BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 26.08.2020
DELIVERED ON : 28.08.2020
CORAM:
THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**
W.P.(MD)No.3654 of 2014
and M.P.(MD)No.1 of 2014

S.Swaminathan ... Petitioner

Vs.

1.The Additional Registrar of
Co-Operative Societies,
(Sale Plan and Development),
Chennai.

2.The Common Cadre Authority,
Primary Agricultural Co-operative Bank,
Trichy Region, Trichy.

3.The Special Officer,
R.1628, Poolancheri Primary Agricultural
Co-operative Bank,
Poolancheri, Musiri Taluk,
Trichy District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.114090/2010/Sa.Pa 1 dated 19.08.2013 and quash the same as illegal and disproportionate and consequently direct the respondents to reinstate the petitioner in service and to pay all the monetary and other benefits.

For Petitioner : Mr.B.Saravanan
For Respondents : Mr.D.Muruganandan,
Additional Government Pleader.

ORDER

This writ petition has been filed to issue an order in the nature of Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the first respondent in his proceedings in Na.Ka.No.114090/2010/Sa.Pa.1, dated 19.08.2013 and quash the same and consequently directing the respondents to reinstate the petitioner in service and to pay all the monetary and other benefits.

2.Brief facts of the case is under:

(i)The writ petitioner was employed in the third respondent Society. For certain irregularities committed by the petitioner, he was suspended from the services from 19.06.2008 by the the Common Cadre Authority viz., the second respondent herein. Subsequently, the petitioner, on attaining the age of superannuation was relieved from the services on 30.06.2008, without prejudice to the pending disciplinary action and contemplated legal action.

(ii)A charge memo was issued by the second respondent herein as against the petitioner, on 27.07.2009. The petitioner also submitted his explanation for the same on 18.03.2009. Consequently, a domestic enquiry was ordered and Report received on 14.10.2009. The Domestic Enquiry Officer held that the two charges as levelled against the petitioner, has been found to be proved. Hence a Show Cause Notice was issued on 09.06.2010. The petitioner, as reply to the same has reiterated the explanation already given by him to the charge memo. The gist of charges as against the petitioner is submitted below

a)The first charge is that even though the respondent society is not eligible to collect deposits from public as per circular of Registrar of Co-operative Societies, the petitioner, by fabricating Deposit Receipts and fraudulently affixing the seal of the respondent Society, collected deposits in his personal capacity from 245 public an amount of Rs.72,93,320/- by cheating them. Further these amounts were not brought into the accounts of the respondent Society, thereby the petitioner has got enriched himself by cheating the general public.

b)The second charge is that by committing the fraudulent act as narrated in first charge, the petitioner has caused disrepute to the Goodwill of the respondent Society.

(iii)As against the dismissal order, the petitioner preferred Revision under Section 153 Tamil Nadu Co-operative Society Act, 1983 before the first respondent herein. The Revisional Authority held that even though the petitioner has refunded a sum of Rs.45,18,665/- to 153 persons before the enquiry and refunded a sum of Rs.27,74,655/- to 92 persons during enquiry, the petitioner, is guilty of misusing the office of the Secretary, which he has held. Further by this irresponsible act, the petitioner, has not only caused disrepute to the goodwill of the Society but also committed the act of breach of trust and dismissed the Revision. Hence, this writ petition has been filed.

3.The learned counsel appearing for the petitioner submitted that the impugned order passed by the second respondent removing the petitioner from service on the ground that both two charges framed against the petitioner have been proved and he has misappropriated the amount. However, though he has refunded a sum of Rs.45,18,655/- to 153 persons before the Enquiry and also refunded an amount of Rs.27,74,655/- to 92 persons during enquiry, he was found guilty of misusing the Office of the Secretary and accordingly, ordered for removal from service.

4.The revision filed to the first respondent is confirmed. In the ground of the revision before the first respondent, a specific plea was raised with regard to legality of the second respondent to inflict punishment on the ground under G.O.Ms.No.122 Co-operation Food and Consumer Protection Department dated 04.07.2008 a common cadre service was abolished and hence, he has no jurisdiction to pass the impugned order and the said contention was not dealt with by the authority. He further submitted that the punishment of removal from service is grave in nature.

5.The learned counsel for the petitioner further contended that the third respondent has no authority for passing original order, since common cadre service was abolished and further more the quantum of punishment involved is not in proportion to the charges.

6.Per contra, the learned Additional Government Pleader contended that the Society is not competent auhtority to receive any deposits as per the orders of the Registrar of Co-Operative Society. The petitioner has received deposits to the tune of Rs.80,00,000/- without any authority and kept it in his personal account and fabricated the accounts and the act of the petitioner is contrary to the Rules.

7.As against the second contention that the common cadre service was abolished vide order in G.O.Ms.No.122 Co-operation Food and Consumer Protection Department dated 04.07.2008, the learned Additional Government Pleader submitted that the petitioner was suspended from the service on 19.06.2008 and was permitted to retire from service without prejudice to disciplinary proceedings on 30.06.2008. Abolition of common cadre service was came to effect only on 04.07.2008 and the Registrar of the Co-operative Society instructed all the Society to dispose all the pending cases.

8.After perusal of the enquiry report and the charges, it is seen that the petitioner herein has collected deposits in the name of the third respondent Society, by impersonation from the general public and the same is found to be against the circular of the Registrar of the Co-operative Society. The above factum is not in dispute. Further more, the petitioner has collected a sum of Rs.72,93,320/- by cheating 245 people in the name of the Society and kept the same in his personal capacity.

9.It is stated that immediately before the enquiry, he has refunded a sum of Rs.45,18,665/- to 153 persons and before conclusion of enquiry he has refunded a sum of Rs.27,74,655/- to 92 persons. Since the very act of collecting deposit in the name of the Society, when the respondent Society is not eligible to collect deposit from public, is itself prohibited. Further more, the petitioner has fabricated deposit receipts and misused the Society seal and hence the petitioner not only committed an act of disrupting to the goodwill of the Society but also committed the act of breach of trust.

10.It is seen from the records that when collection of deposits by the respondent Society has been prohibited by the

Government, any reasons put forth by the petitioner in this regard cannot hold good. The petitioner cannot plead that he has acted only in the interest of the General public for the reasons that the deposits collected by him, were deposited in his personal capacity. Also, the petitioner has fabricated the deposit receipts and misused the Society seal. By this action, the petitioner cannot claim that he has acted in good faith. A perusal of the records will go to show that the petitioner has acted with a malafide intention for unjust enrichment of himself.

11.Thus, this Court knows well that the factum as alleged in the charges are proved in the manner known to law and both the Disciplinary Authority and the Appellate Authority has applied their mind and also taking note of the fact that when the respondent Society has been barred from receiving deposits, the petitioner as Secretary of the Society would have followed the instructions of the Registrar of Co-operative Societies. However, the petitioner by violating the directions, has received deposits from the General Public in his personal capacity by fabricating the receipts, and fraudulently affixing the seal of Society with a malafide intention to got enrich himself. The petitioner has not refunded the deposits out of his own intention, rather he has been compelled by the circumstances to refund the same. However this act of refunding the deposits collected illegally did not absolve the petitioner, from the misdeed done by him. The punishment awarded to the petitioner is in proportion to the charges and does commensurate with the gravity of offence committed by him. The punishment cannot be alleged as excessive or harsh. The petitioner is guilty of various offences like fabrication of Official records, misuse of his official position and breach of trust.

12.Hence, I find that the charges were proved in the manner known to law and the quantum of punishment awarded to the petitioner is in consummated to the gravity of the offence and further more by virtue of circular issued by the Registrar, Co-operative Societies, the respondent has passed an order and hence, both the contentions raised by the petitioner are answered and this Court finds that this petition is devoid of merits. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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