



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.28548 of 2017
and W.M.P.No.6146 of 2020

S.Radha .. Petitioner
(cause title amended vide order
dated.11.04.19 made in WMP 39060/18
in WP 28548/17)

Vs.

1. State of Tamil Nadu
Rep.by Secretary, Cooperative Department
Fort St. George, Chennai.
2. The Registrar of Cooperative Societies
170, Periyar EVR Salai
Kilpauk, Chennai - 10.
3. The Joint Registrar of Cooperative Societies
Collectorate, Namakkal.
4. S-1223, Chandrasekarapuram Primary
Agricultural Cooperative Credit Society,
by its Secretary,
Chandrasekarapuram P.O.,
Rasipuram Tk, Namakkal Dist.
5. Loganathan

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the third respondent dated 02.09.2016 in Revision No.1325/2016/Sa.Pa and confirming the order of dismissal dated 30.01.2016, passed by the President of the fourth respondent and the order in Review No.Na.Ka.8303/16/Sa.Pa. Dated 10.04.2017, confirming the order in Revision to quash all the orders.

For Petitioner	: Mr.J.Srinivasa Mohan
For Respondent	: Mr.K.Tippusulthan, GA
Nos.1 to 3	
For Respondent-4	: Mr.Rajendran
	for Mr.L.P.Shanmugasundaram
	Standing Counsel



O R D E R

With the consent of the parties on either side, this matter has been taken up and heard through Video Conferencing on 20.07.2021.

WEB COPY

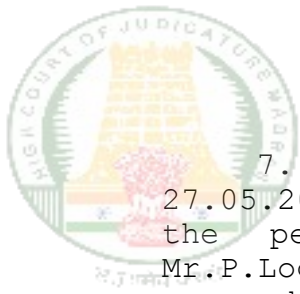
2. The petitioner herein, while serving as a Secretary of the fourth respondent Society, was levelled with certain charges as per the charge memo dated 27.05.2015 by the fifth respondent herein.

3. Pursuant to the charges, an enquiry was conducted and the charges were held to be proved. Thereafter, the fifth respondent herein had passed an order of dismissal, dismissing the petitioner from her responsibilities. The Revision Application filed by the petitioner under Section 153(3) of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as the 'Act') was rejected by the third respondent, through his order dated 02.09.2016. The petitioner had also preferred Review Application under Section 154 of the Act, which was also rejected. Challenging the order of punishment and the orders passed in the Revision and Review, the present Writ Petition has been filed.

4. One of the main grounds raised by the petitioner in the Writ Petition is that the fifth respondent herein, who was the President of the fourth respondent Society at the relevant point of time when the departmental action was taken, had framed the charges, acted as a witness in the departmental enquiry and consequently awarded the punishment in his capacity as the Disciplinary Authority.

5. The learned counsel for the petitioner submitted that a person cannot be a Judge of his own cause. It is also his submission that in the grounds raised by the petitioner in the Revision before the second respondent, the jurisdiction of the fifth respondent was questioned, which was left unanswered by the Revisional as well as Reviewing Authorities.

6. Per contra, the learned Government Advocate appearing for the respondents 1 to 3 placed reliance on various averments mentioned in the counter affidavit and submitted that the charges levelled against the petitioner are very serious in nature and that there were various discrepancies on the part of the petitioner in exercising her duty as Secretary. The learned Standing Counsel appearing for the fourth respondent had also adopted the arguments placed by the learned Government Advocate.



WEB COPY

7. It is not in dispute that the original charge memo dated 27.05.2015 and the punishment order dated 30.01.2016, dismissing the petitioner from the services, was both issued by Mr.P.Loganathan, President of the Co-operative Society/fifth respondent herein. The enquiry report dated 04.12.2015 also evidences that the same person, namely, Mr.P.Loganathan, President of the Co-operative Society, had acted as a witness on the side of the Management.

8. The law with regard to the proposition that "No man can be a Judge of his own case" has been settled in various decisions of the Hon'ble Supreme Court and in the case of Mohd. Yunus Khan Vs. State of Uttar Pradesh and Others reported in 2010 (10) SCC 539, this proposition was reiterated by holding that it is impermissible for the authority to initiate the disciplinary proceedings; become a witness therein; accept the enquiry report; and also impose the punishment. The relevant portion of the decision reads as follows:-

"33. We are of the considered opinion that the initiation of disciplinary proceedings against the appellant and the conclusion thereof by the imposition of the punishment by the Commandant, who had himself been a witness, was in flagrant violation of the principles of natural justice and thus, stood vitiated. "Principles of natural justice are to some minds burdensome but this price-a small price indeed-has to be paid if we desire a society governed by the rule of law." All other consequential orders passed in appeal etc. remained inconsequential. More so, a protest/disobedience against an illegal order may not be termed as misconduct in every case. In an appropriate case, it may be termed as revolting to one's sense of justice. In view of the above, we are of the considered opinion that the protest raised by the appellant against the punishment imposed for his absence could not give rise to a cause of action for initiating the disciplinary proceedings."

9. In view of the aforesaid settled proposition, the action that was initiated by the President of the Co-operative Society, his consequential involvement during the course of enquiry as a witness and acted as a disciplinary authority by accepting the enquiry report and subsequently imposing the punishment, is impermissible in law. Consequently, the punishment of dismissing the petitioner from the services by the fourth respondent, is deemed to be null and void.



10. In view of the above, the impugned orders passed on 02.09.2016 under Section 153 and the order dated 10.04.2017 under Section 154 of the Tamil Nadu Co-operative Societies Act, 1983, are set aside. Thus, the petitioner shall be entitled for all the monetary and service benefits arising out of the passing of this order. The Writ Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Secretary,
State of Tamil Nadu
Cooperative Department
Fort St. George, Chennai.
2. The Registrar of Cooperative Societies
170, Periyar EVR Salai
Kilpauk, Chennai - 10.
3. The Joint Registrar of Cooperative Societies
Collectorate, Namakkal.

+1CC to J.Srinivasa Mohan, Advocate, Sr.No.34925
+1CC to Government Pleader, Sr.No.34934

Writ Petition No.28548 of 2017
and W.M.P.No.6146 of 2020

KSM (CO)
K.RK. (14.09.2021)