



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.9066 of 2016

and

W.M.P. (MD) .No.7202 of 2016

S.Kalimuthu

... Petitioner

Vs.

1.The Registrar of Co-operative Societies,
N.V.Natarajan Maligai,
170, E.V.R. Periyar High Road,
Kilpauk,
Chennai - 600 010.

2.The Joint Registrar of Co-operative Societies,
The Joint Registrar's Office,
Marthandapuram 2nd Street,
Pudukkottai Town and District.

3.The Deputy Registrar of Co-operative Societies,
The Deputy Registrar's Office,
Kamatchiamman Kovil Street,
Aranthangi Town and Post,
Pudukkottai District.

... 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 pertaining to Na.Ka.No.3016/2014/A1 dated 27.04.2016 passed by the second respondent herein, quash the same as illegal and arbitrary and consequently direct the respondents to allow the petitioner to retire along with his all retirement benefits.

For Petitioner : Mr.K.Baala Sundharam

For Respondents : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

ORDER

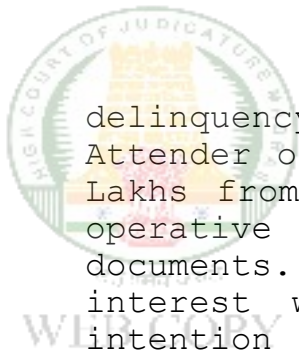
This Writ Petition has been filed challenging the impugned order dated 27.04.2016 with a consequential prayer to direct the respondents to allow the petitioner to retire along with his retirement benefits.



2. The brief facts of the case are that the petitioner was appointed as Junior Inspector and subsequently promoted as Senior Inspector then promoted as Co-operative Sub-Registrar and then as Field Officer. However, the promotion was cancelled on the ground that the charge memo has been issued against the petitioner. The petitioner challenged the same in W.P. (MD) No. 12700 of 2010 and this Court vide order dated 14.10.2011 directed the first respondent to reconsider the case with regard to the panel for promotion for the year 2008 and the same was not considered. Then the petitioner was constrained to file Contempt Petition in Cont. P. (MD).No.291 of 2012 and the same is still pending. The allegations against the petitioner are when he was working as Special Officer / Administrator in Ponpethi Primary Agricultural Credit Cooperative Society from 04.10.2011 to 08.05.2013, he disbursed paddy produce loan to the members of the Society. The said loan amount was collected with interest and by attaching the properties for the default loan amounts. In the meanwhile, the petitioner was transferred to the third respondents office as Field Officer. The petitioner was placed under suspension vide order dated 05.10.2013 and the petitioner challenged the same in W.P. (MD) No. 17745 of 2013 and the same is pending.

3. In the meanwhile, an enquiry officer was appointed and the petitioner objected to the appointment of the enquiry officer since he was facing some criminal charges and hence, the petitioner requested to change the enquiry officer. But the same enquiry officer had conducted the enquiry. The enquiry officer without giving opportunity to the petitioner submitted his report on 26.08.2013. Based on that report, a complaint was forwarded to the Inspector of Police, C.C.I.W., Pudukottai on 10.01.2014 by the third respondent. Then a criminal case was registered in Crime No.1 of 2014, challenging the same the petitioner preferred CrI.O.P.No.14353 of 2015 to quash the FIR and the same is still pending. Then, the petitioner received a notice dated 30.10.2015 from the second respondent and the petitioner submitted a reply dated 01.03.2016. The petitioner again received notice on 15.04.2016 and submitted his explanation again on 23.04.2016. Thereafter the second respondent passed the order of dismissal on 27.04.2016 in Na.Ka.No.3016/2014/A1. The contention of the petitioner is that the order of dismissal dated 27.04.2016 was passed on the verge of petitioner's superannuation on 30.04.2016. Aggrieved over the same, the petitioner has filed this Writ Petition challenging the dismissal order dated 27.04.2016.

4. The respondents have submitted that the gist of the charges against the petitioner is that the petitioner caused financial loss to the tune of Rs.62.30 Lakhs by fabricating documents and creating false and bogus documents as if stocks were held in the Tamil Nadu Warehousing Godown, Pudukkottai towards disbursement of 21 numbers of "Produce Pledge Loan". In the above



delinquency the petitioner along with one Thiru. S. Raja, the Attender of the Society who has drawn cash to the tune of Rs.58.55 Lakhs from Avudayarkoil Branch of Pudukkottai District Central Co-operative Bank and disbursed the loan amount by cash on the false documents. 21 numbers of "Produce Pledge Loan" together with interest was closed fraudulently. The petitioner with malafide intention has created Savings Bank Accounts in respect of seven persons and has transacted an amount of Rs.17.58 Lakhs in the said accounts on false records and has taken an insurance policy with New India Assurance Company Limited for 8813 Paddy bags. However, the stocks were not available at the Thazhanur Godown at the time of insurance and hence the petitioner has not maintained absolute integrity and devotion of duty.

5. The petitioner has received charge memo on 06.01.2014 and submitted his explanation on 16.07.2014. In this occurrence, the Deputy Registrar/Personnel Officer, Office of the Joint Registrar of Cooperative Society, Pudukkottai Region was appointed as enquiry officer by the proceedings of the Joint Registrar of Co-operative Society. The enquiry officer submitted his report on 14.09.2015 and the enquiry report was forwarded to the petitioner. The petitioner instead of submitting the explanation has sought time for one more month. Then the petitioner finally submitted his explanation on 01.03.2016. The petitioner was also given personal opportunity on 29.03.2016. The enquiry report has held that the charges were proved. The amount is huge and the petitioner is liable for punishment and penalty. The petitioner has filed several writ petitions in order to obstruct the disciplinary proceedings. There is no merit in the Writ Petition and prayed to dismiss the Writ Petition.

6. Heard Mr. K. Baala Sundharam, learned counsel for the petitioner and Mrs. D. Farjana Ghoushia, learned Special Government Pleader for the respondents.

7. The learned counsel for the petitioner submitted that the impugned order of dismissal was passed by Joint Registrar of Co-operative Societies and he is not having any jurisdiction to pass an order. The appropriate authority is the first respondent. The learned counsel for the petitioner relied on judgment rendered in the proceedings of the Registrar of Cooperative Society in another case in Na.Ka.No.15170/2019/ONa.03 dated 22.02.2020 wherein it has been held that the appointing authority is the Registrar Cooperative Society and hence Joint Registrar has passed an order which is without jurisdiction and hence quashed the disciplinary proceedings initiated with regard to another person namely, Kalagar Meera Mohammed.

8. The learned Government Pleader submitted that the jurisdiction issue was not raised in this Writ Petition and the same cannot be raised at the time of argument and if this Court considers jurisdiction is acceptable, then the case may be



remitted back to the appropriate authority. There are several judgments wherein it states that the question of jurisdiction can be raised at any point of time. Therefore, by accepting the plea of jurisdiction, this Court is of the considered opinion that the impugned order is liable to be set aside.

WEB COPY 9. It is seen from the records that the petitioner has attained superannuation on 30.04.2016, but the petitioner was not allowed to retire. It is submitted that the surcharge proceedings and the criminal proceedings are initiated against the petitioner and the same was pending, but both the petitioner and the respondents are not able to state whether the arbitration proceedings were initiated. In such circumstances, the loss incurred can be ascertained only after the disposal of the surcharge proceedings and thereafter the loss can be recovered from the petitioner.

10. This Court has held that the respondent is not having jurisdiction and hence the respondents cannot proceed with the disciplinary proceedings and the impugned order is quashed. Since the petitioner has attained superannuation, this Court is of the considered opinion that the disciplinary proceedings cannot be proceeded further. In such circumstances, the petitioner is entitled to the terminal benefits. However, the loss ought to be quantified in the surcharge proceedings and then the pro rata liability ought to be fixed on the petitioner. The pro rata loss shall be retained by the respondents and the balance amount shall be paid to the petitioner. The said exercise shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar (CS-II)

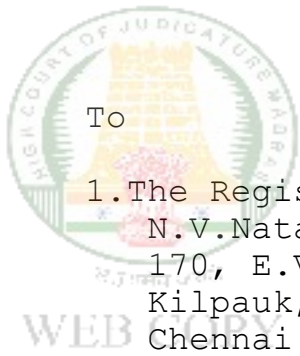
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Sub Assistant Registrar(CS)

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/litigant concerned.



To

- 1.The Registrar of Co-operative Societies,
N.V.Natarajan Maligai,
170, E.V.R. Periyar High Road,
Kilpauk,
Chennai - 600 010.
- 2.The Joint Registrar of Co-operative Societies,
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- 3.The Deputy Registrar of Co-operative Societies,
The Deputy Registrar's Office,
Kamatchiamman Kovil Street,
Aranthangi Town and Post,
Pudukkottai District.

+1 CC to M/s.SPL.GP. (SR-18985[F] dated 18/04/2022)

**ORDER MADE IN
W.P. (MD) .No.9066 of 2016
13.04.2022**

PKP/01.06.2022/5P/5C