



W.P(MD)No.25425 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.25425 of 2019

and

W.M.P(MD)Nos.2547 of 2022 & 21985 of 2019

Y.149 Malaiadi Primary Agricultural
Co-operative Credit Society Limited,
Malaiadi Post,
Kaniyakumari District.
Represented by its President.

... Petitioner

Vs

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

2.S.Chitra Leka

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order dated 04.07.2019 passed by the first respondent in Na.Ka. 5968/2017/Sa.Pa and quash the same as illegal.

For Petitioner : Mr.M.Jerin Mathew

For Respondents : Mr.R.Ragavendran
Government Advocate for R.1
Mr.M.N.Ramkumar for R.2



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ORDER

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Heard the learned counsel on either side.

2. The second respondent herein was employed as Clerk in the writ petitioner society. She was suspended from service on 23.06.2017. Later, she was dismissed from service vide proceedings dated 30.06.2017. Challenging the same, the second respondent filed a representation before the Board. The Board vide order dated 29.07.2017 directed her reinstatement. Challenging the same, the then President of the Society filed W.P(MD)No.20635 of 2017. He also obtained an order of interim stay. The writ petition came to be dismissed on 12.03.2019. In the meanwhile, the second respondent herein filed a representation / petition before the Joint Registrar of the Cooperative Societies, Kanyakumari District under Section 153 of Tamil Nadu Cooperative Societies Act, 1983. The representation / petition was allowed on 04.07.2019 and the dismissal order was held to be invalid and the Management was directed to pay backwages along with continuity of service. Challenging the said proceedings issued by the first respondent, this writ petition came to be filed.

3. The learned counsel appearing for the writ petitioner took me through the averments set out in the affidavit filed in support of the writ petition. He pointed out that the Management is not aggrieved by the order holding that the



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dismissal was patently invalid. They have grievance only regarding the direction to pay backwages. He also pointed out that the order was illegally made by the then President to which the Board was not a party.

4. When the matter was brought to the notice of the Board, the Board rightly ordered reinstatement. On account of the interim order granted in W.P(MD)No.20635 of 2017, the second respondent could not be taken back to service. Immediately after the dismissal of the writ petition filed by Thiru.Surendar Nair, the second respondent was allowed to join duty. Therefore, directing the Management to bear the financial burden arising out of the culpable act committed by the erstwhile President is not proper. The learned counsel for the petitioner also pointed out that before the Revisional Authority the prayer was two fold:

- a) To set aside the order of dismissal; and
- b) To treat the period of non-employment as one of duty.

No other relief was sought. The Revisional Authority went beyond the prayer by ordering payment of backwages. He called upon this Court to interfere with the impugned order to that extent.

5. Per contra, the learned counsel appearing for the second respondent submitted that the Management will have to bear the resulting consequences.



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He pointed out that admittedly the second respondent was thrown out of employment without holding an enquiry. There was a clear violation of principles of natural justice. The Revisional Authority was definitely entitled to pass an order for payment of backwages even it has not been specifically claimed. The learned counsel would further state that the second respondent had specifically called upon the Revisional Authority to treat the period of non-employment as one of duty. The resulting consequence is that the employee will also be paid backwages for the said period. He, therefore, submitted that the impugned order does not call for any interference.

6. I carefully considered the rival contentions and went through the materials on record.

7. I must sustain the stand of the writ petitioner that the Board cannot be faulted. The second respondent was unlawfully terminated by the then President. The President had taken action on his own. That is why when the second respondent petitioned the Board, they immediately directed her reinstatement. The order of reinstatement passed by the Board was put to challenge in W.P(MD)No.20635 of 2017. Still interim order of stay was operating in the said writ petition, the second respondent was not allowed to report for duty. When the writ petition was dismissed on 12.03.2019, the second respondent was immediately allowed to join duty. Therefore, the



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Management cannot be charged with any wrong doing. It is only Surendar Nair who has to be held responsible for keeping the second respondent out.

8. In these circumstances, the second respondent has to direct her claim only against the then President, namely, Surendar Nair. I, therefore, permit the second respondent herein as well as the petitioner to raise a dispute under Section 90 of the Tamil Nadu Co-operative Societies Act against Surendar Nair. The writ petitioner Society will also be arrayed as the respondent in the writ petition.

9. The learned counsel appearing for the writ petitioner states that they also have no objection for becoming co-applicant along with the second respondent herein in such proceedings. The jurisdictional Deputy Registrar will entertain such dispute and dispose of the same on merits and in accordance with law within a period of six months thereafter.

10. Since the petitioner also cannot be entirely absolved of liability, the writ petitioner is directed to pay a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) to the second respondent. This amount can very well be adjusted by the petitioner from and out of the arbitral award that may be passed by the jurisdictional Deputy Registrar of Co-operative Societies.



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11. With this direction to the writ petitioner and the aforesaid liberty to both the parties, the impugned order is interfered to the extent as indicated above. In other words, the order of the first respondent holding that the second respondent's dismissal is invalid is sustained. The direction that the period of non-employment should be treated as one of duty is also sustained. The direction regarding payment of backwages alone is interfered with to the extent mentioned above.

12. This writ petition is allowed accordingly. Consequently, connected miscellaneous petitions are closed. No costs.

19.09.2022

Index : Yes / No
Internet : Yes/ No
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To

The Joint Registrar of Co-operative Societies,
Nagercoil,
Kanyakumari.



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G.R.SWAMINATHAN, J.

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