



W.P.No.13773 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	17.08.2022
Pronounced On	04.11.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.13773 of 2021

and

W.M.P.Nos.14618 & 14623 of 2021

E.Ramalingam

... Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
O/o. Deputy Registrar of Co-operative Societies,
Villupuram District, Villupuram.

2.The President,
V.P.M.3, Villupuram District,
Transport Corporation Thrift &
Credit Societies Ltd.,
No.5, Vallalar Nagar, Sallamedu,
Villupuram District.

3.The President,
11455 The Vanur Panchayat Union &
Aided School Teachers & Employees'
Co-operative Thrift & Credit Society Ltd.,
Thiruchittrambalam Post,
Vanur Taluk, Villupuram District.

... Respondents



W.P.No.13773 of 2021

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent directing the second respondent to initiate disciplinary action against the petitioner vide Proceeding Na.Ka.No.3101/2019/Ma.Va.(4) dated 14.08.2020 and the consequential impugned order passed by the second respondent directing the third respondent to initiate disciplinary action against the petitioner vide Letter dated 19.03.2021 and the consequential impugned order passed by the first respondent directing the second respondent to initiate shortage rectification action vide Na.Ka.1977/2020/Ku.Na(1) dated 14.06.2021 and quash the same.

For Petitioner : Mr.M.Venkatesan

For Respondents : Mrs.C.Meera Arumugam
Additional Government Pleader

ORDER

The petitioner was appointed as the Secretary of the third respondent Cooperative Society on 01.03.1989. The petitioner was given an additional charge in the second respondent Cooperative Society with effect from 31.10.2013. The second respondent Co-Operative Society was started in the year 2013.



W.P.No.13773 of 2021

2. The dispute in the present Writ Petition pertains to an alleged loss caused to the second respondent Society by the petitioner when the petitioner was holding an additional charge in it with effect from 31.10.2013. During the aforesaid period, the following four temporary staffs were appointed in the second respondent Society purportedly contrary to the provisions of the Tamil Nadu Cooperative Societies Act, 1983 and the Rules made thereunder:-

Sl. No	Name	Date of Appointment
1.	Ponmani	28.03.2013
2.	Kumaravel	08.04.2015
3.	E.Adhiyanman	22.10.2016
4.	Senthilmurugan	28.06.2017

3. The petitioner has challenged the impugned order dated 14.08.2020 passed by the first respondent, Deputy Registrar of Cooperative Society bearing reference Na.Ka.No.3101/2019/Ma.Va.(4). By the said impugned order, a direction has been given to the second respondent to initiate disciplinary proceedings under Section 81(6) of the Tamil Nadu Cooperative Society Act, 1983. The aforesaid impugned



W.P.No.13773 of 2021

order of the first respondent Deputy Registrar dated 14.08.2020 encloses a copy of an Enquiry Report dated 12.06.2020 of the Sub Registrar / Field Officer who was appointed as an Enquiry Officer vide Proceedings dated 05.12.2019 of the first respondent bearing Na.Ka.No.3101/2019. Ma.Va.

4. The petitioner has also challenged the consequential order dated 19.03.2021 of the second respondent Society. By the said impugned order dated 19.03.2021, the second respondent Society has directed the third respondent to initiate appropriate proceedings against the petitioner pursuant to the aforesaid impugned order of the first respondent dated 14.08.2020.

5. The petitioner has also challenged the impugned notice dated 14.06.2021 issued by the first respondent. By the said notice dated 14.06.2021, the first respondent Deputy Registrar has directed the second respondent Society to initiate surcharge proceedings against the petitioner.

6. The first respondent Deputy Registrar vide his proceedings Na.Ka No 3101/2019 Ma.Va dated 05.12.2019, appointed an Enquiry



W.P.No.13773 of 2021

Officer and directed him to enquire into matters relating to the temporary appointments made by the second respondent Society and also with matters relating to the outstanding dues of the second respondent Society from its members.

7. The Enquiry Officer submitted his report dated 12.06.2020 to the first respondent Deputy Registrar. In the report, it was stated that the appointments of temporary staffs were made in contrary to the Tamil Nadu Co-operative Societies Act 1983 and the Tamil Nadu Co-operative Societies Rules 1988 and that the petitioner had failed to recover interest from the respective members of the second respondent Society (State Transport Corporation).

8. After Considering the Enquiry Report, the first respondent Deputy Registrar thus issued the first mentioned impugned order dated 14.08.2020 bearing reference No Na.Ka.No 3101/2019/Ma.Va(4) and has directed the second respondent Society to initiate disciplinary proceedings against the petitioner. Subsequent to the above impugned order, the consequential impugned orders were issued, whereby,



W.P.No.13773 of 2021

disciplinary proceedings and surcharge proceedings were initiated against the petitioner.

9. The learned counsel for the petitioner submits that the petitioner is not guilty of any negligence or misdeeds in respect of the third respondent society, of which, the petitioner was the Secretary.

10. It is the case of the petitioner that he has not caused any pecuniary loss to the second respondent Society while holding additional charge. It is further submitted that there are no allegations of any misappropriation of funds by the petitioner either. It is the case of the petitioner that the first respondent Deputy Registrar periodically visits and inspects the records of the Co-operative Societies under his jurisdiction.

11. The learned counsel for the petitioner submits that while holding charge in the second respondent society with effect from 31.10.2013, the petitioner was also not guilty of any breach of trust or guilty of any wilful negligence and/or mismanagement. It is equally submitted that the petitioner was not also guilty of any of the offenses for



W.P.No.13773 of 2021

wilful negligence.

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12. The learned counsel for the petitioner further submits that the petitioner is being unnecessarily targeted by the first respondent notwithstanding the fact that the petitioner discharged the function honourably in the second respondent Society without any negligence.

13. It is submitted that merely because the petitioner's son-in-law was appointed by the Board of elected members of the second respondent Society, the petitioner is being targeted though he cannot be found guilty or be proceeded against.

14. It is submitted that the second respondent Society has no permanent staffs and the affairs of the second respondent Society could be accomplished by the Board only by appointing temporary staffs and that even prior to the petitioner joining the second respondent, one Ponmudi was officiating as the Secretary of the second respondent Society who was appointed by the Board of Elected Members of the second respondent Society on 01.04.2013 and that the services of the said



W.P.No.13773 of 2021

Ponmudi was discharged on 30.09.2019. It is submitted that one Adhiyaman was also removed from the service.

15. It is submitted that the grave charge against the petitioner that the petitioner had appointed these persons contrary to the bye-laws by filling up post without calling for application from the Employment Exchange Board/TNPSC cannot be countenanced as appointments were made by the Board of Directors consisting of President, Vice President and other elected members.

16. It is submitted that the explanation given by the petitioner before the enquiry was not considered. That apart, the petitioner had also filed a performance report periodically giving the details of employees employed on a temporary basis.

17. It is further submitted that the amounts deducted from the employees by the Transport Corporation who are the members of the second respondent Society were not paid by the Transport Department. It



W.P.No.13773 of 2021

is submitted that it cannot be the basis for initiating any proceedings either under Section 81 or under Section 87 of the Act.

18. It is further submitted that the Transport Corporation regularly defaults in remitting the amounts and therefore, the allegation of making a purported loss on account of the belated payment of amounts recovered from the employees from the second respondent Society cannot be also saddled on the petitioner.

19. Opposing this Writ Petition, the learned Additional Government Pleader for the respondents has referred to the counter affidavit filed. It was submitted that the petitioner completed more than 30 years of service as Secretary of the third respondent Society and that the petitioner was well aware that any vacancy in the second respondent Society can be filled up only by following the procedure prescribed under the Act and Rules.

20. It is submitted that the petitioner was holding the post of Secretary (additional charge) in the second respondent Society with effect from 31.10.2013. As a Chief Executive Officer, the petitioner failed to



W.P.No.13773 of 2021

report the first respondent regarding temporary appointments made in contravention of provisions of Act and Rules.

21. It is further stated that the petitioner was given reasonable opportunity to put forth his case. It is submitted that in this connection, summon was issued by the Enquiry officer to the petitioner under Section 81 of the Act, 1983.

22. The learned Additional Government Pleader for the respondents further stated that irregular appointees viz., Thiru.Kumaravel, Assistant and Thiru.Senthilmurugan, Office Assistant have filed W.P.Nos.13227 and 13228 of 2021 to forbear the respondents from terminating their services from the post of Assistant/Office Assistant in the Villupuram District Government Transport Employees Thrift & Credit Society/ the second respondent without following the procedure of law.

23. It is further submitted that in the instant case, the first respondent has not initiated any surcharge proceedings by issuing notice under Section 87 of the Act, 1983 to the petitioner and others for recovery



W.P.No.13773 of 2021

of loss caused to the Society. In respect of surcharge proceedings under Section 87 of the Act, 1983, notice has been issued and an Award will be passed after completing with principle of natural justice.

24. The Additional Government Pleader for the respondents further stated that the statutory Enquiry Officer submitted a report recommending disciplinary action and surcharge action. It is therefore open for the petitioner to prove his innocence before the concerned authority namely Domestic Enquiry Officer under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983.

25. The third respondent has filed a counter affidavit, in which, it has been stated that the impugned order passed by the first respondent against the petitioner is liable to be quashed as there is no material evidence available on record to initiate disciplinary or surcharge proceedings against him.

26. It has been stated that the management of the second respondent Society was responsible for the temporary appointments of the



W.P.No.13773 of 2021

four staffs on daily wage basis/temporary basis and there is nothing to attribute *malafide* against the petitioner as there is no legal bar for appointing relatives of paid officers of the Co-operative Society on daily wage basis / temporary basis. Further, it is contended that there is also no charge of misappropriation against the petitioner or allegation of dereliction of duty so as to initiate disciplinary proceedings or surcharge proceedings against the petitioner. Hence, this Writ Petition deserves to be allowed.

27. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents. I have perused the impugned orders and the enquiry report of the Enquiry Officer appointed by the first respondent Deputy Registrar.

28. The charge against the petitioner is that four persons were appointed contrary to the Tamil Nadu Co-Operative Societies Act, 1983 and the Rules made thereunder without calling for an application from the Employment Exchange / TNPSC during the period when the petitioner



W.P.No.13773 of 2021

was holding additional charge as the Secretary of the second respondent Society.

29. There is no dispute that the appointment of four persons on a temporary basis was during the tenure of the petitioner when he was holding an additional charge as a Secretary of the second respondent society.

30. The appointment of staffs, i.e. paid officers and servants of a registered society is covered by the Chapter VIII of the Tamil Nadu Co-Operative Societies Act, 1983. The Government, by a Notification, is required to constitute Recruitment Bureaus at the State and District levels for the recruitment of such categories of paid officers and servants for employment by such class or classes or category or categories of registered societies as may be prescribed. This has been provided in Section 74 of the Tamil Nadu Co-Operative Societies Act, 1983. However, the said provision does not apply to any of the posts in respect of which common cadres of service have been constituted under Section 75 of the Act.



W.P.No.13773 of 2021

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31. To implement the above provisions, specific provisions have been incorporated in the Tamil Nadu Co-Operative Societies Rules, 1988. In this connection, Rule 149 of the Tamil Nadu Co-Operative Societies Rules, 1988 is relevant. It reads as under:-

149. Conditions of service of paid officers and servants of societies. —

(1) Every society shall, taking into account its nature of business, volume of transaction and financial position, adopt, with the prior approval of the Registrar, a special by-law covering the service conditions of its employees. The special by-law shall, inter-alia prescribe the following:-

- (i) Cadre strength and classification of various categories of posts and the qualifications required thereof for each such posts.*
- (ii) The method of recruitment for each such posts.*
- (iii) The scale of pay and allowances for each such posts.*
- (iv) Conditions of probation for each such posts.*
- (v) Duties and responsibilities for each such posts.*
- (vi) Leave of various kinds admissible and, the conditions thereto for each such posts.*
- (vii) The penalties that may be imposed upon, the procedure for taking*



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W.P.No.13773 of 2021

disciplinary action and inflicting various kinds of punishments on an employee holding each such post and the authority competent to entertain and dispose of appeal made against an order of punishment imposed by the competent authority on a disciplinary proceedings.

(viii) Conditions relating to acquisition and disposal of movable and immovable property:

Provided that in the case of the post, other than the post of manager, superintendent and above a minimum period of three years satisfactory service shall be prescribed for eligibility for promotion from one category to the immediate next higher category of post:

Provided further that no person shall be eligible for appointment to the post of manager, superintendent and above by promotion, unless he has completed atleast one year of satisfactory service in the category of post in which he is working and not less than six years of satisfactory service in the category of posts in which he is working and the feeder category of post to which he is working combined together:

Provided also that the co-operative training at the appropriate level may be prescribed as a necessary qualification for specific categories of non-technical posts.

(2) No appointment by direct recruitment to any post shall be made except by calling for a list of eligible candidates from the Employment



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W.P.No.13773 of 2021

Exchange and also giving due publicity by means of announcement in the notice board of the society and also of the affiliated societies, inviting application from the eligible employees of such societies. Where the Employment Exchange issues a non-availability certificate, the society shall invite applications by giving advertisement in more than one daily newspapers in which one should be in regional language having wide circulation throughout the State:

Provided that the above stipulation shall not apply-

- (i) to the appointment made on compassionate grounds;*
 - (ii) for the absorption of surplus employee of other Co-operative Societies;*
 - (iii) to the posts for which a Recruitment Bureau has been constituted under section 74 of the Act or in respect of which a common cadre of service has been constituted under section 75 of the Act.*
- (2-A) A society may transfer an employee to another society for a period of not less than one year on deputation basis and the other society may avail the service of that employee on the terms and conditions agreed to by both the societies : Provided that no such transfer shall be made for a period exceeding three years.*
- (3) In matters of reservation for appointments and age for retirement, the rules applicable to the Government servants shall be followed.*
 - (4) No person shall be appointed to the service*



WEB COPY



W.P.No.13773 of 2021

of any society, if he has been found guilty of any offence involving moral turpitude. An employee shall cease to be as such in a society, if he is found guilty of any such offence.

- (5) *No person who is a near relative as specified in rule 63, of a member of the Board or an officer of a society shall be appointed to any post in the service of such society. If a doubt arises as to whether a person is or is not a near relative of a member of the board or of an officer of a society, the board shall refer it to the Registrar for decision.*
- (6) *No employee of a society shall canvass or otherwise interfere or use his influence in connection with or take part in any election to any Legislature, Parliament or local authority or any institution constituted under any State or Central Act except with the previous permission of the Board.*
- (7) (a) *No employee shall accept any employment or work elsewhere, with the honorary or otherwise except with the previous permission of the Board.*
- (b) *No employee shall engage himself in any trade or business outside the scope of his duties either in his name or in the name of any member of his family or relative except with the previous permission of the Board.*
- (8) *Nothing contained in this rule, except the items (i),(v) and (viii) of sub rule (1) and the provisions contained in sub-rules (5) to (7) shall apply to a Government servant deputed or a person deputed from any other*



W.P.No.13773 of 2021

institution, to the services of any society.

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32. As per Sub Rule 5 to Rule 149 of the Tamil Nadu Co-Operative Societies Rules, 1988, no person who is a near relative as specified in rule 63, of a member of the Board or an officer of a society can be appointed to any post in the service of such society. Son-in-law, i.e. husband of the petitioner's daughter, cannot be appointed. If a doubt arises as to whether a person is or is not a near relative of a member of the board or of an officer of a society, the Board shall refer it to the Registrar for decision.

33. Rule 150 of the Tamil Nadu Co-Operative Societies Rules, 1988 deals with “Constitution of Recruitment Bureau” and procedure to be followed by Recruitment Bureau has been given in Rule 151 of the Tamil Nadu Co-Operative Societies Rules, 1988.

34. A society requires necessary staff for carrying out the day to day function. However, the society is required to fill up the vacancies in accordance with the provision of the Tamil Nadu Co-Operative Societies Act, 1983 and Rules made thereunder.

35. In case the Board of Directors of the second respondent took a



W.P.No.13773 of 2021

decision to appoint the person on temporary basis, it was the duty of the petitioner to caution the Board of Directors that such appointments would be contrary to the provisions of the Tamil Nadu Co-Operative Societies Act, 1983 and Rules made thereunder.

36. A Secretary / Chief Executive Officer of the second respondent Society, the petitioner ought to have been aware of the provisions of the Tamil Nadu Co-Operative Societies Act, 1983 and Rules made thereunder, particularly, the above provisions as he has rendered more than 30 years of service as the Secretary with the third respondent.

37. Though the decision to recruit the persons on temporary basis was of the Board of Directors, it was the duty of the petitioner as the Secretary to inform the Board of Director regarding the above legal position.

38. It appears that the second respondent Society was started in the year 2013. Even before the petitioner joined, one Ponmudi was already serving as a temporary staff. The appointments of three others on a



W.P.No.13773 of 2021

temporary basis were made during the period when the petitioner was serving as the Secretary of the second respondent Society. All these persons were initially receiving wages on daily basis and thereafter on a consolidated wage / salary. Services of all the four persons have been discharged. However, Kumaravel (the son-in-law of the petitioner) and Senthilmurugan had filed Writ Petitions in W.P.Nos.13227 and 13228 of 2021 respectively, to forbear the second respondent from terminating their services.

39. Though the third respondent, in its counter affidavit, has stated that the petitioner is not guilty of any dereliction of duty. It appears that the petitioner is being victimized on account of the fact that the petitioner's son-in-law was appointed as a temporary staff during the period when the petitioner was holding additional charge as the Secretary of the second respondent Society.

40. Whether the petitioner had indeed informed the Board of Directors and also the first respondent, is a matter of fact which cannot be decided though the third respondent has supported to the case of the



W.P.No.13773 of 2021

petitioner.

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41. In my view, the petitioner has to answer to the charges in the respective proceedings initiated pursuant to the directions of the first respondent. It cannot be decided in this proceeding. Further, disciplinary proceedings and surcharge proceedings cannot be scuttled even if the petitioner may have a case. It has to be decided only in those proceedings as law has been set in motion. This Court cannot intervene to stall such proceedings.

42. Under these circumstances, I am inclined to dismiss this Writ Petition by directing the respondents to complete the disciplinary proceedings and surcharge proceedings initiated against the petitioner within a period of 12 months from the date of receipt of receipt of a copy of this order, in an unbiased manner.

43. It is made clear that these proceedings shall be conducted in an unbiased manner by ensuring that there is a fair play. If there are documents to substantiate that the petitioner had indeed cautioned the



W.P.No.13773 of 2021

second respondent regarding the irregular appointments, the proceedings initiated may be dropped considering the fact that the petitioner is facing the proceedings long after the appointments were made when the petitioner was holding additional charge as the Secretary of the second respondent Society.

44. As far as the delay in recovering the interest from the members of the second respondent Society is concerned, if the amounts were collected / deducted by the Transport Corporation but were not remitted back to the society, same also may not be considered unfavourably against the petitioner.

46. This Writ Petition stands dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

04.11.2022

Internet : Yes/No
Index : Yes / No
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W.P.No.13773 of 2021

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- 1.The Deputy Registrar of Co-operative Societies,
O/o. Deputy Registrar of Co-operative Societies,
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WEB COPY



W.P.No.13773 of 2021

C.SARAVANAN, J.

Jen

Pre-Delivery Order
in
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04.11.2022