



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.01.2021

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.(MD)No.7514 of 2011

U.Sundararajan

... Petitioner

Vs

1.Joint Registrar of Co-operative Societies,
In the Office of Joint Registrar,
Hosur Treasury Building,
Ramanathapuram.

2.The Deputy Registrar of Co-operative Societies,
Paramakudi Circle,
Paramakudi,
Ramanathapuram District.

... Respondents

PRAYER: Writ 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 proceeding in Na.Ka.No.6777/2010 Pa.Tho, dated 09.05.2011 and quash the same as illegal.

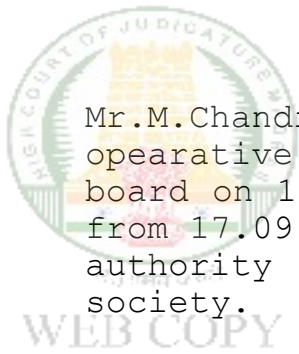
For Petitioner : Mr.Mohamed Imran
for M/s.Ajmal Associates

For Respondents : Mr.C.M.Marichelliah Prabhu
Additional Government Pleader

O R D E R

Challenging the impugned order passed by the first respondent, dated 09.05.2011 in Na.Ka.No.6777/2010 Pa.Tho, the Writ Petition has been filed.

2.It is the case of the petitioner that the petitioner has been initially appointed as Junior Inspector of Co-operative Societies on 06.12.1985 and subsequently, promoted as Senior Inspector of Co-operative Society and he has been working as Senior Inspector/Sale Officer in the office of the Deputy Registrar of Co-operative Societies to the utmost satisfaction to the superiors. Whiles, a charge memo was issued on 16.02.2010 against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955 on the ground that the petitioner appointed one



Mr.M.Chandra Sekaran, Secretary in Pioneer Spinners Labour Co-operative Thrift Society, who was already dismissed by the elected board on 15.04.1999 and allow him to work as a Clerk in the Society from 17.09.2001 onwards, without obtaining any order from the higher authority and without considering the rules and regulations of the society.

3.The petitioner further avered that the appointment was made in favour of the said Chandrasekaran in the year 2001. However, the charge memo was issued after a lapse of nine years in the year 2010, from the date of occurrence. Despite inordinate delay in initiating the disciplinary proceedings, the petitioner gave an explanation refuting the allegation made in the charge memo and the petitioner further avered that he followed the circular issued by the Registrar, in which, the Registrar, clearly stated when the employees under suspension in facing the criminal case in order to extract the work, they can reinstate the employees, after obtaining appropriate letter from the investigating agency. Hence, after following the due procedures, the said Chandrasekaran was appointed. However, the Enquiry Officer drawn the proven minute against the petitioner as if the petitioner was appointed one Chandrasekaran in the vacancy place of Nagajothi, who is placed under suspension and further, without obtaining permission from the competent authorities and further the said appointment is against the sanctioned strength of the Co-operative Society and on those allegations, the Enquiry Officer drawn a proven minute. Based on the proven minute, the petitioner was called for further explanation by issuing the second show cause notice. However, no action was taken despite the petitioner submitted his explanation. Hence, the petitioner filed a writ petition before this Court in W.P.(MD)No.6129 of 2011 seeking for a direction to conclude the departmental proceedings. In compliance of the said order, the first respondent by his impugned order, dated 09.05.2011 had imposed the order of punishment of stoppage of increment for a period of three months without cumulative effect. Challenging the same, the petitioner filed the present writ petition before this Court.

4.The learned counsel for the petitioner would submit that as per the circular, dated 07.05.2001, the petitioner being a Special Officer, had appointed one Chandrasekaran as Clerk and further, the procedures contemplated under the Co-operative Societies Act are duly followed. Further, the learned counsel for the petitioner drew the attention of this Court to the order passed by the petitioner in favour of Chandrasekaran, dated 15.09.2001. The Chandrasekaran was removed from service in the year 1999, and thereafter, he prepared an appeal before the petitioner/Special Officer on 10.06.1999 and the petitioner acted as an Appellate authority and modified the punishment imposed by the elected President by order dated 15.09.2001 and he was de-promoted as Clerk. However, a charge memo was issued as if the petitioner appointed Chandrasekaran as a Clerk. Hence, he is liable for allowing this petition.



5.The learned Additional Government Pleader appearing for the respondents would submit that though the said Chandrasekaran was removed from service for proven charges on 15.04.1999 and after conducting domestic enquiry, based on the proven report submitted by the Enquiry Officer, dated 28.03.1999, the petitioner did not have the Appellate Authority power. He is the Special Officer, who is the original authority without any power, modified the punishment imposed against the Chandrasekaran, is unsustainable one and that the order itself shows that the petitioner acted as an Appellate Authority and revise the punishment imposed by the elected President is nonest one. Hence, that order itself clearly shows that the guilt has been committed by the petitioner. For the above said guilt, the impugned punishment was imposed, which cannot be interfered with. Hence, he prayed for dismissing this petition.

6.Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the respondents and perused the materials available on record.

7.Considering the facts and circumstances of the case, the petitioner's grievance is that the petitioner modified the punishment in favour of Chandrasekarn in the year 2001. However, the charge memo was issued in the year 2010. In view of the delay in initiating the proceedings, it vitiates the entire proceedings, however, on perusal of the dismissal order, dated 15.09.2001, it reveals that the petitioner, while he was a Special Officer entertained in the appeal petition, which was submitted by Chandrasekaran as against the order of dismissal on 15.04.1999.

8.On perusal of the order itself shows that the petitioner committed a grave misconduct and acted as an Appellate Authority, which was not authorised by the Act and illegally entertained in the appeal petition and modified the punishment is a grave misconduct and after negotiating illegality committed by the petitioner, the enquiry was conducted and based on the enquiry, the petitioner was imposed with the punishment of stoppage of increment, which cannot be interfered with. It is only the minimum punishment for the proven charges. Hence, the delay will not stand on the way and the department to proceed against him for the illegal act committed by the petitioner.

9.Further, this Court perused the circular, dated 07.05.2011, the said circular is applicable only to a person, who was placed under suspension and pending disciplinary proceedings, the appropriate authority has to consider for reinstatement for extracting work. However, in the present case, the said Chandrasekaran was removed from service in the year 1999 and without any power, the petitioner acted as an Appellate Authority and revise the order of punishment, which was imposed by the competent authority is legally unsustainable one.



10. For the reasons above stated, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar (CS-II)

//True copy//

/ /2021
Sub Assistant Registrar

To

1. Joint Registrar of Co-operative Societies,
In the Office of Joint Registrar,
Hosur Treasury Building,
Ramanathapuram.

2. The Deputy Registrar of Co-operative Societies,
Paramakudi Circle,
Paramakudi,
Ramanathapuram District.

+1 CC to THE SPECIAL GOVERNMENT PLEADER (SR-1129[F] dated
19/01/2021)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-1203[F] dated
19/01/2021)

Order made in
WP (MD) No. 7514 of 2011
18.01.2021

SRS/02.02.2021/4P/5C