



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD) No.19078 of 2015

and

M.P. (MD) No.1 of 2015

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The Kunnathur Primary Agricultural Co-operative Credit Society Ltd.,
No.Y-55, Co-operative Bank Road,
Puthukkadai -629 171,
Kanyakumari District,
Rep. by its President. .. Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,
Nagercoil, Kanyakumari District.

2. S.Chelladurai .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari, calling for the records relating to the impugned proceedings of the first respondent in Na.Ka.1970/2015/ SaPa dated 03.09.2015 (received on 09/10/2015) and quash the same as illegal.

For Petitioner : Mr.M.Jerin Mathew
For Respondent No.1 : Mr.K.Chellapandian, AAG
assisted by Mr.C.Ramar, AGP
For Respondent No.2 : Mr.Issac Mohanlal, SC,
for M/s.V.M.Balamohan Thampi

ORDER

The petitioner Co-operative Society has challenged the proceedings of the first respondent passed in Na.Ka.1970/2015/Sa Pa dated 03.09.2015.

2. The case of the petitioner is that the second respondent was in the petitioner's Society as a Temporary Clerk in the year 1991 and presently, he is working as Secretary of the Society. The second respondent was placed under suspension for some serious misconduct by order, dated 13.12.2014, in public interest and in contemplation of disciplinary proceedings. The allegation made against the 2nd respondent is that he had involved in serious misconduct resulting in a loss of about Rs.1.09 Crores to the petitioner/Society. Therefore, two charge memos dated 29.12.2014 and 27.01.2015 containing, in all, seven charges have been issued to the 2nd respondent, the sum and substance of the charges are as under :-

1. the delinquent has been negligent in his duties and responsibilities by not making entries in the jewel loan register and as per the regulation, more than



Rs.8,00,000/- should not be given to an individual as jewel loan and that he had granted totally Rs.72,00,000/- to the individuals in contravention of the regulation;

2. he has abetted the fraud by allowing a single person to sign in the loan application, as Sundar Raj, Raj, Pushpa Bhai and Subas for the loan disbursed to one Sundar Raj;

3. he has brought disrepute to the society among the public by sanctioning Rs.72,00,000/- as jewel loan to his family members, no fund was left over to cater to the needs of the poor agricultural families;

4. he has caused loss to the society by re-financing the jewel loans of his brother's pawn broker shop at a lower rate of interest;

5. he has made entries in the service register clandestinely without getting any permission from the superiors and received Rs.1,46,303/- as arrears of pay;

6. he has been negligent and derelicted his duty by admitting his wife as a member of the society fraudulently and by forging her signature sanctioned jewel loan; and

7. without the knowledge of the President and without getting his signature, the delinquent had made entries in the service register of the employees.

3. The second respondent submitted his explanations dated 31.12.2014 and 11.02.2015 and since the explanations were not satisfactory, domestic enquiry was ordered by appointing enquiry officer. The 2nd respondent was provided with adequate opportunity and he had also elaborately cross-examined 7 management witnesses and orally examined himself as witness on his side. On behalf of the Management 22 documents were marked. After conducting a detailed enquiry and after analysing both oral and documentary evidence, the enquiry officer held the charges against the 2nd respondent proved vide his report dated 04.03.2015.

4. Accepting the findings of the enquiry officer, the Management forwarded a copy of the same to the second respondent and called for his explanation by letter dated 05.03.2015. Thereafter, the second respondent submitted his explanation on 13.03.2015 and the Management, being not satisfied with the said explanation, dismissed the second respondent from service by order dated 16.03.2015. Aggrieved against the order of dismissal, the petitioner filed a revision petition before the first respondent under Section 153 of Tamil Nadu Cooperative Societies Act. Upon receipt of the revision petition, the first respondent sent a notice to the Management on 10.04.2015 calling upon to file counter. Thereafter, the petitioner Management made a representation on 24.04.2015 and highlighted that the documents filed by the second respondent were not furnished to the petitioner Management.



Again the first respondent sent another notice dated 23.04.2015 to file counter on or before 30.04.2015, ie., within two days from the date of receipt of the notice. Hence, the petitioner Management made another representation dated 29.04.2015 and sought for accommodation to be provided with the copies of the documents filed by the second respondent along with the application. However, without considering the petitioner's request, the first respondent granted interim stay of the order of suspension as well as the order of dismissal issued to the second respondent. Aggrieved by the order of interim stay, the petitioner filed W.P.(MD).No.8686 of 2015 and this Court by order dated 03.06.2015 set aside the interim order and directed the first respondent to pass final order in the matter. In the meantime, the second respondent has also approached this Court by filing W.P.(MD).No.8615 of 2015 seeking for a direction to implement the order of interim stay granted by the first respondent. Since the matter had become infructuous by then, the said writ petition was dismissed as infructuous by an order dated 23.07.2015. As per the direction of this Court, the main revision petition was taken and the first respondent modified the punishment of dismissal into one of stoppage of increment for a period of 3 years with cumulative effect. Challenging the said order, the present writ petition is filed.

5. The learned counsel for the petitioner would submit that the allegations against the second respondent is serious and that the 2nd respondent misused his official position and misused the trust entrusted on the 2nd respondent by the petitioner Management and he forced the members of the society to pledge their jewels in the pawn shop run by his own brother and his wife and the said jewels were re-pledged as per the wish of the second respondent in the society and thus secured huge amount and he reinvested the money in his private finance and the said misdeeds were clearly established by the petitioner Management by examining the witnesses as well as documents. The misdeeds committed by the second respondent are so grave in nature and the same has been established before the Enquiry Officer, which resulted in the enquiry report against the 2nd respondent. However, the 1st respondent, without appreciating all the above as also the establishing of the misdeeds of the 2nd respondent before the enquiry officer as also before the 1st respondent, has modified the punishment, without any plausible reason. Though the first respondent also concluded that the charge against the second respondent was proved, however has gone on to modify the punishment, which is impermissible. Hence, the order of the first respondent is perverse and liable to be interfered with. In fact the action of the first respondent was also demonstrated before the Division Bench of this Court in W.A.(MD).Nos.1304 of 2015 and 1318 of 2015, which were filed by the second respondent and the Society respectively, and the Division Bench disposed of the writ appeals vide common order dated 11.12.2015 and observed in paragraph No.9 as follows:

"9. De hors the provisions of the Tamil Nadu Co-operative Societies Act, 1983, even on principles

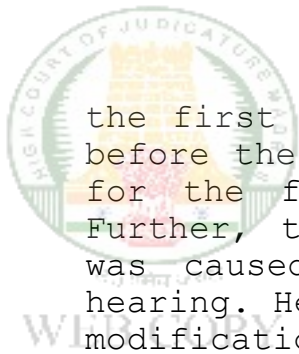


of equity the Court could not have passed this order in view of the seriousness of the allegations. We do not want to extract the allegations for the benefit of the employees as a very look at the allegations any prejudice the mind of anyone. Therefore, the writ appeal filed by the employee is dismissed. No Costs. Consequently, the connected miscellaneous petition is also dismissed."

In view of the above, the order of the first respondent is liable to be interfered with. Accordingly, he prayed for allowing the writ petition.

6. Per contra, the learned senior counsel for the second respondent submits that admittedly, there is no loss to the Society and the second respondent has rendered unblemished service for more than two decades in the petitioner/Society. It is further submitted by the learned senior counsel that though the enquiry was conducted in a proper manner, however, the imposition of punishment by the appropriate authority is not based on proper application of mind. As per the special bye-law, the maximum punishment can be imposed only by the elected Board and Chapter VI Provision 28 makes it clear that the major punishment of dismissal of service and major penalties can be imposed only by the competent authority. In the present case, without obtaining the concurrence of the Board, the President has imposed the major punishment of dismissal of service, which is not sustainable. It is the further submission of the learned senior counsel that without affording sufficient opportunity and without giving personal hearing to the second respondent, the President passed the dismissal order with malafide intention, which has been rightly modified by the first respondent which does not call for any interference.

7. Refuting the submission made by the learned counsel for the second respondent, the learned counsel for the petitioner submits that in respect of the violation of procedure in the departmental proceedings, there are no strict procedures contemplated for conducting the enquiries co-in operative Societies and only the principles of natural justice has to be adhered to. In the present case, principles of natural justice have been scrupulously followed by the petitioner Management. Initially the second respondent was suspended from service on 13.12.2014 and two charge memos were issued on 29.12.2014 and 27.01.2015 with 7 charges. Thereafter, enquiry was conducted and after conducting the enquiry, the enquiry proceedings were placed before the elected Board on 04.03.2015 and the elected Board passed a resolution on 13.03.2015, which decision of the elected Board was communicated to the second respondent by the President on 16.03.2015. It is the further submission of the learned counsel for the petitioner that the present issue of non-following of procedure has been raised for



the first time before this Court and the said issue was not raised before the first respondent and, therefore, the present contention, for the first time before this Court, is wholly impermissible. Further, the second respondent has not established that prejudice was caused to him by not providing an opportunity of personal hearing. Hence, the order of dismissal is perfectly in order and the modification of the said punishment by the 1st respondent is liable to be interfered with and, accordingly, he prays for allowing this writ petition.

8. Heard the learned Counsel on either side and carefully perused the materials available on record.

9. The Hon'ble Supreme Court, in ***B.C. Chaturvedi v. Union of India, (1995 (6) SCC 749)***, while dealing with issue relating to the power of the Court relating to judicial review of the order passed by the disciplinary authority, held as under :

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. In the conclusion or finding be such as no reasonable



person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued." (Emphasis Supplied)

10. The above view has been reiterated by the Hon'ble Supreme Court in **Principal Secy. Govt. of A.P. v. M. Adinarayana, (2004 (12) SCC 579)**, wherein, it has been held as under :-

"23. We have read this charge in the light of allegations in support thereof. In the instant case, it is not disputed that the respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior information before he purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the purchase of the several items. Therefore, in our view, the charged officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2-H (sic) of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the abovesaid finding we hold that respondent is guilty of both the charges framed against him within Rule 2 (b) of the Conduct Rules of 1961 framed under the Amendment Act, 1993.

26. In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made. We have, therefore, no hesitation in setting aside the order



of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the appellant State stands allowed. Further, there will be no order as to costs."

11. In a recent decision in **Director General of Police, RPF & Ors. - Vs - Rajendra Kumar Dubey (C.A. No.3820/2020 dated 25.11.20)**, the Hon'ble Supreme Court, advertent to the various decisions of the Apex Court relating to the interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings, including the decision in *Chaturvedi's case* (supra), held as under :-

"12.1 It is well settled that the High Court must not act as an appellate authority, and re-appreciate the evidence led before the enquiry officer.

We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

In **State of Andhra Pradesh v S.Sree Rama Rao**, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or



reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

These principles were further reiterated in the **State of Andhra Pradesh v Chitra Venkata Rao**. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.

In subsequent decisions of this Court, including **Union of India v. G. Ganayutham, Director General RPF v. Ch. Sai Babu, Chennai Metropolitan Water Supply and Sewerage Board v T.T. Murali, Union of India v. Manab Kumar Guha**, these principles have been consistently followed.

In a recent judgment delivered by this Court in the **State of Rajasthan & Ors. v. Heem Singh** this Court has summed up the law in following words :

"33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service.



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Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy - deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

In **Union of India v. P. Gunasekaran**, this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of



India shall not venture into re-appreciation of the evidence. The High Court would determine whether : (a) the enquiry is held by the competent authority; (b) the enquiry is held according to the procedure prescribed in that behalf; (c) there is violation of the principles of natural justice in conducting the proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; (i) the finding of fact is based on no evidence.

In paragraph 13 of the judgment, the Court held that :

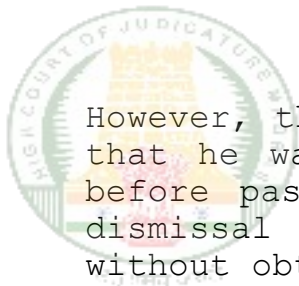
"13. Under Articles 226 / 227 of the Constitution of India, the High Court shall not :

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in the case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based;
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience."

(Emphasis Supplied)

12. From the ratio laid down above, it is implicitly clear that the Courts, in exercise of its power of judicial review, cannot extend the examination to the correctness of the act of the disciplinary authority, but only limit itself to the manner in which the decision has been arrived at by the authorities and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the authorities on the basis of the evidence before it and not proceed with the case as if it is an appeal against the impugned order.

13. In the case on hand, it is the accepted stand of the 2nd respondent that the enquiry was conducted in a proper manner.



However, the whole grievance expressed by the 2nd respondent is only that he was not provided with an opportunity of personal hearing before passing the impugned order of dismissal and that the said dismissal order, which is the maximum punishment, has been imposed without obtaining the resolution of the Board.

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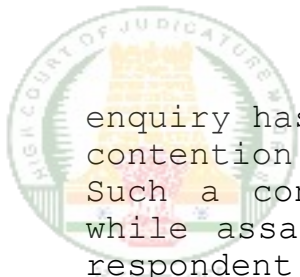
14. In this regard, the petitioner has placed materials before this Court to show that the matter was placed before the Board on 04.03.2015, which had deliberated the issue and has passed resolution on 13.03.2015. It is further borne out by record that the said resolution of the Board was also communicated to the 2nd respondent on 16.03.2015. In the above backdrop, the contention advanced on behalf of the 2nd respondent that there is violation of procedure prescribed by the by-laws has not been made out and the said contention deserves to be rejected.

15. Mainly two of the charges with which the 2nd respondent has been charged are very grave in nature. Coming to the delinquency of the 2nd respondent, one of the charge against the second respondent relate to the refinance to the jewels pledged in the pawn broker shop run by the 2nd respondent's brother and the subsequent loan granted on the said jewels by the 2nd respondent to his brother and his wife, which loan exceeds the ceiling fixed and that the loan has been granted to the tune of Rs.72,00,000/-. The above act of the 2nd respondent with regard to the above delinquency has been established by the petitioner before the enquiry officer and based on oral and documentary evidence, the enquiry officer has held the charge against the 2nd respondent proved.

16. The second charge is that the second respondent has forged the signature of the President while receiving the letters addressed to the President and he had not brought those letters to the knowledge of the President. Further without approval of the President and without getting any permission from his superiors, he has unilaterally made entries in the service register and received Rs.1,46,303/- as arrears of pay. Moreover, the second respondent himself had granted jewel loans to his brother and his wife and the said jewel loan is exceeding the ceiling limit also not in dispute.

17. To substantiate the above charge, the petitioner/Management examined 7 witnesses and marked 22 documents. A perusal of the said documents reveal that the petitioner had granted jewel loans to his brother and his wife exceeding the ceiling limit and that the said loans were granted without the approval of his higher officers. Similarly, forging of the signature of the President for the purpose of obtaining pecuniary gain by the 2nd respondent has also been proved by the petitioner/Management on the basis of oral and documentary evidence.

18. Insofar as the contention of the 2nd respondent that proper procedure in the conduct of the disciplinary
<https://hcservicescourts.go.in/hcservices>



enquiry has not been followed, it is to be pointed out that the said contention has been raised for the first time before this Court. Such a contention has not been raised before the 1st respondent, while assailing the order of dismissal from service. When the 2nd respondent has not taken a stand relating to non-following of procedure before the 1st respondent, it is not open to the 2nd respondent to come before this Court and contend that there is violation of procedure and the said contention advanced on behalf of the 2nd respondent cannot be sustained. Further, non-grant of an opportunity of personal hearing has not caused any prejudice to the the second respondent and the 2nd respondent has also not stated as to what he intends to establish through the said personal hearing. In such a backdrop, this Court is of the considered view that mere non-granting of personal hearing would not render the whole disciplinary enquiry a farce.

19. The petitioner/Management, through oral and documentary evidence, has proved the guilt of the 2nd respondent beyond an iota of doubt and the disciplinary authority, on the basis of the resolution of the Board, has inflicted the punishment of dismissal from service. However, the 1st respondent, without any rhyme or reason and without giving the basis for differing with the findings in the enquiry, has upturned the punishment of dismissal from service into one of cut in increment for a period of three years with cumulative effect, which is unsustainable, as the said modification is not associated with proper reasoning for coming to the said conclusion. When the charges have been properly proved and punishment has been inflicted, without proper reason, the 1st respondent ought not have modified the punishment and this Court is of the considered opinion that the modification in punishment, by the 1st respondent, definitely requires interference by this Court in exercise of its powers under Article 226 of the Constitution, as the said modification is not on the basis of any materials available on record, which enures to the benefit of the delinquent.

20. In view of the above observations, the impugned proceedings of the first respondent in Na.Ka.1970/2015/SaPa dated 03.09.2015 is hereby set aside and the writ petition is allowed confirming the order of dismissal passed by the petitioner/Management. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

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Sub Assistant Registrar(CS)



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.

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To

The Joint Registrar of Co-operative Societies,
Nagercoil,
Kanyakumari District.

+1 CC to M/s.SPL GP (SR-8742[F] dated 04/03/2021)

+1 CC to M/s.M.E.ILANGO, Advocate (SR-8784[F] dated 04/03/2021)

+1 CC to M/s.V.M.BALAMOHAN THAMPI, Advocate (SR-8961[F] dated 05/03/2021)

W.P (MD) No.19078 of 2015
03.03.2021

SSS (CO)
KB (17.04.2021) 13P 5C