



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2021

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.1051 of 2021

and

C.M.P (MD) .No.4716 of 2021

The President,
Z637, Swamimalai Primary Agriculture
Co-operative Credit Society Ltd,
Swamimalai Post,
Kumbakonam Taluk,
Thanjavur District.

... Appellant/3rd Respondent

Vs.

1. Selvam

... 1st Respondents/Petitioner

2. The Joint Registrar,
Office of the Joint Registrar
of Co-operative Societies,
Thanjavur Region,
Thanjavur District.

3. The Deputy Registrar,
Office of the Deputy Registrar
of Co-operative Societies,
Kumbakonam,
Thanjavur District.

... Respondents 2 & 3/
Respondents 1 & 2

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.P.(MD) No.8297 of 2021, dated 22.04.2021.

Prayer in WP(MD) . 8297 of 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS or any other order or direction in the nature of the Writ, directing the Respondents to consider Petitioner representation dated 22.10.2019 seeking Petitioner re-instatement in to the service and pass orders within a stipulated time as fixed by this Hon'ble Court and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.



For Appellant : Mr.Niranjan S.Kumar
For Respondents : Mr.A.K.Manikkam,
Standing Counsel for Government
for R2 and R3

J U D G M E N T

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

We have heard Mr.Niranjan S.Kumar, learned counsel appearing for the appellant and Mr.A.K.Manikkam, learned Government Counsel appearing for the respondents 2 and 3.

2. This appeal filed by the Swamimalai Primary Agriculture Co-operative Credit Society Limited, represented by its President, is directed against the order dated 22.04.2021, in W.P(MD).No.8297 of 2021.

3. The first respondent filed the writ petition praying for issuance of a Writ of Mandamus to direct the appellant to consider the representation dated 22.10.2019. In the said representation, the respondent sought for revoking the order of suspension dated 31.05.2018.

4. The learned Writ Court appears to have disposed of the writ petition at the admission stage by directing the writ petitioner to give a fresh representation for revocation of suspension within a time frame and on receipt of the representation, the appellant was directed to consider the representation and pass orders in consonance with the judgment of the Hon'ble Apex Court in **Ajay Kumar Choudhary vs. Union of India and another, (2015) 7 SCC 291**, within a time frame. Aggrieved by such direction, the appellant-Society is before us.

5. Firstly, if the writ petition had to be disposed of at the admission stage, no positive direction could have been issued nor anything could have been observed on the merits of the claim made by the writ petitioner. In the instant case, had the Writ Court disposed of the writ petition by issuing a direction to the appellant to consider the representation, it might have been a different matter. But the direction is to consider the representation and pass orders in consonance with the judgment in the case of **Ajay Kumar Choudhary** (cited supra). This in our view is a positive direction, which could not have been issued without reference to the relevant service Rule, which govern the service condition of the respondent.

6. Furthermore, the decision in **Ajay Kumar Choudhary** cannot be applied without considering the facts and circumstances of the case. The learned Writ Court had no occasion to take note of the facts, because no counter-affidavit was on record, as the writ petition was disposed of at the admission stage. Further, the facts of the case as placed before us by the learned counsel appearing for the appellant shows that a criminal case has been registered against the respondent and the respondent was evading arrest and subsequently, obtained anticipatory bail and the Society moved with



the application for cancellation of bail and in which, the respondent did not appear and in spite of notice sent by this Court and therefore, the Court had to issue direction to constitute a special team to nab the respondent and ultimately, he was secured from Tirupathi and produced before the concerned Court. That apart, there is allegations that the books of accounts and locker keys were taken away by the respondent and he was absconding when the audit was going on.

7. In any event, the departmental enquiry has to be conducted after issuance of charge memo and these issues can be very well agitated in the domestic enquiry, which will be conducted.

8. Hence, for the above reasons, we are of the clear view that the Writ Court committed an error in allowing the writ petition by issuing a positive direction at the admission stage, by applying the judgment in **Ajay Kumar Choudhary** without noting the facts and circumstances of the case on hand.

9. For the above reasons, this **Writ Appeal is allowed** and the order passed in the writ petition is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Joint Registrar,
Office of the Joint Registrar of Co-operative Societies,
Thanjavur Region, Thanjavur District.
2. The Deputy Registrar,
Office of the Deputy Registrar of Co-operative Societies,
Kumbakonam, Thanjavur District.

+1 CC to M/s.NIRANJAN S.KUMAR, Advocate (SR-23574[F] dated 22/07/2021)

+1 CC to M/s.GP (SR-23731[F] dated 23/07/2021)

W.A. (MD)No.1051 of 2021
20.07.2021

RC (02.08.2021) 3P-5C