



W.A(MD)No.1157 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

W.A(MD)No.1157 of 2011

Dr.Philip Jeya Singh

:Appellant/Petitioner

.VS.

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Cooperative Department,
Fort St. George,
Chennai – 9.

2.The Joint Registrar of Cooperative Societies,
Thoothukudi Region,
Thoothukudi.

3.Nazareth Urban Cooperative Bank,
Rep. by its Special Officer, Nazareth,
Thoothukudi District.

: Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to allow this writ appeal and set aside the order passed on 20.12.2010 in W.P.No.24530 of 2001 and allow the writ petition as prayed for.

For Appellant
For R-1 & R-2

:Mr.N.Dilip Kumar
:Mr.J.K.Jeyaseelan,
Government Advocate
:Mr.G.Prabhu Rajadurai

For R-3



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JUDGEMENT

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**R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.**

This appeal is at the instance of the petitioner in W.P.No.24350 of 2001 challenging the dismissal of the said writ petition.

2. The facts leading to the writ petition are as follows:

The appellant/writ petitioner has joined as Accountant in the third respondent Bank in the year 1973. He was promoted as Assistant Secretary on 04.10.1974. On 01.07.1977, he was promoted as Secretary. While he was working as the Secretary, on a complaint by one Varuvel Yesuvadiyan, father of one Anthony Sekar, who was working as a Clerk in the third respondent Bank and was dismissed from service, a show-cause notice was issued to the appellant on 15.04.1989. The appellant gave explanation on 31.05.1989. Accepting the explanation, the Board dropped further proceedings on 10.06.1989. Thereafter, Special Officer of the Society, took charge and issued a charge memo on 09.05.1990. This charge memo was challenged by the appellant in W.P.No.6191 of 1990 and the said writ petition was referred to a Full Bench on the issue of maintainability of a writ petition against the



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Co-operative Society and the Full Bench held against the appellant. The attempt by the appellant to have the order of the Full Bench overturned by the Honourable Supreme Court also failed. Even during the pendency of the said writ petition, the appellant was removed from service on 14.05.1999. After dismissal of the writ petition, the appellant preferred an appeal before the appellate authority which was rejected on the ground that it was time barred. Thereafter, the appellant filed a revision before the Joint Registrar. The Joint Registrar did not dispose of the revision petition. The appellant filed another writ petition in W.P.No.3634 of 1995 seeking early disposal of his revision by the Joint Registrar. After an order was passed in the writ petition, the Joint Registrar disposed of the appellant's revision on 30.07.1998 revising the punishment to one of demotion as Assistant Secretary. Since the order of the Joint Registrar was not implemented, the appellant gave a letter to the third respondent Bank seeking implementation of the order on an undertaking not to file an appeal against the order. This undertaking was given on 16.10.1998. He also undertook not to claim back wages. Immediately, on receipt of the said letter, on 21.10.1998, order of the Joint Registrar was implemented. The appellant was taken in service as Assistant Secretary. Thereafter, the appellant filed a revision under Section 153 of the Tamil Nadu Co-operative Societies Act, to the Government of Tamil Nadu, challenging the order of the Joint Registrar. The Government by the order impugned in the writ petition held that



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4. The next question will be as to whether the writ petition should be remanded to the writ Court or not. In normal circumstances, we would have remitted the writ petition to the writ Court. In this case, the appellant, as on today, is aged about 77 years and if it is relegated to the writ Court, he has to wait in the queue to get his monitory benefits. We therefore, proceed to examine the case of the appellant on merits.

5. The only complaint against the appellant was that he had given sale deed of his immovable property to the Society as job security. It is the consistent finding of all the authorities that the Society did not have the habit of receiving immovable property as job security. A fidelity security is also given by the employees. It is not known under what circumstances, the sale deed was handed over to the Society by the appellant. Merely because he has handed over the sale deed containing a larger extent of property after having sold a part of the property, it cannot be construed that there was intention on the part of the appellant to cheat the Society. It would not amount to misconduct.

6. We should also point out that a show-cause notice was issued by the Board of the third respondent Bank on 15.04.1989 and on 10.06.1989, the Board has dropped the entire proceedings. Therefore, the proceeding that commenced with the charge memo on 09.05.1990, in our considered opinion, is



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wholly without jurisdiction. Unfortunately, the authorities have failed to advert to this aspect. Even assuming that the proceedings initiated by the charge memo dated 09.05.1990 are valid, in the absence of any provision in bylaws of the Society requiring an employee to give immovable property as job security, the fact that the appellant has furnished a sale deed, cannot be construed as a misconduct. Even the Government has found that there was no such requirement. It is also not stated that under what circumstances, the sale deed was handed over to the third respondent Bank.

7. In such circumstances, we are unable to sustain the order of punishment. The order of punishment has to be set aside and is accordingly set aside. The writ petition still stand allowed.

8. We however make it clear that the appellant had given up his claim for back wages. Therefore, he would be entitled to pay protection as if he had continued his service as a Secretary till his retirement. Pensionary benefits shall be calculated as if he continued as Secretary and the arrears of pension shall be paid within six months from the date of receipt of a copy of this order.



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In the result, the writ appeal is allowed. No Costs.

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[R.S.M.,J.] [N.S.K.,J.]
13.04.2022

Index: Yes/No
Internet: Yes/No
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To

1. The Secretary,
Government of Tamil Nadu,
Cooperative Department,
Fort St. George,
Chennai – 9.
2. The Joint Registrar of Cooperative Societies,
Thoothukudi Region,
Thoothukudi.



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JUDGMENT MADE IN

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13.04.2022



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R.SUBRAMANIAN, J.

and

N.SATHISH KUMAR, J.

Today, this matter is listed under the caption “for being mentioned”.

2.While disposing of the Writ Appeal, we had stated that the appellant would be entitled to pensionary benefits. It is now brought to our notice that the appellant was not holding a pensionable post. Therefore, the order should read as retirement benefits instead of pensionary benefits.

3.Hence, the word “Pensionary” is substituted by “Retirement” and the word “arrears of pension” will stand substituted by “retirement benefits” in Paragraph 8 of the order dated 13.04.2022.

4.In the said order dated 13.04.2022, we had directed that the arrears of pension (now substituted as retirement benefits) shall be paid within six months from the date of receipt of a copy of this order. Since already two months have lapsed, Registry is directed to substitute the word “four months” instead of “six months” in the Paragraph 8 of the order dated 13.04.2022.



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R.SUBRAMANIAN, J.
and
N.SATHISH KUMAR, J.

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5.In view of the above, paragraph 8 of the order dated 13.04.2022 should read as follows:-

“8.We however make it clear that the appellant had given up his claim for back wages. Therefore, he would be entitled to pay protection as if he had continued his service as a Secretary till his retirement. Retirement benefits shall be calculated as if he continued as Secretary and the retirement benefits shall be paid within four months from the date of receipt of a copy of this order.”

5.Registry is directed to carry out the amendment and issue amended copy of the order.

(R.S.M.,J.) (N.S.K.,J.)
08.07.2022

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