from time to time as an Accountant and, thereafter, as a Manager. Eventually, he was promoted as a Secretary on 01.06.2000. While functioning as a Secretary, a charge memo was served on him on 28.03.2002 in connection with the loan transactions of the Society. He submitted an explanation on 15.06.2002 and a domestic enquiry was conducted pursuant to which the enquiry officer submitted a report on 01.10.2002. The Petitioner submitted an explanation dated 23.11.2002 upon receipt of the enquiry officer's report. Upon consideration of the aforesaid, the third Respondent passed the order of termination dated 07.12.2002. As against the said order, a revision petition was filed pursuant to which the impugned order dated 28.07.2009 came to be issued. The present writ petition was filed in the said facts and circumstances.

3. I heard the learned senior counsel, Mr.C.Selvaraju, for the Petitioner; Mrs.T.Girija, the learned Additional Government Pleader for Respondents 1 and 2; and Mr.M.S.Palanisamy, the learned counsel for the third Respondent.

4. Mr.Selvaraju submitted that the time limit prescribed for an enquiry under Section 81(4) of the Tamil Nadu Co-operative Societies Act, 1983 (the TN Cooperative Societies Act) was contravened in the present case. Accordingly, he submits that the proceedings are vitiated. His second contention is that Section 75(i)(iv) r/w Section 75 (3) of the TN Co-operative Societies Act is applicable to this case. Consequently, the exercise of jurisdiction by the special officer was invalid. This vitiated the disciplinary proceedings which culminated in the impugned order. In support of this contention, he referred to and relied upon a recent judgment of this Court in V.Viswanathan v. The Joint Registrar of Co-operative Societies and others in W.P.No.34818 of 2019, order dated 23.01.2020 (W.P.No.34818 of 2019). By relying upon the aforesaid judgment, the learned senior counsel contended that this Court concluded therein that the disciplinary proceedings were conducted by a person without jurisdiction as per Section 75(i)(iv) r/w 75(3) thereof. Similarly, in the instant case, the conduct of disciplinary proceedings by the special officer is without jurisdiction. Consequently, he submits that the impugned order is liable to be quashed and the Petitioner is entitled to be reinstated. Mr.Selvaraju also contended that in view of the framing of statutory, the bye laws of the Society would stand superseded.

5. On the contrary, Mr.Palanisamy submitted that the order of this Court in W.P.No.34818 of 2019 pertained to the S-307, Muthukalipatti Primary Agricultural Co-operative Credit Limited. By contrast, the third Respondent herein is a multipurpose co-operative society and not a primary agricultural cooperative credit society. Therefore, the principles laid down in the said order of this Court do not apply to the present case. As regards jurisdiction, Mr.Palanisamy invited the attention of the Court to Section 75 (i)(iv) of the TN Co-operative Societies Act and pointed out that the said provision applies only to a notified class or category of registered societies and to particular posts in respect of which a common cadre is constituted by notification. He contends that no notification was issued in respect of multi-purpose co-operative societies such as the Society. With reference to G.O.Ms.No.55 dated 24.03.2000, he pointed out that this applies only to primary agricultural co-operative banks and to the post of Secretary therein. Likewise, he also referred to the subsequent G.O.Ms.No.14 dated 12.02.2019 and pointed out that this applies to primary agricultural co-operative credit societies. On the merits of the case, he points out that 16 charges were framed against the Petitioner and 15 charges were held to be proved by the enquiry officer and the order of the disciplinary authority is a reasoned order after carefully considering the explanation submitted by the Petitioner. The learned counsel Mr.Palanisamy also pointed out that in an earlier round of litigation in W.P.Nos.45698 to 45700 of 2002, the contention that the Petitioner is part of the common cadre in terms of Section 75 (i)(iv) was raised and this contention was expressly negatived by this Court by order dated 28.11.2007. Consequently, he submits that the jurisdictional contention cannot be resurrected while challenging the order in revision. With regard to Section 81(4), Mr.Palanisamy contends that the same applies only to a statutory enquiry and not to disciplinary proceedings.

6. Mrs.Girija, the learned AGP, concurs with the submissions of Mr.Palanisamy and adds that the principles of natural justice were duly complied with by providing an adequate opportunity to the Petitioner to contest the disciplinary proceedings. As such, she submits that the writ petition is liable to be dismissed.

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

8. By order dated 02.12.2020 in W.P.No.20637 of 2010, I had dismissed the writ petition pertaining to the same Society. In the said writ petition also, similar charges were levelled against the then Assistant Secretary of the Society. Similar objections were taken therein both with regard to Section 81(4) of the TN Co-operative Societies Act and also

with regard to the exercise of jurisdiction by the Special Officer by referring to Section 75(i)(iv) r/w 75(3). The difference between the two cases is that the Petitioner herein is the Secretary and not the Assistant Secretary. Therefore, it has to be considered as to whether the same has any implications, legal or otherwise. Mr.Palanisamy contended that Section 75(i)(iv) applies only to a notified class or category of registered societies and to particular posts therein. Upon perusal of G.O.Ms.No.55 dated 24.03.2000, I find that paragraph 2 thereof, inter alia, provides as under:

"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."

9. Upon perusal of the aforesaid paragraph, it is clear that the Government has constituted a common cadre in respect of the post of Secretary of primary agricultural co-operative banks in the State. The third Respondent Society is clearly not a primary agricultural co-operative bank. Instead, it is a multi-purpose co-operative Society. Therefore, notwithstanding the fact that one is dealing with the post of Secretary in this case, it is clear that the notification issued pursuant to Section 75 does not apply to multipurpose co-operative societies and applies only to primary agricultural co-operative banks. The other notification, namely, G.O.Ms.No.14 dated 12.02.2019, also applies only to the post of Secretary of primary agricultural co-operative credit societies. Once again, this notification does not apply to the third Respondent Society. Mr.Selvaraju was unable to point out any other notification whereby a common cadre was created in respect of the post of Secretary of multipurpose co-operative societies, such as the third Respondent herein, to which Section 75(3) would apply and, as a consequence, disciplinary control should be vested in an officer not below the rank of Joint Registrar.

10. As regards the contention that Section 81(4) of the TN Co-operative Societies Act was contravened, it is pertinent to bear in mind that the said provision was 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. In addition, Mr.Palanisamy points out that the said provision applies only to a statutory enquiry and not to disciplinary proceedings. Upon consideration of the rival contentions on this issue and upon examining the statute and case law, I am inclined to accept the contentions of Mr.Palanisamy.

11. As regards the conduct of disciplinary proceedings and proceedings in revision, upon perusal of the relevant documents, it is evident that the principles of natural justice were complied with. The order of termination and the order in revision are reasoned orders, which advert to and are based on the evidence adduced. Consequently, it cannot be concluded that either the principles of natural justice were violated or that the impugned order is perverse. As such, the Petitioner has failed to make out a case to interfere with the impugned order.

12. In the result, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Joint Registrar of Cooperative Societies,
Salem Zone,
Salem - 7.
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.

+1cc to M/s.M.S.Palaniswamy, Advocate, S.R.No.39875

+1cc to M/s.C.S.Associates, Advocate, S.R.No.39925

+1cc to the Special Government Pleader(Co-op), S.R.No.40064

W.P.No.9065 of 2010

NMI (CO)
RV(31/12/2020)

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