



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.4758 of 2011

and

M.P. (MD)No. 2 of 2011

WEB COPY

R.Gnanasekaran

... Petitioner

Vs.

1.The Additional Registrar,
Revisional Authority under Section
153 of Cooperative Societies Act,
Additional Registrar (Sales Planning and Development),
Office of Registrar of Societies,
Kilpauk, Chennai-10.

2.The Special Officer,
M.D.Special 71, Aranmanaipudur,
Primary Agricultural Co-operative Bank,
Aranmanaipudur,
Theni District.

... Respondents

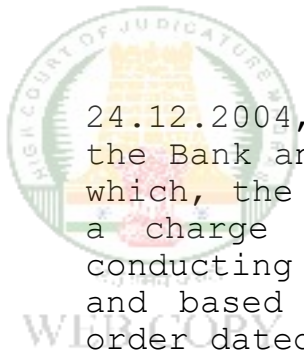
Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records relating to the impugned order passed by the first respondent in his proceedings in Na.Ka.52711/2010, Sa.Pa.1, dated 31.08.2010 and quash the same as illegal insofar as the denial of backwages is concerned for the period 05.12.2005 to 05.07.2007 and 28.05.2010 to 31.08.2010.

For Petitioner	:	Mr.Mohammed Imran for M/s Ajmal Associates
For Respondents	:	Mr.C.M.Marichelliah Prabhu Additional Government Pleader for R.1
	:	No Appearance for R.2

ORDER

This Writ Petition is filed seeking for issuance of a Writ of Certiorari to call for the records relating to the impugned order passed by the first respondent in his proceedings in Na.Ka.52711/2010, Sa.Pa.1, dated 31.08.2010 and quash the same as illegal insofar as the denial of backwages is concerned for the period 05.12.2005 to 05.07.2007 and 28.05.2010 to 31.08.2010.

2. The case of the petitioner is that he was appointed as an appraiser in the respondent Co-operative Bank on 10.12.1997 and he was working to the best of his abilities and without giving room for any complaint. While so, he was suspended from service on



24.12.2004, alleging that he had not conducted himself properly in the Bank and not taken any steps to collect default loan amount, for which, the Bank sustained huge loss and for that, he was issued with a charge memo and an Enquiry Officer was appointed and after conducting enquiry, the Enquiry Officer has drawn a proven minute and based on the proven minute, the second respondent passed an order dated 05.12.2005 by removing the petitioner from service.

3. Challenging the said order of removal, the petitioner filed a writ petition in W.P.No.11660 of 2005. This Court, by its order dated 06.07.2007, dismissed the writ petition, on the ground that the petitioner failed to file a revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act and the petitioner received a copy of the said order on 01.08.2007 and the time limit granted by this Court was expired on 15.08.2007. However, within the said period of limitation, on 11.08.2007, the petitioner filed an appeal under Section 152(1) of the Tamil Nadu Co-operative Societies Act in C.M.A.(CS) No.2 of 2007, on the file of the District Court, Theni, challenging the order of dismissal, dated 05.12.2005. Thereafter, the petitioner has withdrawn the appeal filed before the District Court, Theni, on 13.03.2008 and as such, the same was dismissed as not pressed, vide order dated 13.03.2008. However, he received the order copy only on 16.04.2008.

4. Immediately, he filed a revision petition, under Section 153 of the Tamil Nadu Co-operative Societies Act, before the Registrar of Co-operative Societies, Kilpauk, Chennai, on 12.06.2008. Thereafter, nothing was heard. Hence, the petitioner filed an application, dated 21.11.2008, under the Right to Information Act, requesting to furnish the information as to the steps taken on the revision filed by the petitioner and subsequently, he was informed by a letter, dated 12.12.2008 that the revision filed by him was dismissed as the same was not filed within the period prescribed by this Court. Hence, the petitioner filed a miscellaneous petition in M.P.No.1 of 2009 in W.P.No.11660 of 2005, before this Court seeking extension of time limit, so as to enable him to represent his revision petition. The above matter was taken up for hearing on 11.02.2009 and because of boycott of Court by Advocates, the petitioner's Advocate could not attend the Court on that day and the learned Single Judge dismissed that miscellaneous petition as infructuous.

5. Aggrieved by the same, the petitioner filed an appeal before the Division Bench of this Court in W.A.No.271 of 2010. This Court, by its order dated 06.07.2007, directed the petitioner to file an affidavit to the effect that he will not claim back wages from 06.07.2007 till the revision petition was taken by the second respondent. Accordingly, the petitioner filed an affidavit and recording the same, this Court directed the first respondent to hear the petitioner and pass appropriate orders and thereafter, the first respondent filed the revision petition, however, denied the back



wages by stating that the petitioner filed an affidavit before the Division Bench of this Court for forgoing the back wages. Challenging the said order, the present writ petition has been filed before this Court.

6. Learned Counsel appearing for the petitioner would submit that admittedly, the order of removal was passed by the original authority, on 05.12.2005. Further, the earlier writ petition in W.P.No.11660 of 2005 was dismissed by this Court for not availing the alternate remedy and thereafter, admittedly, the petitioner filed an affidavit of undertaking before the Division Bench of this Court in W.A.No.271 of 2010 to the effect that he will not claim back wages from 06.07.2007 till the revision petitioner was taken on file. Therefore, the petitioner is not entitled to get back wages from 06.07.2007 to 31.08.2010. However, the petitioner is entitled to get back wages from 05.07.2005 to 05.07.2007. The undertaking given by the petitioner was wrongly incorporated by the first respondent. Hence, the learned Counsel appearing for the petitioner prays for interference.

7. The learned Additional Government Pleader appearing for the first respondent would submit that from the initial stage itself, the petitioner knocked the wrong Forum, without availing alternate remedy available under the provisions of the Tamil Nadu Co-operative Societies Act and the order passed by the first respondent is based on the undertaking given by the petitioner and therefore, the order passed by the first respondent is legally sustainable and hence, he seeks for dismissal of the writ petition.

8. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the first respondent and perused the materials placed before this Court.

9. It is not in dispute that the petitioner was working as an appraiser in the respondent Cooperative Bank. During his tenure, he committed misconducts and cause huge loss to the respondent Cooperative Bank, he was suspended from service on 24.12.2004 and he was issued with a charge memo and an Enquiry Officer was appointed and after conducting enquiry, the Enquiry Officer has drawn a proven minute and based on the proven minute, the second respondent passed an order dated 05.12.2005 by removing the petitioner from service. Subsequently, in the revision petition filed by the petitioner, the first respondent cancelled the order of termination and directed the second respondent to reinstate the petitioner into service as jewel appraiser and it is also made that the petitioner is not entitled to get any back wages from the date of termination till the date of reinstatement and it will be treated as leave on loss of pay.

10. It is well settled law that the petitioner ought to have pleaded in the revision petition filed before the revisional



non-employment. However, no such pleading was raised by the petitioner and therefore, it must be presumed that he was gainfully employed during the period of non-employment and hence, he cannot claim back wages for the intervening period of non-employment. The petitioner is not entitled to any back wages, for which he did not work. The rule of "no work no pay" is applicable to the petitioner. The petitioner cannot be allowed to draw the benefits of a post, the duties of which he has not discharged and to allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. The first respondent denied the back wages only based on the undertaken given by the petitioner.

11. For the reasons aforesaid, this Writ Petition *sans* merit and, accordingly, the same is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL

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.

To

1.The Additional Registrar,
Revisional Authority under Section
153 of Cooperative Societies Act,
Additional Registrar (Sales Planning and Development),
Office of Registrar of Societies, Kilpauk, Chennai-10.

2.The Special Officer,
M.D.Special 71, Aranmanaipudur,
Primary Agricultural Co-operative Bank,
Aranmanaipudur, Theni District.

+1 CC to M/s.SPL GP (SR-698[F] dated 08/01/2021)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-470[F] dated 07/01/2021

+1 CC to M/s.V.O.S.KALAI SELVAM, Advocate (SR-395[F] dated 07/01/2021)

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PK(CO)