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W.P.No.25478 of 20118.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2023

PRONOUNCED ON : 21.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.No.25478 of 2011

and

M.P.No.2 of 2011

K.Ramu

: Petitioner

-VS-

1.The Additional Registrar of Co-operative Societies,
Kilpauk, Chennai-10.

2.The Chairman,
Common Cadre Authority/Joint Registrar
of Co-operative Societies,
Villupuram Region, Villupuram.

3.The Special Officer,
Cl. Spl. 130, Nagandur Primary Agricultural
Nagandur Post, Gingee Taluk,
Villupuram District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in his proceedings in Na.Ka.No.94599/2010 Sa.Pa.1, dated 29.09.2011 whereby, confirming the order passed by the second respondent in his proceedings in



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Na.Ka.No.14354 of 2004, Vae.Sae.Sa, dated 11.03.2008 and quash the same and consequently, direct the respondents to reinstate the petitioner into service with all backwages and monetary benefits.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.M.Muthusamy
Government Advocate for R1 & R2

: Mr.K.V.Sajeev Kumar
Special Government Pleader for R3

ORDER

The petitioner has filed this writ petition for issuance of a Certiorarified Mandamus to quash the order of dismissal in the impugned order passed by the first respondent dated 29.09.2011 and by confirming the order of dismissal passed by the second respondent dated 11.03.2008 and consequently, for a direction for reinstatement to the petitioner into service with all backwages and monetary benefits.

2.The service matrix that are necessary for determination in this petition are as under:



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2(a).The petitioner was appointed as a Salesman on 14.10.1985 on daily wages in the Nagandhur Primary Agricultural Co-operative Bank by the erstwhile board. Subsequently, he was paid consolidated wages from 12.03.1988 ranging from Rs.225 to 275 per month on 01.07.1992 he was posted as fertilizer salesman and was working till 30.10.1996 in that post. Due to financial crisis of the society he was retrenched from service with effect from 30.10.1996 by the then Special Officer of the society.

2(b).The third respondent found the petitioner has committed certain financial irregularities namely,

- 1.Loan issued without proper bonds;
- 2.Loan issued under fixation performs;
- 3.False payment in the refund of shares of the members;
- 4.Tampering and altering of Chitta and adangal issued by the Village Officers and issued loans more that the land holdings;
- 5.Causing deficit in the stock of fertilizer entrusted to him;
- 6.Improper payments without any valid vouchers;
- 7.Apart from this enquiry officer before commencing his enquiry has instructed the petitioner to produce the cash balance of Rs.4,12,693.08/- as



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per the cash book balance. The petitioner has failed to produce the cash balance since he has misappropriated the above amount;

and the third respondent noticing the same after issuing the notice framed necessary charges against the petitioner and he was also suspended from service on 02.02.2002.

2(c). On receipt of the explanation of the petitioner, the third respondent-the bank has reinstated him into service on 10.03.2003 pending disposal of the disciplinary action against the petitioner.

2(d). The petitioner got again suspended on 09.05.2003 for the very same charges. On receipt of certain complaints against the petitioner an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was ordered and the enquiry officer who conducted enquiry and perused all the accounts of the society has found certain irregularities committed by the petitioner in the accounts of the society and hence, additional charges were framed against him besides suspending him on 09.05.2003.



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3.It appears that G.O.Ms.No.55 dated 24.03.2000 was came into force with regard to the common cadre for the employees of the Co-operative Department and the same was subjected to challenge before the High Court in W.P.No.7081 of 2001 and the same was dismissed on 23.06.2003, whereby, the virus of the G.O. was upheld.

4.The petitioner was originally suspended on 09.05.2003. Since the above said G.O.Ms.No.55 was stayed by the High Court, the third respondent has continued the proceedings. Against which, the petitioner has filed W.P.No.7331 of 2004 before this Court, challenging the order of suspension, dated 09.05.2023 issued by the third respondent and the same was disposed of on 05.04.2004. Against which, the third respondent preferred Writ Appeal before this Court in W.A.No.2377 of 2004 and the same was dismissed on 21.12.2006. In the meantime, the disciplinary action has been initiated and final orders were passed and the petitioner was dismissed from service. However, subsequently, it is found to be an erroneous representation in W.A.No.2377 of 2004.



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5(a).After the order of the High Court in W.P.No.7081 of 2001, dated 23.06.2003, wherein, the validity of G.O.Ms.No.55 was upheld. The matter was referred to the second respondent as he is the competent authority under the common cadre authority and he initiated further proceedings and passed the order of dismissal, dismissing the petitioner from service in R.C.No.14354 of 2004, dated 11.03.2008 and the same is under challenge. Earlier writ petition filed by the writ petitioner, without challenging the statutory remedy, was dismissed and directed to file a revision before the first respondent in W.P.No.8501 of 2008.

5(b).Accordingly, it appears that he has filed a revision and the revision was also rejected on the ground of delay. Again, he has filed another writ petition in W.P.No.606 of 2011 for condoning the delay in preferring the statutory revision and the same was allowed on 10.02.2011 and this Court directed the first respondent to restore the revision and to conduct the enquiry and pass final orders and the final orders have been passed and the same is subject matter of the writ petition.



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6.Mr.C.Prakasam, learned counsel for the petitioner would contend that there are various procedural violations on the date of issuance of the suspension order dated 09.05.2003 was issued by the third respondent and the third respondent has no power to issue order of suspension in view of G.O.Ms.No.55, dated 24.03.2000 and the initiation of the proceeding. He would further state that the show cause notice has been issued by the third respondent after the disposal of the writ petition challenging the validity of G.O.Ms.No.55 and hence, the issuance of show cause notice by the third respondent is not in conformity with G.O.Ms.No.55, dated 24.03.2000 and that the petitioner was acquitted before the learned Magistrate in respect of misappropriation of funds. He would further state that before issuing the order of dismissal (impugned order herein) passed by second respondent confirmed by the first respondent, no second show cause notice was issued.

7.The learned Government Advocate as well as the learned Special Government Pleader drew my attention to the counter filed by the third respondent and the second respondent and the additional counter affidavit has been filed on behalf of the third respondent by one Kavitha Dhanasekar (wife of Dhanasekar), who is the President of the said Society, dated



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12.06.2023, wherein, it is stated that G.O.Ms.No.55, Co-operation, Food and Consumer Protection Department, dated 24.03.2000 constituting common cadre of service for the post of Secretaries of Primary Agricultural Co-operative Credit Societies was challenged before this Court in W.P.No.7081 of 2001 and this Court dismissed the same on 23.06.2003 by upholding the said G.O.Ms.No.55, Co-operation, Food and Consumer Protection (CN1) Department is valid and sustainable.

8.Since the writ petition was pending, stay was granted. Suspension order dated 09.05.2003 was issued by the third respondent, since he is the Special Officer and disciplinary action taken by him as per the provisions of the by-law. The show cause notice was issued on 14.05.2004 by the Special Officer of the Society after the disposal of the writ petition and the sur-charge proceedings has been initiated against the writ petitioner culminated in finding that the petitioner has committed grave irregularities including misappropriation of cash balance of Rs.4,12,693.08 and causing loss to the tune of Rs.12,17,482/- to the assets of the society and hence, sur-charge proceedings under Section 87(1) of the Tamil Nadu Co-operative Societies Act was passed by the Deputy Registrar of Co-operative Societies,



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Tindivanam and final orders had been passed. Challenging the final order passed under Section 87(1), the petitioner filed C.M.A.No.28 of 2004, the same was dismissed on 10.02.2009. Against which, the writ petitioner has filed the writ petition in W.P.No.15368 of 2009 and the same is pending.

9.At Para Nos.9, 10, 12 and 13 of the counter, it is stated as follows:

“9.The accumulation of the petitioner's contribution to his Provident Fund was calculated and out of which, Rs.45,000/- was credit into his Employees Society Loan due and remaining Rs.1,10,000/- was paid to him in the month of August 2012 and his signature obtained in the Pay Bill Register and corresponding entries were also made in the daybook maintained by the Society.

10.In the Calender Case No.62 of 2005 criminal case instituted against the petitioner, the learned Judicial Magistrate No.II, Tindivanam, by the order dated 12.12.2008 convicted him under Sections 408 and 477-A of IPC for the proved charges but released on Probation of Offenders Act, 1958.

11....

12...The Joint Registrar of Co-operative Societies Villupuram, it is seen that the Joint Registrar in his capacity as



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Chairman of Common Cadre Authority has passed the order in RC.No.14354/2004/Ve.Se.Sadated, 11.03.2008 dismissing the petitioner from the services of the society.

13.It is submitted that the petitioner has refused to receive the show cause notice, dated 14.05.2014 issued by the Special Officer of the said society and it was served by affixing it on the door of his residence. It is also submitted that the petitioner had not given his reply to the said show cause notice. Therefore, the second respondent in this writ petition did not issue the second show cause notice. It is submitted that from the facts of the disciplinary case taken against the petitioner, procedure irregularity, if any, may not tilt in anyway the decision taken in the disciplinary proceedings instituted against the petitioner.

(emphasis supplied)

10.The averment made in Para No.13 is hereby recorded. I find that as per the counter filed by the third respondent before this Court on 12.06.2023, no second show cause notice regarding the proposed punishment was passed and hence, I find that the law laid down by the Hon'ble Supreme Court of India in ***Managing Director, ECIL, Hyderabad Vs. Karunakar & Others*** reported in (1993) 4 SCC 727 and ***Union of***



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India & others V. Mohd. Ramzan Khan reported in ***(1991) 1 SCC 588***, is clearly applicable to the facts and circumstances of the case.

11.Considering the fact that as per the counter affidavit at Para No.13, no second show cause notice regarding the proposed punishment, having not been issued, is not expressing any opinion is to the competency of the suspension order dated 09.05.2003 and having been issued before the orders of this Court in W.P.No.7081 of 2001, dated 23.06.2003, wherein, the validity of G.O.Ms.No.55 was upheld and thereafter, I find that the show cause notice was issued on 14.05.2004, namely, before the disposal of the writ petition, wherein, G.O.Ms.No.55 was upheld and consequently, the second respondent, namely, the Joint Registrar of Co-operative Societies alone is competent to conduct the enquiry in respect of the person falling under the common category authority and hence, the point is left open and for the non-issuance of the second show cause notice before the punishment of dismissal, the order of dismissal passed by the first respondent confirmed by the second respondent legally unsustainable and consequently, the writ petition has to be allowed and the impugned orders are to be set aside.



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12.In the result, the Writ Petition is partly allowed. The order of dismissal passed by the first respondent confirmed by the second respondent is hereby set aside and for want of issuance of second show cause notice regarding the proposed punishment, the matter is remitted back to the second respondent, namely, the Chairman/Joint Registrar of Co-operative Societies to follow the procedure in accordance with law and to pass fresh orders after giving an opportunity to the petitioner.

13.With these observations, the Writ Petition is partly allowed to the extent indicated above. The time for such exercise to be completed within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes / No
Internet: Yes / No
NCC : Yes/No
SJI

To

1.The Additional Registrar of Co-operative Societies,
Kilpauk, Chennai-10.

12/15



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2.The Chairman,
Common Cadre Authority/Joint Registrar
of Co-operative Societies,
Villupuram Region, Villupuram.

3.The Special Officer,
Cl. Spl. 130, Nagandur Primary Agricultural
Nagandur Post, Gingee Taluk,
Villupuram District.



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RMT. TEEKAA RAMAN, J.

SJI

Pre-Delivery Order made in
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