



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 20.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.7089 & 11316 & of 2017

and

W.M.P.Nos.18461, 12259 & 12260 of 2019

W.P.No.7089 of 2017:-

P.P.Baluchamy

...Petitioner

Vs

1.The Registrar of Co-operative Societies,
No.170, E.V.R.Periyar Salai,
Kilpauk, Chennai - 600 010.

2.The Joint Registrar of Co-operative Societies,
Dindigul Region,
Room No.226, II Floor,
Collectrate, Dindigul - 624 004.

3.D.D.1, Koothampoondi Primary Agricultural
Co-operative Credit Society Ltd,
Rep. by its President,
Koothampoondi - 624 616.
Dindigul District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the 1st respondent to initiate the execution and statutory proceedings under the provisions of the Tamil Nadu Co-operative Societies Act against the 3rd respondent management for their wilful disobedience in implementing the lawful orders passed by the 2nd respondent in favour of the petitioner.

W.P.No.11316 of 2017:-

The Management,
D.D.1, Koothampoondi Primary Agricultural
Co-operative Credit Society Ltd,
Rep by its President,
Koothampoondi - 624 616.
Dindigul District.

...Petitioner



Vs

1.The Registrar of Co-operative Societies,
No.170, E.V.R.Periyar Salai,
Kilpauk, Chennai - 600 010.

2.The Joint Registrar of Co-operative Societies,
Dindigul Region.

3.P.P.Baluchamy

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the 2nd respondent in his proceedings in Na.Ka.No.6210/2015/Sa.Pa dated 28.09.2016 and quash the same.
(in W.P.No.7089 of 2017)

For Petitioner : Mr.C.Prakasam

For R1 & R2 : Mr.K.V.Sajeev Kumar
Government Advocate

For R3 : Mrs.T.P.Savitha

(in W.P.No.11316 of 2017)

For Petitioner : Mrs.T.P.Savitha

For R1 & R2 : Mr.K.V.Sajeev Kumar
Government Advocate

For R3 : Mr.C.Prakasam

COMMON ORDER

By consent of both the parties, these writ petitions are taken up for final disposal.

2. For the sake of convenience, the petitioner, namely P.P.Baluchamy, in W.P.No.7089 of 2017, who is the third respondent in W.P.No.11316 of 2017, is hereinafter referred to as 'the petitioner'.

3. The petitioner herein, while serving as a Secretary before the third respondent Society, was levelled with certain charges to the effect that he had threatened and received the Society's collection amount to the tune of Rs.1,49,495/- between the period commencing from 30.04.2014 and 21.03.2015. Based on the charges, an enquiry was conducted, whereby the charges were held to be proved. Accordingly, the Board of Directors had dismissed the petitioner from the services on 23.09.2015. The petitioner had filed a revision under Section 153 of the Tamil Nadu Co-operative Societies Act, which was allowed on 28.09.2016, thereby setting aside the order of dismissal dated 23.09.2015.



4. The Management of Co-operative Credit Society had challenged the order of revision in W.P.No.11316 of 2017 and the employee has filed W.P.No.7089 of 2017 seeking for implementation of the orders passed by the Revisional Authority. Since both the writ petitions touch upon the order passed by the Joint Registrar of Co-operative Societies, Dindigul Region dated 28.09.2016 passed under Section 153 of the Act, a common order is passed.

5. One of the main grounds raised by the learned counsel appearing for the Society is that the petitioner herein, namely P.P.Baluchamy, along with P.Narayanan, were held responsible for the misappropriation and loss of Rs.1,49,495/- and subsequently, on 25.09.2015, when the said P.Narayanan had given a letter, categorically stating that the amount of Rs.1,49,495/- was received by the Secretary, namely P.P.Baluchamy, he had deposited the entire sum of Rs.1,49,495/- before the Co-operative Bank. The letter dated 25.09.2015 has been produced before this Court and by placing reliance on this letter, it is argued that the erstwhile Secretary, namely P.P.Baluchamy, alone was responsible for depositing the money and therefore, the Revisional Authority's decision to reverse the punishment, was questioned.

6. I am not inclined to accept the submission made by the learned counsel for the Society, for the simple reason that this letter dated 25.09.2015 was obtained from P.Narayanan, after the order of dismissal came to be passed against the Secretary on 23.09.2015. The revision under Section 153 of the Act has been initiated against the findings of the Domestic Enquiry Officer dated 22.09.2015. If at all the Society was of the view that it is the erstwhile Secretary, namely P.P.Baluchamy, who had deposited the money before the Co-operative Bank, there was a duty cast on them to establish the same during the course of enquiry.

7. On the other hand, the letter dated 07.04.2015 given by P.Narayanan was produced before the Enquiry Officer, which categorically establishes that P.Narayanan had taken responsibility for misappropriating the sum of Rs.1,50,000/- and that he had deposited the money before the Co-operative Bank on 07.04.2015 itself. The Revisional Authority had taken into account of the letter dated 07.04.2015, while reversing the order of dismissal of the Revisional Authority. He had also observed that though the said P.Narayanan had admitted his guilt of depositing the money, the respondents have chosen to reinstate P.Narayanan back into services, while dismissing P.P.Baluchamy from services. The ground of discrimination pointed out by the Revisional Authority seems to be acceptable. As such, the main ground raised by the learned counsel for the Society, cannot be substantiated, since the letter dated 25.09.2015 was not before the Enquiry Officer and the Revisional Authority was required to undertake the task of revising the proceedings before the Enquiry Officer alone.



8. The learned counsel further submitted that the service records of the employee was not available at the time of scrutiny and therefore, the order of dismissal on this ground requires to be substantiated. This aspect was considered by the Revisional Authority in paragraph 12 of his order, wherein it is stated that P.P.Baluchamy did not know as to which authority he was required to handover the service record and when such authority was pointed out, he had dispatched the records through registered post on 13.04.2015. These are findings on facts which the Revisional Authority has recorded and this Court, exercising its power under Article 226 of the Constitution of India, may not be justified in questioning these factual findings.

9. Thus, the reasons assigned by the Revisional Authority in the impugned order dated 28.09.2016, quashing the order of dismissal of P.P.Baluchamy on 23.09.2015, does not require any interference.

10. For all the reasons cited above, W.P.No.11316 of 2017 filed by the Society is dismissed. No costs.

11. Insofar as the relief claimed by the petitioner in W.P.No.7089 of 2017, filed by the employee is concerned, it is brought to the notice of this Court that the petitioner had attained the age of superannuation on 31.05.2017. It is also stated that by way of implementation of the orders of the Revisional Authority dated 28.09.2016, the Society had passed an order dated 27.03.2017, demoting the petitioner from the post of Secretary to the post of Assistant Secretary and thereby reinstated him. The order itself is prima facie illegal.

12. When the original order of dismissal passed by the Board of Directors on 23.09.2015 was set aside by the Revisional Authority on 28.09.2016, the effect of the revisional order would be that the erstwhile Secretary, namely P.P.Baluchamy, is deemed to have never been dismissed from services and therefore, he would be entitled to be reinstated back in service to the original post of Secretary. Thus, the subsequent order dated 27.03.2017 is deemed to be an illegal order and hence, need not be given effect to.

13. In view of the aforesaid reasons, W.P.No.7089 of 2017 stands disposed of with a direction to the first respondent herein to record that the petitioner has been reinstated back into service with effect from the date of his dismissal, i.e., from 23.09.2015 and had retired on 31.05.2017 and accordingly disburse all the retirement benefits in favour of P.P.Baluchamy, together with interest at the rate of 10% from the date on which the monetary benefits were due, at least



within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

hvk
To

1.The Registrar of Co-operative Societies,
No.170, E.V.R.Periyar Salai,
Kilpauk, Chennai - 600 010.

2.The Joint Registrar of Co-operative Societies,
Dindigul Region,
Room No.226, II Floor,
Collectrate, Dindigul - 624 004.

+2ccs to Mr.Mrs.T.P.Savitha, Advocate SR.No. 34520,34521

+2ccs to Mr.C.Prakasam , Advocate SR.No. 34721,34722

+1 cc to Government Pleader Sr.No. 34997

W.P.Nos.7089 & 11316 & of 2017
and

W.M.P.Nos.18461, 12259 & 12260 of 2019

gp(CO)
A.SK(19.08.2021)