



WEB COPY

W.P.(MD)No.20253 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.04.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.20253 of 2017

and

W.M.P. (MD)No.16508 of 2017

A.Rajinikanth

... Petitioner

vs

1. The Joint Registrar of Co-operative Societies,
Virudhunagar Collector Office Compound,
Virudhunagar District.

2. The Deputy Registrar,
Pandalkudi Road,
Aruppukottai, Virudhunagar District.

3. R.Ravichandran

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned suspension order dated 22.08.2016 issued by the 3rd respondent and quash the same as illegal and consequentially reinstate the petitioner into service.

For Petitioner : Mr.Chamundi Bose

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

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned suspension order dated 22.08.2016 and consequentially to reinstate the petitioner into service.

2. The petitioner was working as Secretary in the third respondent Society. The section 81 enquiry was conducted and even before the enquiry was initiated the petitioner was placed under suspension by the third respondent on 22.08.2016 and he is still under suspension. The petitioner was not paid any subsistence allowance despite his request, vide letter, dated 06.03.2017. An Enquiry Officer was appointed on 10.08.2016 and he has conducted the



enquiry and submitted his report dated 17.03.2017. The contention of the petitioner is that the enquiry was conducted but the petitioner was not enquired at all and the enquiry report was not served to the petitioner till date. Based on the report, the second respondent has forwarded a recommendation to the first respondent on 15.06.2017 to supersede the Board. Thereafter the first respondent has issued the impugned notice dated 10.07.2017 for supersession of the Board. Challenging the same, the petitioner has filed a writ petition in W.P.(MD)No.15961 of 2017 and this Court has granted stay of the proceedings vide order 24.08.2017. Subsequently the petitioner filed another writ petition in W.P.(MD)No.18598 of 2017 challenging the enquiry report dated 17.03.2017 and this Court has granted stay, vide order, dated 13.10.2017.

3. The contention of the petitioner is that the Society was Audited every year by the Department. No fault was recorded in the Audit report for the year 2015-2016. Even the Extension Office Co-operative (EOC) has not found any fault in functioning of the Society and the said officer has communicated to the second respondent, vide letter, dated 28.03.2016. The respondents have framed charges without giving the enquiry report to the petitioner. The petitioner submitted that the enquiry report has held the charges for misappropriation of jewel loan amount by the Secretary of the Society. The President and the Gold Appraiser were also charged for misappropriation along with the petitioner. The first charge is that the Secretary misappropriated by issuing 21 Jewel loans under Agricultural Scheme but the petitioner claims that the 21 Jewel loan (jewel packets) are there in the Society locker and the extract of the Register substantiates the same. The second charge is that the Secretary has redeemed the Jewel loans of the members by paying cash and has not returned the jewels to the members, but the contention of the petitioner that there is no complaint from any member that their jewels have not been returned to them by the Secretary and hence the 2nd charge is baseless and frivolous. The contention of the petitioner is that other charges from 3 to 9 charges the petitioner has denied the same. The contention of the petitioner is that there are factual discrepancies in the Enquiry Report and the enquiry was conducted without verifying the records and without obtaining any statement from the petitioners and other concerned persons. Therefore the petitioner prays to direct the respondents to revoke the suspension order and prayed to allow the writ petition.

4. The respondents have filed a counter affidavit and submitted that the enquiry report states that fraud has been committed. Forged documents and forged entries were submitted in order to get subsidies and there are misappropriation in the Savings Bank Account and EPF Account. The total misappropriation amount is Rs.93,13,886/-. The petitioner was appointed as Secretary and he



had joined as Secretary on 15.06.2011 and continued up to 29.08.2016. Pursuant to the order of the enquiry the petitioner was placed under suspension. Since the amount is huge, the petitioner cannot claim to revoke the suspension. Infact the criminal case was also initiated and the Society has preferred FIR in Cr.No.01/2016 dated 07.09.2016 under Section 406,408,471,477 (a), read with 34 of IPC on the file of the Inspector of Police, Commercial Crime Wing, Virudhunagar. Therefore, the petitioner is not entitled to revoke the suspension order.

5. Heard Mr. Chamundi Bose, learned Counsel appearing for the petitioner and Mr. P. Thambidurai, learned Government Advocate appearing for the respondents.

6. It is seen from the records that the enquiry was completed and the criminal case was initiated and the same is pending. The petitioner has challenged the enquiry report in W.P.(MD)No.18598 of 2017 and this Court has granted an order of Interim stay. The prolonged suspension in such circumstances will not serve any purpose. Since 81 enquiry was completed and all the evidence are recorded for subsequent prosecution and disciplinary proceedings etc.

7. At this stage the petitioner is entitled to revoke the suspension. Therefore, this Court is of the considered opinion that the petitioner is entitled to the relief. The respondents are directed to revoke the suspension and place the petitioner in a non-sensitive post and the respondents are directed to pay the subsistence allowance for the period of suspension. However, the petitioner is entitled to regularize the suspension period after all the enquiries are over.

8. With the above direction, the Writ Petition is allowed in above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr



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 Joint Registrar of Co-operative Societies,
Virudhunagar Collector Office Compound,
Virudhunagar District.
2. The Deputy Registrar,
Pandalkudi Road,
Aruppukottai,
Virudhunagar District.

+1 CC to M/s.CHAMUNDI BOSE, Advocate (SR-18534[F] dated 13/04/2022)

+1 CC to M/s.SPL.GP. (SR-18568[F] dated 13/04/2022)

W.P. (MD) No.20253 of 2017
12.04.2022

MGJ(20.05.2022) 4P 5C