



WEB COPY

W.P.No.1300



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.13008 of 2011
and M.P.Nos. 2 & 3 of 2011

S.Sadasivam
...Petitioner

vs.

1.The Joint Registrar of Coop. Societies,
Villupuram Region, Villupuram,
Villupuram District.

2.The Deputy Registrar of Coop. Societies/PDS,
Villupuram,
Villupuram District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order passed by the 1st respondent in her proceedings Na.Ka.3520/2010/Pa.A, dated 31.03.2011 and quash the same and consequently direct the respondents to disburse the retirement benefits together with pension with arrears to the petitioner.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.A.M.Ayyadurai



Government Advocate
ORDER

WEB COPY The Writ Petition has been filed challenging the impugned proceedings under which the petitioner was dismissed from service on the charges that had been framed against him.

2.Heard Mr.C.Prakasam, learned counsel appearing for the petitioner and Mr.A.M.Ayyadurai, learned Government Advocate appearing for the respondents.

3.The case of the petitioner is that the petitioner being appointed as a Sub Inspector of Cooperative Society through Tamil Nadu Public Service Commission in the year 1982 and was promoted as a Senior Inspector of Cooperative Society in the year 1984 and further promoted as Cooperative Sub Registrar in the year 1996. While he was working as a Sub Registrar (PDS) in Thirunavalur Block in the office of the second respondent herein, he was appointed as a Special Officer for three Cooperative Societies by way of an additional charge. The petitioner has to overlook the Ration Shops and supply of ration items without any scarcity to all the Ration Shops and also the work of the Cooperative Society Sub Registrar. He was also given incharge of Thirunavalur Uzhavar Pani Kooturavu Sangam between 12.01.2010 & 24.05.2010. During his tenure in the said office on 22.05.2010, there was a theft in the Cooperative



WEB COPY

W.P.No.1300



Society based upon which a criminal case had also been lodged. Two of the employees of the Society were involved in the theft along with the third party who were held with the said employees in disposal of the stolen items. A charge memo was issued to the petitioner that he being the Special Officer was responsible for the safe custody of the items and that he ought to have taken care that no such incident had happened and held him liable for the negligence in discharge of his official duties and responsibilities.

4. Pursuant to the said show cause notice, the petitioner had also submitted his explanation and an Enquiry Officer was appointed to enquire into the said charge memo. The Enquiry Officer has also submitted an Enquiry Report holding that the petitioner was responsible for the incident based upon which the first respondent had passed an order of dismissal of the petitioner. He would submit that the petitioner was no way responsible for the incident that had occurred. He would submit that the keys of the stock room of the said Society was given incharge of the two individuals jointly, one of them was involved in the offence using the keys with him. The decision to hand over the keys was taken in the meeting of the Members of the Society. The petitioner had not retained the keys as he had been working as Sub Registrar (PDS) of Thirunavalur Block and also was incharge of three Cooperative Societies and therefore, he would not be available all the time in Thirunavalur Cooperative Societies. He would submit that if he is holding the key, it would hamper the



functioning of the Cooperative Society.

5. Without considering these aspects, the Authorities have held that the petitioner was responsible. He would also rely upon a charge sheet that had been filed by the CB-CID in the case and contend that it was only one of the person who was entrusted with the keys was charge sheeted with an offender and another person had not involved in the incident. Even though the petitioner was in possession of one of the keys and the keys could have been used for the incident for which, he could not be blamed for a misdeed of another. He would submit that in that context there is no negligence on the part of the petitioner. Even assuming that if the petitioner was solely responsible for handing over the keys to the offender, the punishment of dismissal was a far-harsher punishment. On that aspect also, he would contend that it was not the sole decision of the petitioner to handover the keys, but, however, it was the decision of the Members of the Society to hand over the keys to the two employees of the Society for better functioning of the Society.

6. He would further submit that these aspects have all not been considered and had held that the petitioner had been responsible for the incident and had been dismissed from service that too at the verge of his retirement. Therefore, he would plea that the order impugned would have to be necessarily interfered with and the respondents be directed to pay all terminal benefits to the petitioner.



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7. Countering his arguments, Mr. A.M. Ayyadurai, learned Government Advocate appearing for the respondents would submit that the petitioner cannot contend that due to the multiple work faced by him, he was not able to perform his duties. Learned Government Advocate would submit that if the petitioner have reported such difficulties to the Higher Officials then necessary arrangements could have been made. He would further submit that the Society in which theft had occurred is within the Headquarters where the petitioner was posted as Sub Registrar and therefore, he cannot say that he was not able to visit the Society on a regular basis. He would submit that even though a resolution No.2 dated 23.02.2010 had been passed by the respondents fixing the responsibility of the custody of lock & key among two individuals, the petitioner had not controlled the work of the employees to find whether they have been properly working or not. He would submit that the Jewel loan ledger would show that only one person has signed and another person has not signed which would itself show that the petitioner had not devoted his full attention to the duty.

8. He would further submit that the petitioner was not in station as it is evident that the complaint was not given by the petitioner, who was a Special Officer. He had also failed to take proper action for the LIC cover for the Jewels



W.P.No.1300

WEB COPY

kept under the locker. Apart from that being the Special Officer, he is the sole authority to safeguard all the properties which he had failed to do and therefore, there is no infirmity either in the enquiry proceedings or in the punishment imposed on the petitioner and therefore, he would pray this Court to dismiss the Writ Petition.

9.I have heard the submission made by the respective counsel appearing on either side and perused the materials available on record.

10.It is an admitted case that the petitioner was appointed as a Special Officer at Thirunavalur Uzhavar Pani Kooturavu Sangam. It is unfortunate that an employee of the Society who was incharge of the keys had misused the same and taken out the Jewels. A reading of the charges that had been framed by the Authority are that (a) the petitioner had failed to safeguard the Society and (b) a criminal case had also lodged against the petitioner which was investigated by the CB-CID. Further, it is not disputed by the respondents that the petitioner apart from being the Sub Registrar (PDS) was also incharge of three other Societies. When an individual has been appointed to manage more than one Society, then he could not be present at all places at the same time. Necessarily, he has to delegate certain of his duties to the employees in the Cooperative Society for better running of the Society. That is what the petitioner had done in this case also. The Authority has found fault



with the action of the petitioner to come to a conclusion that the petitioner was negligent in appointing the two employees, the two employees are the employees of the Society in a responsible position.

11. Any misconduct that had been committed by the individuals appointed by the petitioner, then it could be considered that there was a negligence on the part of the petitioner in not verifying the antecedent of the persons to whom the petitioner had entrusted the safe custody of keys of the locker. It is pertinent to note that a joint custody in a banking institution is always made to protect the interest of its customers. In this case also the joint custody of the keys had been made to the two employees. However, one individual had misused the keys in his possession to unjustly enrich himself by committing theft. I would appreciate that if an employee of the bank in the course of his employment had committed a mistake and the petitioner, who is a Superior Authority had not taken note of it and had proceeded based on the mistake committed by the employee, then the petitioner would be vicariously liable for the action of the said employee. But, on the other hand, the employee who was in possession of the keys had committed theft which cannot be termed as a misconduct in the course of employment. The said theft had been committed during the night time by taking advantage of the fact that he was in custody of the keys for which the petitioner cannot be held either vicariously liable or to be held that he was



negligent.

12.As already stated, the petitioner was given incharge of three Cooperative Societies and he could not be present in all the three Societies at the same time and for smooth running of management, the petitioner had rightly given the custody of the keys to the existing employees who are in responsible position.

13.In such view of the matter, I am of the opinion that the charges framed against the petitioner cannot be said to be a misconduct on the petitioner to be proceeded with by the Authority.

14.In view of the aforesaid reasonings & findings, the order impugned in this Writ Petition is set aside and as a sequel considering the fact that the order impugned has been passed on the verge of his retirement, the respondents are directed to settle the terminal benefits to the petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

15.In fine, the Writ Petition is allowed with the aforesaid direction. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

30.11.2023

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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W.P.No.1300



To
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WEB COPY



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K.KUMARESH BABU, J.

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