



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 25.08.2020
DELIVERED ON : 03.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WP(MD).No.5412 of 2014

and

M.P(MD).Nos.1 and 2 of 2014

WEB COPY

K. Mathialagan

: Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
Lalgudi Range,
Lalgudi,
Trichy District.

2.The President,
No.273, Valady Primary Agricultural Co-operative Credit Society,
Valady Post,
Lalgudi Taluk,
Trichy District.

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the first respondent in pursuant to the impugned order passed by him in his urgent Memorandum in Na.Ka.No.1865 / 2011 / Sa.Pa, dated 14.03.2014 and quash the same.

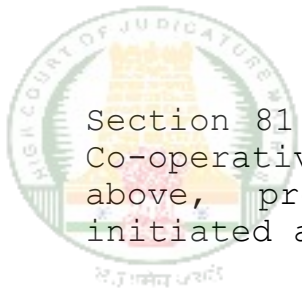
For petitioner : Mr. G. Thalaimutharasu
For R1 : Mr. J. Gunaseelan Muthiah
Additional Government Pleader
For R2 : Mr. D. Selvanayagam

ORDER

The petitioner challenging the impugned order of the first respondent, dated 14.03.2014 made in Na.Ka.No.1865 / 2011 / Sa.Pa, whereby, he was asked to relieve from the post of Secretary and to quash the same.

2. The necessary facts that are required for the disposal of the Writ Petition as follows:

(a) While the petitioner was working as Secretary of the second respondent-Society alleged to have committed some irregularities in the disbursal of crop loan and sanction of jewel loan. Hence, the Co-operative Department ordered enquiry under



Section 81 as well as inspection under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983. On receipt of reports as stated above, prosecution as well as disciplinary proceedings were initiated against the petitioner.

(b) In the disciplinary proceeding initiated, charges were framed against him, explanation obtained and Domestic enquiry has been conducted. The Domestic Enquiry Officer gave sufficient opportunity to the petitioner and conducted the enquiry following the Principles of Natural Justice. Even though the petitioner acknowledged the notice of Enquiry, does not participate in the first hearing.

(c) During the second hearing of Domestic Enquiry, the petitioner attended the Enquiry proceedings and put forth that he has not been paid with subsistence allowance and some documents. Hence, on his written request for the same, the enquiry proceedings were adjourned to some other date. However, on that date, the petitioner did not attend the Enquiry, even though, the subsistence allowance and required documents were kept ready by the Management. Hence, the Enquiry Officer set him exparte and submitted his report to the respondent Society.

(d) The Enquiry Officer found that the charges as against the petitioner has been held to be proved based on the records as submitted by the respondent Society. Consequent to the same, a show cause notice was issued to the petitioner by the respondent Society calling for the explanation. He did not submit his explanation to the show cause notice and he has also not attended the personal enquiry as per the notice, dated 03.04.2012 of the respondent society.

(e) Hence, the respondent society by a proceeding, dated 30.04.2012 dismissed the petitioner from the service. However, the petitioner has not chosen to prefer / file revision or appeal as against the dismissal order. Hence, the dismissal order issued by the respondent society has become final.

(f) For the alleged offence committed by the petitioner herein charges under Sections 408, 468, 477(A) IPC., a criminal case has been registered in Crime No. 2 of 2012 and the same was taken on file in C.C.No.184 of 2012 on the file of the learned Judicial Magistrate - V, Trichirappalli. In the said case, the petitioner appears to have deposited the entire amount to the tune of Rs. 1,17,806/- and also filed a memo to that effect and the said memo was accepted by the said Magistrate and acquitted the petitioner on 22.01.2014, under Section 3 of the Probation of Offenders Act (as it so stated in the judgment).

(g) Consequently, the petitioner by invoking Section 77(4) of Tamil Nadu Co-operative Societies Act, requested the second respondent Society to reinstate him and the second respondent also reinstated the petitioner into the services of the Society and now, the petitioner is working as a Secretary from 12.03.2014 onwards.



(h) The concerned Field Officer of the Co-operative Department informed about the above order of instrument of the petitioner to the first respondent. Hence, the first respondent issued the impugned order to the second respondent on 14.03.2014.

(i) Furthermore, the second respondent Society was informed that inasmuch as the petitioner has not preferred any revision or appeal as against the dismissal order, dated 30.04.2012 passed under department proceedings, he cannot be reinstated into the services of the society. Hence, the first respondent society, by the impugned order, directed the second respondent to cancel the reinstatement of the petitioner into the services of the society. As against the same, the petitioner has filed the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that the impugned order is passed without any jurisdiction and it is not qualified under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 and as such, the Board by its resolution, has ordered for reinstatement by exercising the power under Section 77(2) of the Tamil Nadu Co-operative Societies Act. But, without giving an opportunity of hearing the first respondent has passed the said impugned order.

4. Per contra, the learned Additional Government Pleader appearing for the respondents would contend that in the Domestic Enquiry the petitioner was found guilty and an order of punishment i.e., removal from service was passed and in the absence of any appeal against the order passed by the disciplinary authority, the same attains finality. Therefore, the Board cannot exercise the power under Section 77 of the Tamil Nadu Co-operative Societies Act. Further, it is also stated that the Registrar of Co-operative Societies are exercising the administrative authority over the Society.

5. In reply, the learned counsel appearing for the petitioner relied on the Judgment of this Court, dated 03.08.2020 made in W.P (MD).No. 16327 of 2012.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. The core points for determination are that :

(i) Whether the first respondent has jurisdiction to pass order under Section 153 of the Tamil Nadu Co-operative Societies Act?

(ii) Whether the resolution passed by the second respondent-society ordering reinstatement of the petitioner is unsustainable in law?

(iii) Whether invoking Section 77(4) of the Tamil Nadu Co-operative Societies Act by the second respondent Society is sustainable and sustainable in law?



8. On perusal of the impugned order, it is seen that the dismissal order passed against the petitioner based upon the domestic enquiry has become final and as such, the petitioner was dismissed from service of the respondent society with reference to the by-law of the society. In the absence of any appeal or revision filed against the order of punishment was passed in the domestic enquiry, the order of reinstatement is without any legal basis and thus, invocation of Section 77 of the Tamil Nadu Co-operative Societies Act, 1983, is not sustainable in law.

9. Admittedly, the first respondent is an administrative authority over the the second respondent in such capacity under the Act, the first respondent is being vested with the authority to supervise the functions of the society in its jurisdiction and such circumstances the first respondent is empowered as per the Section 153 of the Tamil Nadu Cooperative Societies Act. The first respondent in an administrative authority to supervise the functions of the Societies well within its jurisdiction. The first respondent is empowered under the Tamil Nadu Co-operative Societies Act to safeguard the assets and the interest of the society. Only on that count the first respondent has issued the impugned order. Hence, no motive whatsoever cannot be attributed as against the first respondent. The first respondent has acted with a bona fide intention in this regard. The impugned order has been issued only to thwart any irregular act / deed of the second respondent society.

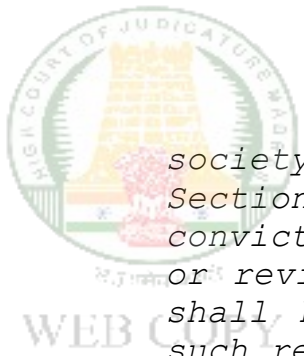
10. Hence, I am inclined to hold the point against the petitioner and the first respondent being an administrative head vested with supervisory power is right in exercising his jurisdiction and hence, the order passed by the first respondent is within the jurisdiction which does not suffer from any lack of jurisdiction.

11. The next point of the petitioner's counsel is that since the petitioner was acquitted in the criminal case in C.C.No.184 of 2012, the petition for invoking the Section 77(4) of the Tamil Nadu Cooperative Societies Act was considered by the second respondent and ordered for reinstatement. On perusal of the resolution passed by the second respondent Society, the society has invoked Section 77 (4) of the Tamil Nadu Cooperative Societies Act, whereby, the petitioner was reinstated and he is serving as a Secretary from 12.03.2014 onwards.

12. For better appreciation, the above said Section 77(4) of the Tamil Nadu Cooperative Societies Act is extracted hereunder:

77. Removal of paid officer or servant of society :

..



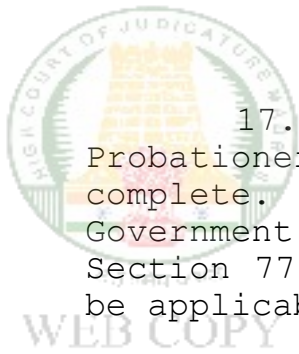
(4) Where a paid officer or servant of a registered society removed from service under sub Section (2) of sub Section (3) is acquitted by the competent Court or when the conviction of such officer or servant is set aside on appeal or revision by the appellate Court,, such officer or servant shall be reinstated to the same post held by him prior to such removal.

13. On perusal of the order passed by the learned Judicial Magistrate No.V, Tiruchirappalli, dated 22.01.2014, it is seen that a case has registered in Crime No. 2 of 2012, on the file of Inspector of Police, the Economic Offences Wing, Pudukkottai for the offence under Sections 408, 468, 477(A) of Cr. P. C., against the petitioner stating that he said to have been misappropriated a sum of Rs.1,17,806/-.

14. PW.1 and PW.2 were examined on behalf of the prosecution and the necessary documents have been marked as Exs.A1 to A4 for the alleged misappropriation of funds and other offences as stated in the charge sheet. Furthermore, after completion of the prosecution witnesses, 313 Cr.P.C., proceedings were also taken and the Court has held that since the entire amount has been paid and he has not cross-examined and hence, the further examination of prosecution witnesses were closed and the accused was examined under section 248 (2) of the Criminal Procedure Code on the point of question of sentence and for which, the petitioner as an accused, has prayed leniency under the Probation of Offenders Act and accordingly, the learned Judicial Magistrate, for the reasons stated above, appears to have passed an order of acquittal under Section 3 of the Probation of Offenders Act, and further ordered that the petitioner / accused should not be disqualified in respect of any service matter under Section 12 of the Probation of Offenders Act.

15. Based upon this order, the second respondent has passed an order of reinstatement by invoking Section 77(4) of the Tamil Nadu Co-operative Societies Act, 1983. The contention of the counsel for the petitioner that the learned Judicial Magistrate has passed an order of Hon'ble acquittal and hence, the second respondent just passed a resolution and ordered for reinstatement. However, I am unable to uphold the same for multiple reasons. Firstly, the disciplinary proceedings have already been initiated and order of the dismissal was passed as early as on 30.04.2012 much before the order by the criminal Court.

16. Admittedly, the petitioner has not filed any appeal or revision against the dismissal order, dated 30.04.2012 passed in the department proceedings and hence, the order passed by the learned Judicial Magistrate No.V, Trichirappalli, dated 22.01.2014 cannot come for any rescue of the petitioner herein.



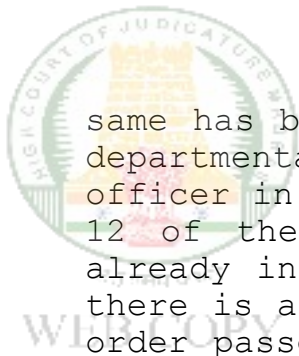
17. In the criminal case, the petitioner was pardoned under Probationers Act. As such, the acquittal cannot be claimed as a complete. With regard to the legal opinion of the learned Government Advocate, Tiruchirappalli, I find that invoking of Section 77(4) of the Tamil Nadu Co-operative Societies Act will not be applicable to the facts and circumstances of the instant case.

18. The petitioner was charged for the offence under Sections 408, 468 and 477(A) IPC which involved financial irregularities committed by the petitioner. However, Section 77(4) of the Tamil Nadu Co-operative Societies Act, involved offence relating to moral turpitude. Hence, the petitioner is not entitled to reinstatement based on the so called acquittal in the criminal cases.

19. In this connection, it remains to be stated that Departmental proceedings also been initiated as against the petitioner parallel to the criminal proceedings. The departmental proceedings ended in the dismissal of the petitioner. As against the dismissal order, as already stated, the petitioner has not preferred / filed any revision or appeal. Hence, the dismissal order has become final, absolute and a conclusive one. Moreover, the powers to invoke the Section 77 is delegatory only to the Joint Registrar concerned as per G.O.Ms.No,.269 (Co-operation) dated 18th June 1988, so the second respondent cannot invoke the section in a routine manner. Further, the employees cannot make a claim either directly or indirectly for setting aside of punishment imposed in the course of disciplinary action on the score that they have been acquitted in the criminal action. Hence, the reinstatement of the petitioner into the services of the respondent Society is in violation to the instructions given by the Registrar of Co-operative Societies on factual matrix of the petitioner's case. Section 77(4) of the Tamil Nadu Co-operative Societies Act will not apply to the petitioner's case.

20. It is once again reiterated that Section 77 deals with the offences relating to moral turpitudes, whereas, the offences committed by the petitioner are financial in nature in the instant case. Furthermore, no doubt the petitioner got acquittal in the criminal cases. However, he has not taken any steps to agitate the dismissal order issued at the culmination of the Departmental proceedings initiated against him. The criminal and disciplinary proceedings are parallel to each other. They are separate and distinct. The doctrine of criminal proceedings is that the guilt is to be proved, beyond reasonable doubt, whereas, the Departmental proceedings are conducted on the basis of preponderance of probabilities and no strict proof is required as in a criminal case.

21. Thus, this Court finds that the order of reinstatement passed by the second respondent Society is contrary to law and in as much as the proper domestic enquiry has been conducted by the Society which had resulted in order of dismissal dated 30.04.2012 and in the absence of any appeal or revision by the petitioner, the



same has become final. When there is an order of dismissal in the departmental proceedings any observation made by the Judicial officer in the Criminal Court regarding the benefit under Section of 12 of the Probation of Offenders Act are unveil the punishment already inflicted under departmental proceedings. Furthermore, when there is an order of dismissal as early as on 30.04.2012, while the order passed by the learned Judicial Magistrate No.V, Trichirapalli in C.C.No. 184 of 2012, is dated 22.01.2014 which cannot provide any assistance or shelter against the punishment already inflicted. Nor the second respondent-Society can take umbrage of order in criminal Court passed under Probation of Offenders Act.

22. In this regard, it is patient to state that in the Judgment of the Hon'ble Supreme Court, dated 10.08.2010 made in **Civil Appeal No.6423 of 2010** in the case of **Sushil Kumar Singhal Vs. the Regional Manger, Punjab National Bank**, it is stated in paragraph Nos. 26 and 27, it is held as follows:

26. In *Manish Goel Vs. Rohini Goel* MANU / SC / 0106/2010 : AIR 2010 SC 1099, this Court after placing reliance on large number of its earlier Judgments held as under:

No Court has competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of the statutory provisions. The Courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injuncted by law.

Thus, in such a fact-situation, it is not permissible for this Court to issue any direction as had been issued in the case of *Shankar Dass* (supra).

27. In view of the above, we reach the conclusion that once a Criminal Court grants a delinquent employee the benefit of Act, 1958 its order does not have any bearing so far as the service of such employee is concerned. The word "disqualification" is Section 12 of the Act, 1958 provides that such a person shall not stand disqualified for the purposes of other Acts like the Representation of the People Act, 1950 etc.,

The conviction in a criminal case is one part of the case and release on probation is another. Therefore, grant of benefit of the provisions of Act, 1958, only enables the delinquent not to undergo the sentence on showing his good conduct during the period of probation.



..... Therefore, in case of an employee who stands convicted for an offence involving moral turpitude, it is his misconduct that leads to his dismissal."

23. In fine, the benefit of order under Probation of Offenders Act, by criminal Court, does not have any bearing, so far as the service of such employee is concerned. So too, punishment awarded in the departmental action. Hence, the order passed by the Judicial Officer under Section 12 of the Probation of Offenders Act cannot confer any safety belt to the petitioner to provide for reinstatement as observed by the second respondent in the resolution ordering the reinstatement of the petitioner.

24. As such stated supra, the order of dismissal is a culmination on the completion of proper departmental enquiry, has resulted in dismissal order, as early as on 30.04.2012. Hence, the subsequent order of the learned Judicial Magistrate dated 22.01.2014 will not have effect nor will nullify the order passed by the administrative side and hence, the order passed by the second respondent Society under Section 77(4) of the Tamil Nadu Co-operative Societies Act is unsustainable in law and consequential impugned order passed by the first respondent is held to be valid and all the three points agitated by the learned counsel for the petitioner are hereby answered in negation as against the petitioner and consequently, the impugned order is held to be valid. The petitioner is directed to be relieved from the post forthwith and accordingly, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

25. Since by virtue of the Judicial order, dated 22.01.2014, the petitioner seems to be continued in service. Since he has rendered work and also received the salary, there shall not be any recovery of the salary for the period commencing from reinstatement till the date of relieving from the post.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Trp

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.

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



To

1.The Deputy Registrar of Co-operative Societies,
Lalgudi Range,
Lalgudi,
Trichy District.

2.The President,
No.273, Valady Primary Agricultural Co-operative Credit Society,
Valady Post,
Lalgudi Taluk,
Trichy District.

Copy to

The Registrar(Judicial)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Spl GP (SR-21089[F] dated 04/11/2020)

+1 CC to Mr.G.THAILAIMUTHARASU, Advocate (SR-20904[F] dated
03/11/2020)

ORDER MADE IN
WP(MD).No.5412 of 2014
03.11.2020

VB (19.11.2020) 9P 6C