

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM

THE HON'BLE Mr. JUSTICE M.GOVINDARAJ

W.P.No.27644 of 2012

G.Venkatesan

... Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies, Kozamada Street, Tiruvannamalai (Po) & Dt.

2.The Mandakolathur Primary, Agricultural Co-operative Credit, Society Ltd, rep. by Special Officer, Polur (TK), Tiruvannamalai (Dt), Pin - 606 904.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus to call for the records of the respondents relating to the first respondent's order No.R.P.3/2012/Sa.Pa dated 28.08.2012 confirming the second respondent's order dated 12.11.2009 and quash both the orders and consequently direct the respondents to reinstate the petitioner in service with back-wages, continuity of service, seniority and other attended benefits.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.L.P.Shanmugasundaram
Special Government Pleader (Co-op)

ORDER

The petitioner was appointed as Office Assistant in the 2nd respondent Cooperative Society in the year 1991. While he was in service, he absented himself from 21.04.2009 to 12.11.2009 without submitting any leave application. As per Rule 149 (10) (i) of the Tamil Nadu Co-operative Societies Rules, 1988 (in short "the Rules") any employee absenting without any leave application or over staying leave beyond a period of two months shall be deemed to have resigned from the service of the Society. Accordingly, a show cause notice was issued to the petitioner on 26.10.2009 by the second respondent as to why his period of absence shall not be deemed to have resigned from the service of the Society. The

petitioner has submitted his explanation stating that he was mentally disturbed and therefore, he could not send his leave application and requested the respondents to take him back for duty. Subsequently, the second respondent passed the impugned proceedings dated 12.11.2009 stating that since the petitioner has stayed away from duty, he is deemed to be have resigned from service. Against which, the petitioner preferred a revision before the first respondent and the same was rejected as barred by limitation. The writ petitioner again approached this Court in W.P.No.15531 of 2012 and this Court vide order dated 20.06.2012 has directed the 1st respondent herein to entertain the revision petition. Accordingly, the 1st respondent has considered the revision and passed orders on 28.08.2012, confirming the order dated 12.11.2009 passed by the second respondent. Aggrieved over the same, the petitioner is before this Court.

2. The respondents filed detailed counter affidavits. The respondents stuck to the stand that as per Rule 149 (10) (i) of the Rules, a person, who remains absent for more than 60 days, without submitting any leave application itself can be considered as deemed resignation and he can be sent out of service.

3. The learned Special Government Pleader would contend that the petitioner was not at all regular in service and therefore, he is not entitled to file any revision against the order passed by the second respondent. Moreover, there is no vacancy in the post of Office Assistant in the 2nd respondent Society and therefore, the petitioner cannot be reinstated in service by any stretch of imagination and hence, he seeks dismissal of the writ petition.

4. I have considered the submissions on both sides.

5. Admittedly, the petitioner remained absent from 21.04.2009 to 12.11.2009 without submitting any leave application. When a show cause notice was issued by the 2nd respondent, he submitted a reply stating that he was mentally disturbed and hence, he could not submit any leave application. However, he sought permission to join duty as he is all right. The respondents have refused to accept the explanation that the petitioner was mentally ill and by following Rule 149 (10) (i) of the Rules, removed the petitioner from service. In the revision preferred before the first respondent, the petitioner has categorically stated that there was a matrimonial issue between him and his spouse and that he was mentally disturbed. If it is found by the disciplinary authority that the petitioner is mentally disturbed due to the matrimonial dispute, the authority should have referred the petitioner to medical board. Removing him from service without conducting any enquiry is illegal and the petitioner has also raised an issue that the punishment imposed without any enquiry is disproportionate to the charges

levelled against him. Even though all these points were raised, by a cryptic order the first respondent has confirmed the punishment imposed by the Special Officer / 2nd respondent.

6. It is well settled that while imposing capital punishment, the fair procedure in conformity with the principles of natural justice has to be adopted. More so, when factual disputes have been raised by the petitioner, it can be dealt with by conducting an oral enquiry. In the instant case, the revisional authority has neither addressed the factual issues raised by the petitioner nor directed the Enquiry Officer to conduct enquiry, after providing opportunity to the petitioner. As discussed above, the revisional authority has not at all discussed all these issues and failed to pass a well reasoned order as to why the grounds raised by the petitioner are not acceptable. It is well settled that an order without reasons is violative of principle of natural justice. The impugned order as such is a non-speaking order passed without application of mind. In such circumstances, I have no hesitation to set aside the order passed by the 1st respondent.

7. Accordingly, the order passed by the first respondent in proceedings No.R.P.3/2012/Sa.Pa dated 28.08.2012 confirming the order dated 12.11.2009 passed by the second respondent is quashed and the matter is remitted back to the first respondent for fresh consideration of all these points. The first respondent / revisional authority shall pass a reasoned order, after affording an opportunity of personal hearing to the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

The writ petition is allowed to the extent indicated above. No cost.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

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Sub Assistant Registrar

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To

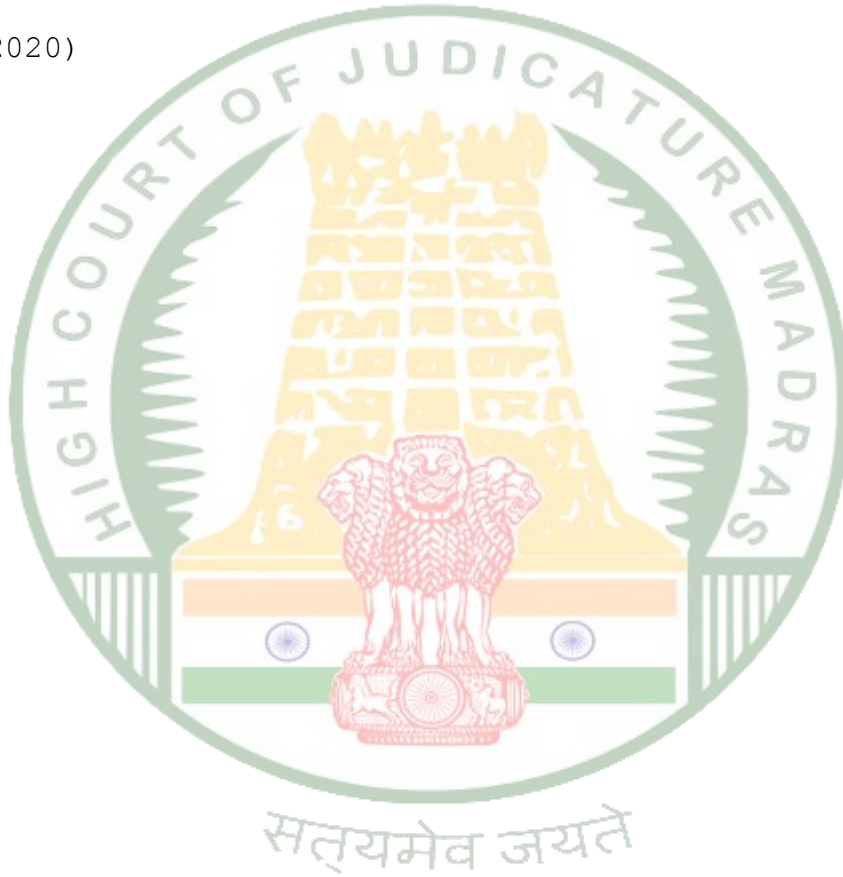
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Society Ltd, Polur (TK),
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+1cc to Mr. L.P.Shanmugasundaram, Advocate, S.R.No. 7159
+1cc to the Special Government Pleader(CO.Op), S.R.No. 6663

W.P.No.27644 of 2012

MR(CO)
GN(06/08/2020)



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