



W.P(MD)No.23151 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.23151 of 2022

and

W.M.P.(MD)No.17252 of 2022

S.Jeyaraman

... Petitioner

Vs.

1.The Regional Joint Registrar of Co-operative Societies,
Thoothukudi Region,
Thoothukudi.

2.The Deputy Registrar of Co-operative Societies,
Kovilpatti,
Thoothukudi District.

3.S.Ponraj
Former President of Board of Directors
of TN.Spl.62, Saminatham PACS Ltd.,
Saminatham (Post),
Ottapidaram Taluk,
Thoothukudi District.

4.TN.Spl.62.Saminatham Primary Agricultural
Cooperative Credit Society Ltd., rep. by its,
President of Board of Directors,
Saminatham (Post),
Ottapidaram Taluk,
Thoothukudi District.

5.The Registrar of the Co-operative Society



W.P(MD)No.23151 of 2022

Kilpauk, Chennai.

(R5 is *suo motu* impleaded vide order dated 07.11.2022 by this Court)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the suspension Order Na.Ka.9892/2015, Tho.Ve.Koo.Sa. dated 06.09.2022 passed by the 1st respondent and quash the same and consequently, direct the respondents to grant the service and monetary benefits from 06.09.2022 within a time limit to be fixed by this Court.

For Petitioner : Mr.A.Thirumurthy

For R1, R2 & R5 : Mr.R.Raghavendran
Government Advocate

ORDER

Heard the learned counsel on either side.

2. The writ petitioner questions the impugned order dated 06.09.2022 whereby he has been suspended by the Regional Joint Registrar of Co-operative Societies, Thoothukudi Region. The writ petitioner was working as Secretary to TN.Spl.62.Samintham Primary Agricultural Co-operative Society Ltd., Saminatham. He was suspended from service vide order dated 09.12.2016. Disciplinary action was initiated and he was finally removed from service vide order dated 11.04.2018. Questioning the punishment imposed on him by the



W.P(MD)No.23151 of 2022

management, the petitioner filed a revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 before the Regional Joint Registrar of the Co-operative Society / R1 herein. The first respondent vide order dated 06.02.2019 dismissed the revision petition but gave liberty to the petitioner to approach the board that may be newly elected. Availing the said liberty, the petitioner submitted a review petition before the newly elected board. The newly elected board after getting legal opinion passed a resolution dated 07.08.2019 resolving into take back the petitioner into service. The proceedings were also duly issued in that regard. The petitioner has been working as secretary of the society ever since. He has also been drawing his salary. While so, by the impugned order, the petitioner has been suspended from service.

3. The learned counsel appearing for the petitioner while reiterating all the contentions set out in the affidavit filed in support of the writ petition contended that the writ petitioner has been suspended from service on the same cause of action for the second time. His further contention is that once the petitioner was reinstated in service and the earlier disciplinary action stood terminated, the question of re-opening the same does not arise and that too after a lapse of three years.



W.P(MD)No.23151 of 2022

4. On the face of it, the contentions advanced by the learned counsel appearing for the petitioner are formidable. But as rightly pointed out by the learned Government Advocate, the sequence of events suggest something to the contrary. Let me catalog them by one by one. The petitioner was removed from service on 11.04.2018. The petitioner filed Revision Petition No.6 of 2018 before the first respondent. The first respondent dismissed the Revision Petition on 06.02.2019. He did not go into the merits of the matter. Instead, liberty was given to the petitioner to move the board that may be constituted afresh. Subsequently, on 12.02.2019, Tamil Nadu Primary Agricultural Co-operative Credit Societies Common Cadre Service Rules, 2019 were issued constituting Common Cadre Service. The Secretary of the Co-operative Societies is one of the posts that fall within the Common Cadre Service. As per Sub Rule (4) of Rule 3, for the first three years from the date of constitution of the Common Cadre Service, the Joint Registrar would be the competent authority. From the 4th year onwards, the Committee would ask as the competent authority. Rule 3 of the Tamil Nadu Primary Agricultural Co-operative Credit Societies Common Cadre Service Rules, 2019 is as follows:-

3.Constitution of Common Cadre Service:- (1) The Common Cadre of Service shall be maintained separately for 'A' Class Primary Agricultural Co-operative Societies, 'B' Class Primary Agricultural Co-operative Credit Societies and



W.P(MD)No.23151 of 2022

'C' Class Primary Agricultural Co-operative Credit Societies.

Explanation I: For the purpose of these rules, 'A' Class Primary Agricultural Co-operative Society means the Primary Agricultural Co-operative Credit Society which are working with continuously five years in Net Profit, 'B' class Primary Agricultural Co-operative Credit Society means the Primary Agricultural Co-operative Credit Society which are working in current profit during some years in the last five years but with cumulative loss and 'C' Class Primary Agricultural Co-operative Credit Society means the Primary Agricultural Co-operative Credit Society working with accumulated loss and current loss.

Explanation-II- (1) Any new Primary Agricultural Co-operative Credit Society registered under the Act after the constitution of the Common Cadre shall be classified as 'B' class Primary Agricultural Co-operative Credit Societies for a period of five years from the date of registration of the Society.

(2) The post of Secretary of the Primary Agricultural Co-operative Credit Societies in the district concerned shall from the respective Primary Agricultural Co-operative Credit Societies Common Cadre Service.

(3) All the employees holding the post of Secretary of Primary Agricultural Co-operative Credit Societies shall be deemed to have been absorbed in the respective Common Cadre Service. For any such employee not willing to become a member of the said Service, second proviso to sub-section (2) of Section 75 of the Act will apply.

4 For the first three years from the date of constitution of the Common Cadre of Service, the Joint Registrar of Co-operative Societies, Chennai shall be the Competent Authority (hereinafter called “Common Cadre Authority”) in respect of the Primary Agricultural Co-operative Credit Societies:-

- (I) The Regional Joint Registrar of Co-operative Societies
of the respective Region. : Chairman
- (II) The Managing Director of the respective Central
Co-operative Bank : Member-Secretary
- (III) The Circle Deputy Registrar of Co-operative
Societies at the District headquarters : Member



W.P(MD)No.23151 of 2022

(IV) The President of the Primary Agricultural
Co-operative Credit Society in the district
with the highest working capital to be nominated
by the respective Central Co-operative Bank. : Member

5. The member-Secretary shall, in consultation with the Chairman, convene
the meetings of the Common Cadre Authority as and when necessary.

5. When the order dated 06.02.2019 was passed by the first respondent, he was not the Common Cadre Authority. He was exercising only the power of revisional authority under Section 153 of the Tamil Nadu Co-operative Societies Act. My attention is not drawn to any of the provisions in the bylaws which will confer power on the board to review an order of punishment that has already been passed. Right or wrong the writ petitioner was dismissed from service vide order dated 11.04.2018. It could have been set aside only in the manner known to law. The board did not possess the power of review. It is well settled that the power of review must be expressly conferred. There is no inherent power of review or implied power of review. The Joint Registrar did not set aside the dismissal order. Merely because, the Joint Registrar gave liberty to the writ petitioner to move the board, the board will not acquire the power to review the order of punishment. If an authority does not otherwise possess the power, he cannot be conferred with the power. What is not originally there cannot be injected by the revisional authority. I have to hold



W.P(MD)No.23151 of 2022

that the order passed by the board reinstating the petitioner in the year 2019 was nullity in law. In my view, there was no necessity to even pass the impugned order of suspension. However, at the same time, the petitioner cannot be left remediless. He had availed his revisional remedy and his revision petition deserves disposal on merits.

6. In this view of the matter, Revision No.06 of 2018 that was disposed of on 06.02.2019 will stand restored to file. The impleaded respondent namely the Registrar of the Co-operative Society, Kilpauk, Chennai is directed to dispose of the said revision on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. The petitioner will be heard in person. All the contentions of the petitioner are left open. I make this observation specifically because the learned counsel appearing for the petitioner took me through the scheme of the byelaws and contended that the order of punishment imposed of him was illegal. If the Registrar of Co-operative Society, Chennai under Section 153 of the Act finds dismissal order dated 11.04.2018 to be illegal, the petitioner will be deemed to be continued in service. In other words, the rights of the petitioner will abide by the order to be passed by the Registrar of the Co-operative Society.



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W.P(MD)No.23151 of 2022

G.R.SWAMINATHAN, J.

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7. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

07.11.2022

Index : Yes / No
Internet : Yes/ No
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To

- 1.The Regional Joint Registrar of Co-operative Societies,
Thoothukudi Region,
Thoothukudi.
- 2.The Deputy Registrar of Co-operative Societies,
Kovilpatti,
Thoothukudi District.
- 3.The Registrar of the Co-operative Society
Kilpauk, Chennai.

W.P(MD)No.23151 of 2021

07.11.2022