



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.18574 of 2018

and

W.M.P. (MD) .No.16433 of 2018

P.Xavier Raj

... Petitioner

Vs.

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

2.The President,
Y.192, Kolvel Primary Agricultural
Co-operative Credit Society Limited,
Varuvilai,
Kolvel,
Thiruvarambu,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the impugned order passed in Na.Ka.No.91/2018/Sa.Pa, dated 09.08.2018, on the file of the second respondent and to quash the same as illegal.

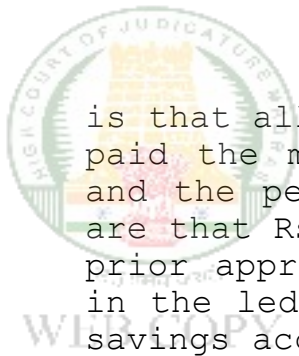
For Petitioner : Mr.K.R.Laxman

For Respondents : Mr.P.Thambidurai,
Government Advocate (Civil Side).

ORDER

This Writ Petition has been filed to quash the impugned order dated 09.08.2018.

2. The petitioner was appointed as Writer in the second respondent Society on 17.03.1999. Thereafter, he was transferred from the post of Writer and appointed as Salesman in the second respondent Society on 14.02.2009. Based on certain allegations, Section 81 inquiry was conducted. The contention of the petitioner



is that all these allegations were accepted by the Secretary and has paid the misappropriation amount along with the interest of 12.5% and the petitioner is innocent. The charges against the petitioner are that Rs.40,000/- was paid for renovation of the building without prior approval and Rs.13,000/- paid to one Radha has not mentioned in the ledger book and Rs.5,000/- has been misappropriated from the savings account of Thulasi Cooperative Society. Upon those charges, the petitioner was terminated from service vide order dated 21.12.2017. The petitioner preferred Review under Section 153 of the Tamil Nadu Cooperative Societies Act and the second respondent has appeared before the first respondent and the Review Authority by setting aside the termination order has passed the review order dated 27.07.2018. However, the review authority has passed the impugned order dated 09.08.2018 thereby cancelled his own review order stating that under Section 154 of Cr.P.C. under Crime No.1 of 2017 is pending before the Criminal Court. Therefore, the cancellation of the disciplinary proceedings is in accordance to law. Aggrieved over the said order, the petitioner preferred the Writ Petition.

3. The first respondent has filed a counter stating that based on the Section 81 inquiry report, Domestic Enquiry was conducted and the petitioner was terminated vide order dated 21.12.2017. Based on the resolution of the Society, the petitioner preferred Review Petition under Section 153 and the same was allowed. The pendency of the criminal case against the petitioner was not brought to the review authority. Therefore, the review authority has passed the impugned order setting aside the review petition allowed vide order dated 27.07.2018. According to the respondents, the petitioner has committed misappropriation along with the Secretary and other employees. The petitioner is working as the Salesman and under Section 81 Enquiry, the petitioner's name is also there. Therefore, the disciplinary proceeding has initiated disciplinary proceedings, since the pendency of the criminal case was not brought to the knowledge of the review authority, the review authority has passed the said order. Thereafter, after taking into consideration of the criminal proceedings, the review authority has passed the present impugned order. Hence prayed to dismiss the Writ Petition.

4. Heard Mr.K.R.Laxman, learned counsel for the petitioner and Mr.P.Thambidurai, learned Government Advocate (Civil Side) for the respondents.

5. It is seen from the records that the review authority has set aside the review order since there is a criminal case pending. This Court has held that the criminal proceedings, arbitration proceedings, surcharge proceedings, disciplinary proceedings are independent to each other. The authority ought to consider based on the facts placed before them whether the disciplinary proceeding ought to be initiated. In the present case,



the petitioner has misappropriated Rs.13,000/- from an account by not entering the transaction in the ledger and also he has misappropriated Rs.5,000/- from the savings account. For these two charges, the petitioner submitted that the Secretary has misappropriated and she has accepted the guilt and paid the amount along with 12.5% interest. Moreover, the petitioner is only working as a Salesman and he has nothing to do with the transaction. The third charge is that the petitioner has received Rs.40,000/- to repair the office and spent Rs.15,000/- to white wash the building, thereby, caused loss to the Society. Since the petitioner is working as a Salesman, repairing the building or white washing the building, such decisions are taken by the Secretary or the Trustees. Therefore there is nothing to do with the petitioner. Moreover, the petitioner submitted that he was working in the said second respondent Society until 2009. Thereafter, he was transferred to a Fair Price Shop in the year 2009 vide order in Na.Ka.No.1/2009 dated 14.2.2009 and he has already handed over the charge keys etc., on 14.12.2009 itself. As per the allegations, the misappropriated amount of Rs.13,000/- and Rs.5,000/- has taken place on 25.04.2011 and 27.08.2011. During that period, the petitioner was not serving in the second respondent Society at all, since he was already transferred to some other Fair Price Shop.

6. By taking all these facts into consideration, the impugned order revoking the earlier Revision Petition is not in accordance to law. Therefore, this Petition is allowed and the original review order is restored. The petitioner is entitled to back wages from the date of original review order dated 27.07.2018 and not prior to the review order and continuity of service and other benefits are entitled. The respondents shall implement this order within a period of six (6) weeks from the date of receipt of a copy of this order.

7. With the above observations, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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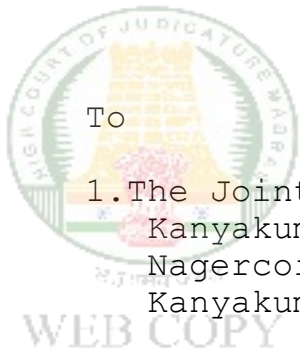
/ /2022

Sub Assistant Registrar(CS)

Nsr

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/interim agent concerned.

<https://hcservices.courts.gov.in/hcservices>



To

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2.The President,
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Kanyakumari District.

+1 CC to M/s.K.R. LAXMAN, Advocate (SR-18037[F] dated 12/04/2022)

+1 CC to M/s.SPL.GP. (SR-18366[F] dated 12/04/2022)

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RD(10.06.2022) 4P 5C