



W.P(MD)No.15132 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.08.2022
DELIVERED ON : 08.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.15132 of 2013
and
M.P(MD)Nos.1 & 2 of 2013

Raveendran

... Petitioner

Vs.

- 1.The Registrar of Co-operative Societies,
E.V.R.Salai, Kilpauk,
Chennai-600 010.
- 2.The Additional Registrar of Co-operative
Societies, (Sale, Planning & Development),
E.V.R.Salai, Kilpauk,
Chennai-600 010.
- 3.The Joint Registrar & Co-operative Societies,
Nagercoil,
Kanyakumari District.
- 4.The Deputy Registrar of Co-operative Societies,
Thuckalay, Kanyakumari District.
- 5.The Secretary,
No.674, Thiruvattar Primary Co-operative Society,
Thiruvattar & Post,
Kanyakumari District.

... Respondents



W.P(MD)No.15132 of 2013

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to order of the second respondent in Na.Ka.No.91407/2012 Sapa 3, dated 24.05.2013, confirming the order of the third respondent in Na.Ka. 4216/02/Sa.Pa., dated 28.05.2010, permanently disqualifying the petitioner from holding any office of any registered Societies in future under Section 36 of the Tamil Nadu Co-operative Societies Act and quash the same.

For Petitioner : Mr.C.K.M.Appaji

For Respondents : Mr.P.Thilak Kumar
Government Pleader
Mr.M.Ramesh
Government Advocate

ORDER

The present Writ Petition has been filed challenging an order passed by the second respondent herein, confirming the order of the third respondent, under which, the writ petitioner was permanently disqualified from holding any office of any registered society under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983.



W.P(MD)No.15132 of 2013

2. According to the petitioner, he was the president of Thiruvattar Primary Agricultural Co-operative Bank between 1996 and 1999. During the said tenure, there was no allegation as against the writ petitioner. After completing the tenure from his office, surcharge proceedings were initiated under Section 87 of the Tamil Nadu Co-operative Societies Act and an order was passed as against him on 09.10.2002. The main allegation on which such proceedings were initiated was that certain irregular appointments and promotions were made during his tenure in office.

3. The petitioner further contended that the order passed in the said surcharge proceedings was challenged by him along with others, in C.M.A (C.S)No.11 of 2003 on the file of the District Court / Cooperative Tribunal, Kannyakumari at Nagercoil. The learned District Judge was pleased to hold that the appointments were effected only pursuant to a settlement arrived at under Section 12 (3) Industrial Disputes Act on 07.10.1999. In view of the above said fact, the appeal filed by the writ petitioner was allowed and the surcharge proceedings were set aside on 17.04.2009. Immediately thereafter, notice was issued to the respondents, why action should not be initiated for permanently disqualifying him under Section 36 of the Tamil Nadu



W.P(MD)No.15132 of 2013

Co-operative Societies Act.

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4. As per the said notice, four charges were levied as against the writ petitioner. The first charge relates to irregular appointment of two persons. The second charge related to grant of irregular promotion to certain employees. The third allegation related to the fact that after expiry of the lease term, the petitioner has not taken any steps for renewal of the lease of the shops belonging to the Co-operative Society. The fourth allegation related to the fact that the petitioner, without obtaining administrative sanction, had utilized the general fund of the society.

5. After enquiry, an order was passed on 28.05.2010 by the third respondent herein, finding the petitioner as delinquent with regard to the first three charges and discharging the writ petitioner from the charge of improper utilisation of societies general funds. The said order passed by the third respondent herein was challenged by the writ petitioner before the second respondent. The second respondent by his order, dated 24.05.2013, has confirmed the order passed by the third respondent herein. The said order is under challenge in the present writ petition.



W.P(MD)No.15132 of 2013

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6. The learned Counsel for the petitioner has contended that as far as the allegation relating to appointment of two persons, namely, Chandrasekaran and Melba Chinnarani are concerned, those appointments were effected only based upon a settlement arrived at under Section 12(3) of the Industrial Disputes Act. The services of those employees were regularised and later ratified by the successor, namely, the Special Officer.

7. The learned Counsel for the petitioner has further contended that as far as the promotion of four employees are concerned they were also ratified and by the successor in administration, namely, the Special Officer. No proceedings were initiated either as against those newly appointed persons or as against the promoted persons for any recovery or any proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act. The concerned beneficiaries of these orders are still working in the Co-operative Bank. Hence, the allegation as against the writ petitioner is not legally sustainable.



W.P(MD)No.15132 of 2013

WEB COPY

8. The learned Counsel for the petitioner has further contended that as far as the non renewal of the lease relating to the shops are concerned, the lease deed came to an end only on 31.03.1997. Even thereafter, the tenants continued to pay the rent regularly. The tenure of the petitioner came to an end in 1999 and even, thereafter, the Special Officer who had assumed office had also could not renew the lease in view of administrative difficulties. Hence, the said allegation is not legally sustainable.

9. The learned Counsel for the petitioner has contended that after the proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act were set aside by the competent authority, namely, the Co-operative Tribunal, the respondents have initiated the proceedings under Section 36 of the Tamil Nadu Co-operative Societies Act without any jurisdiction. Hence, he prayed for allowing the writ petition.

10. Per contra, the learned Counsel for the respondents have contended that the scope of proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act are completely different from the scope of



W.P(MD)No.15132 of 2013

proceedings under Section 36 of the Co-operative Societies Act. Merely because, the proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act were set aside by the Co-operative Tribunal, it will not be a bar for the authorities to initiate action under Section 36 of the Co-operative Societies Act. He further contended that the appointments made during the tenure of the writ petitioner are irregular in nature and without obtaining any prior permission from the competent authorities. He further contended that the writ petitioner has granted promotion to various persons without considering the financial status of the Co-operative Bank. He further contended that the petitioner having been the President of the Co-operative Bank ought to have taken steps to renew the lease of all the shops, for which the lease is expired on 31.03.1997. In view of the non renewal of the lease, the Bank has incurred huge loss. Hence, the order passed by the respondent authorities disqualifying the petitioner from future participation in the administrative process is legally sustainable.

11. I have carefully considered the submissions made on either side.



W.P(MD)No.15132 of 2013

WEB COPY

12. There is no dispute that surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act was initiated as against the writ petitioner. The main ground on which the said surcharge proceedings were initiated was that the petitioner while he was the president of the Co-operative Bank had made irregular appointments and has granted promotion to certain persons without any prior sanction or considering the financial aspects of the Co-operative Bank. The Co-operative Tribunal while setting aside the proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act has held that the appointments are pursuant to a settlement arrived at under Section 12(3) of the Industrial Disputes Act. The Co-operative Tribunal has also found that the promotions effected during the petitioner's tenure have not been set aside. The Tribunal has further found that none of the beneficiaries have been questioned about the benefits and no further action has been initiated as against the beneficiaries. On the said findings, the order under Section 87 of the Tamil Nadu Co-operative Societies Act has been set aside by the Tribunal.



W.P(MD)No.15132 of 2013

13. Immediately after setting aside of the proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, proceedings under Section 36 of the Co-operative Societies Act have been initiated by the respondent authorities. Four charges have been framed as against the writ petitioner and others. Out of the four charges, one charge relating to the expenses from the general fund of the Society has already been held to be not proved by the Original Authority. The other three allegations related to irregular appointment, irregular promotion and non renewal of lease of the shops belonging to the Co-operative Bank.

14. Two employees have been appointed by the Co-operative Bank during the tenure of the writ petitioner. Those employees have initiated a proceedings under the Industrial Disputes Act and by way of a settlement under Section 12(3) of the Industrial Disputes Act, their appointments have been regularised. The said regularization has also been accepted by the successor, namely, the Special Officer and no proceedings have been initiated as against the beneficiaries.



W.P(MD)No.15132 of 2013

15. As far as the promotion of one Usha Kumari, Kalaiselvi, Thiagarajan and Krishi Kesavan are concerned, their promotions were also ratified by the successor in administration of the society, namely, the Special Officer. No proceedings have been initiated as against the beneficiaries of the said promotion order. At no point of time, any action was initiated as against them for irregular promotion or demoting them or to recover the salary received by them in the promoted post.

16. As far as the case of non renewal of the lease is concerned, admittedly the lease of the shops had expired on 31.03.1997. This allegation has been introduced for the first time during Section 36 proceedings which did not find a place in Section 87 proceedings. Even after the expiry of the lease, rent was regularly paid by the concerned lessees. Hence, the allegation that the petitioner was receiving the same rent from 1994 onwards is clearly factually incorrect. The petitioner became a member of the Board only in the year 1996. The lease is for the period up to 31.03.1997. The petitioner demitted his office in 1999. Hence, the allegations as against the writ petitioner are not sustainable in law.



W.P(MD)No.15132 of 2013

17. Since one of the allegations have already been held to be not proved by the Original Authority and this Court has arrived at a finding that the rest of the charges as against the petitioner are also not legally sustainable, the impugned order passed by the third respondent herein, confirming the order of the second respondent herein are not legally sustainable. In view of the above said facts, the writ petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

08.09.2022

Index : Yes / No
Internet : Yes / No
btr

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W.P(MD)No.15132 of 2013

R.VIJAYAKUMAR, J.

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W.P(MD)No.15132 of 2013

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