



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2020

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.6762 of 2014

P.Mahadevan

.. Petitioner

Vs.

1.The Joint Registrar of Co-op. Societies,
Sivagangai Region,
Sivagangai.

2.The Special Officer,
RD 108 Kalapoor Primary Agricultural
Co-operative Credit Society Ltd.,
A.Kalapoor,
Tirupathur Taluk,
Sivagangai District.

3.RD 108 Kalapoor Primary Agricultural
Co-operative Credit Society Ltd.,
A.Kalapoor,
Tirupathur Taluk,
Sivagangai District,
rep. by its President.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned order in Na.Ka.6746/2012 Sa.Pa. dated 21.02.2013 passed by the 1st respondent confirming his order No.Na.Ka.3195/2011 Sa.Pa. dated 18.06.2012, confirming the order of dismissal dated 22.05.2010 passed by the 2nd respondent and quash the same as illegal and pass such further or other orders.

For Petitioner : Mr.M.Jerin Mathew

For Respondents : Mr.S.Dhayalan,
Government Advocate.

ORDER

This writ petition has been filed for issuance of a Writ of Certiorari to call for the records relating to the impugned order in Na.Ka.6746/2012 Sa.Pa. dated 21.02.2013 passed by the 1st respondent confirming his order in No.Na.Ka.3195/2011 Sa.Pa. dated 18.06.2012, confirming the order of dismissal dated 22.05.2010 passed by the 2nd respondent and quash the same.



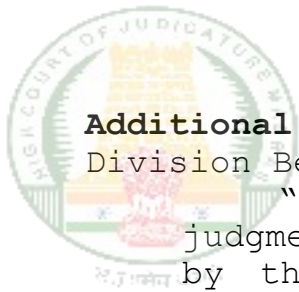
2.The case of the petitioner is that he was initially appointed as Clerk in the 3rd respondent Society. While he was working as Secretary, he was placed under suspension, vide proceedings, dated 23.07.2004 and a charge memo, dated 31.08.2004, came to be issued by the 2nd respondent. The charges against him are that he did not attend the work and he had caused loss to the society by misappropriating the money. After conducting ex-parte enquiry, he was dismissed from service with retrospective effect from 01.06.2009, vide order, dated 22.05.2010, against which, he filed revision petition before the 1st respondent, which was also dismissed, vide impugned order, dated 18.06.2012. The petitioner again filed review petition before the 1st respondent, which was also rejected by the 1st respondent, vide impugned proceedings, dated 21.02.2013. Against which, the present writ petition has been filed.

3.The learned counsel for the petitioner submitted that the second respondent, Special Officer, who has got no jurisdiction, has placed the petitioner under suspension and also issued the charge memo. At the relevant point of time, the disciplinary authority to take action against the secretary was the Committee constituted under the common cadre authority. He would also rely upon the Judgment of a Division Bench of this Court in W.A.No.1173 of 2012, dated 09.06.2014. [**K.Krishnan v. The Additional Registrar of Co-operative Societies, Chennai - 10**].

4.The learned Government Advocate appearing for the respondents submitted that the second respondent has rightly placed the petitioner under suspension and issued charge memo, for the mistakes committed by the petitioner. He has also submitted that as per G.O. (Ms)No.14, Co-operation, Food and Consumer Protection (CN1) Department, dated 12.02.2019, now the Common Cadre Authority has been constituted to initiate proceedings and pass orders in respect of the Secretary and therefore, the matter may be remanded back to the respondents.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

6.Perusal of records shows that the 2nd respondent has placed the petitioner under suspension and issued the charge memo for the alleged mistakes committed by the petitioner. The grievance of the petitioner is that the Special Officer is not the competent authority to issue such a charge memo and impose punishment. The 2nd respondent did not get approval from the Common Cadre Authority for issuing charge memo in terms of G.O.Ms.No.55, dated 24.03.2000, issued by the Co-operation, Food and Consumer Protection Department. In W.A.No.1173 of 2012, dated 09.06.2014 [**K.Krishnan v. The**



Additional Registrar of Co-operative Societies, Chennai - 10], a Division Bench of this Court has held as follows:

"16.This Court, after referring to the above cited judgment, finds considerable force in the submission made by the learned counsel appearing for the appellant. A perusal of the materials placed before the Court would disclose that admittedly, the third respondent did not obtain the approval from the Common Cadre Authority in terms of G.O.Ms.No.55, dated 24.03.2000 and only at the time of issuance of second show cause notice, got approval of the Common Cadre Authority and show cause notice was issued and in response to the same, the appellant has submitted his explanation. It is also to be pointed out at this juncture that after vacating the order of interim stay in the writ petition challenging the legality of G.O.Ms.No.55, dated 24.03.2000, issued by the Co-operation, Food and Consumer Protection Department, the third respondent issued the charge memo on 30.04.2004 and at that point of time, he was not competent to issue such a charge memo and appoint the Enquiry Officer. Though ultimately the order of punishment was issued on 23.05.2007, by the Common Cadre Authority, in the considered opinion of the Court, since the initiation on the part of the third respondent lacks jurisdiction, as pointed out above, the proceedings initiated thereafter, cannot stand, as it lacks jurisdiction".

7.The learned Government Advocate appearing for the respondents has also produced G.O(Ms)No.14, dated 12.02.2019, issued by the Co-operation, Food and Consumer Protection (CN1) Department, in which, the Government has constituted Common Cadre Authority to initiate proceedings and pass orders in respect of the Secretary. He has also submitted that now the Common Cadre Authority has been constituted to initiate proceedings and pass orders in respect of the Secretary and therefore, the matter may be remanded back to the respondents. In view of the above, the impugned orders dated 21.02.2013 and 18.06.2012 passed by the 1st respondent and the order dated 22.05.2010 passed by the 2nd respondent are set aside and the matter is remanded back to the 3rd respondent Management with a direction to appoint a fresh enquiry officer, to hold a fresh enquiry, and then pass appropriate final orders in the light of G.O. (Ms)No.14, Co-operation, Food and Consumer Protection (CN1) Department, dated 12.02.2019. Since it is submitted on the side of the petitioner that the petitioner is nearing the age of superannuation, such exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Further, in view of this order setting aside the dismissal order passed by the respondents 1 and 2, the Management is directed to reinstate the petitioner in service. It is also made clear that if so warranted, the Management is at liberty to place the petitioner



under suspension. The writ petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar

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// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Joint Registrar of Co-op. Societies,
Sivagangai Region,
Sivagangai.

2.The Special Officer,
RD 108 Kalapoor Primary Agricultural
Co-operative Credit Society Ltd.,
A.Kalapoor,
Tirupathur Taluk,
Sivagangai District.

3.The President,
RD 108 Kalapoor Primary Agricultural
Co-operative Credit Society Ltd.,
A.Kalapoor,
Tirupathur Taluk,
Sivagangai District.

+1 CC to M/s.M.E.ILANGO, Advocate (SR-3486[F] dated 28/01/2020)

+1 CC to M/s.SPL.GP (SR-3375[F] dated 28/01/2020)

ORDER MADE IN
W.P(MD)No.6762 of 2014
27.01.2020

KK/26.02.2020/4P-6C