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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.07.2023

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.Nos. 17603 & 26445 of 2016

And

W.M.P.No. 4426 of 2022

And

W.M.P.No. 15089 of 2016

And

W.M.P.Nos. 9358, 9359 & 14794 of 2017

And

W.M.P.Nos. 6406 & 23587 of 2018

And

W.M.P.No. 23326 of 2021

W.P.No. 17603 of 2016

The Social Welfare Department
Employees Co-operative Thrift &
Credit Society Ltd., XC -35
Represented by its President
Chepauk,
Chennai – 600 005.

... Petitioner

..Vs..

1. The Additional Registrar of Co-operative
Societies
Chennai Region
TANFED Building
Raja Annamalaipuram
Chennai – 600 028.



2. Selvi. S.Rajeswari

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records in pursuant to the 1st impugned order passed by the 1st respondent in proceedings Na.Ka.3172/2015/E2 daed 25.09.2015 and the 2nd impugned order passed by the first respondent in proceedings Na.Ka. 3172/2015/E2 dated 01.04.2016 and quash these orders.

For Petitioner :: Mr. R.Prem Narayan

For 1st Respondent :: Mr. S.Ravi Kumar
Special Government Pleader

For 2nd Respondent :: Mr.R.Jeyaram

W.P.No. 26445 of 2016

Selvi.S.Rajeswari

... Petitioner

..Vs..

1. The Principal Secretary
Cooperative Food and Consumer Protection Department
Government of Tamilnadu
Fort St. George
Chennai – 600 009.



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2. The Secretary
Labour and Employment Department
Government of Tamilnadu
Fort St. George
Chennai – 600 009.
3. The Registrar of Cooperative Societies
170 Periyar EVR High Road,
Kilpauk, Chennai – 600 010.
4. Additional Registrar of Co-operative Societies
Chennai Region
91, St. Marys Road
TANFED Building, 3rd floor,
Abhiramapuram,
Chennai – 600 108.
5. Deputy Registrar of Cooperative Societies (Credit)
Kuralagam 2nd Floor
Chennai – 600 108.
6. Social Welfare Department Employees Cooperative
Thrift and Credit Society Ltd.,
Chepauk, Chennai – 600 005
Represented by its President.
7. A.Uthiresan
Secretary
Social Welfare Department Employees Cooperative
Thrift and Credit Society Ltd.,
Chepauk, Chennai – 600 005.
8. C.Chandrasekaran
Ex.Vice President
Social Welfare Department Employees Cooperative
Thrift and Credit Society Ltd.,
Chepauk, Chennai – 600 005

**Residential Address:**

No.2/264, Muthunagar
Periya Mathur
Madhavaram
Chennai -68.

9. K.Soundararajan
Ex.President
Social Welfare Department Employees Cooperative
Thrift and Credit Society Ltd.,
Chepauk, Chennai – 600 005.

Residential Address:

21, 3rd Cross Street,
Ex.Servicemen Colony
St. Thomas Mount, Chennai -16.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus directing the 6th respondent to give effect to the order dated 01.04.2016 made in Rc.No. 3172/2015/C2 passed by the 4th respondent relating to the reinstatement of the petitioner as Assistant in the 6th respondent society with full back wages and continuity of service forthwith.

For Petitioner

:: Mr. R. Jeyaram

For RR 1 to 6

:: Mr. S.Ravi Kumar
Special Government Pleader

**COMMON ORDER**

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The Writ Petitioner in W.P.No. 17603 of 2016 is the Social Welfare Department Employees Co-operative Thrift and Credit Society Ltd., and is represented in this Writ Petition by its President. However, the Vice President has filed the affidavit in support of the Writ Petition.

2. The petitioner is deeply aggrieved by an order passed by the first respondent, Additional Registrar of Co-operative at Chennai interfering with an order of dismissal of punishment passed against the second respondent Selvi. S.Rajeswari, who was working as Clerk in the petitioner Society. Owing to various charges levelled against the second respondent, an Enquiry was conducted and the enquiry report was placed before the subcommittee and thereafter before the Board and finally, an order of dismissal from service was passed by the President of the petitioner Society.

3. The second respondent had filed a Revision under Section 153 of the Tamil Nadu Co-operatives Societies Act 1983. This came up before



the first respondent, who, after examining the records and after following the procedure as enunciated under the aforementioned provision, had thought it fit to interfere with the order of dismissal from service. That order was passed on the ground that the order of dismissal itself stood vitiated, since the President had passed the order and not the subcommittee and was not ratified by the Board. The petitioner herein sought review of the said order under Section 154 of the said Act. The review will also stand rejected. Questioning both the reversal of the order of dismissal from service and the order passed on review, the Writ Petition has been filed. In effect, the petitioner does not want the second respondent to continue to work as a Clerk under the petitioner Society.

4. For good measure, the second respondent has filed W.P.No. 26445 of 2016 seeking a direction against the sixth respondent therein, the Society, namely, Social Welfare Department Employees Cooperative Thrift and Credit Society Ltd., to give effect to the order of reinstatement passed by the Additional Registrar of Co-operative Societies, who had been impleaded as the fourth respondent in the said Writ Petition.



5. Heard the learned counsels.

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6. In the affidavit filed in support of the Writ Petition in W.P.No. 17603 of 2016, the Vice President of the petitioner Society claimed that the second respondent Selvi. S.Rajeswari / Clerk continuously committed various acts of misconduct and misappropriation and therefore was placed under suspension on 12.08.2013. A charge memo was issued on 11.09.2013. In the Charge, the primary allegation was that there was dereliction of duty. The dereliction of duty was in not following the orders of the higher officials. It was also complained that she committed financial loss to the Society.

7. An enquiry was conducted and the enquiry officer submitted his report on 04.03.2014 holding that the charges stood proved. A second show cause notice was issued to the second respondent seeking explanation. Thereafter, it is claimed by the deponent of the affidavit / Vice President of the petitioner society that the entire records had been placed before the subcommittee. It is also claimed that the subcommittee had given its decision and based on such decision, the President of the Society issued



final orders on 25.04.2015 dismissing the second respondent from service.

This order had been questioned by the second respondent by filing a revision under Section 153 of the Tamil Nadu Co-operatives Societies Act 1983 before the first respondent/ Additional Registrar of Co-operative Societies.

8. The issue before this Court is not the manner under which the enquiry was conducted but the order of the revisional authority / first respondent in the Writ Petition.

9. Section 153 of the Act has its own procedure. The crucial provision is Section 153(2), which is as follows:-

“(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representations. ”

10. While examining any order passed by a quasi judicial authority



and examining it on the touch stone of judicial review, this Court exercising its authority under Article 226 of the Constitution of India may not always examine the punishment or the nature of the punishment imposed unless, it is disproportionate to the Act alleged or if it is extremely irrational. But this Court can certainly examine whether the procedure as stipulated by law had been followed not only in letter but also in spirit by the authority.

11. Sub-Clause(2) of Section 153 of the Act, which has been extracted above, stipulates that the first respondent / Additional Registrar of Co-operative Societies, cannot pass and should not pass any order prejudicial to either one of the parties present before him unless he or she gives opportunity of making representation. The order under Section 153 of the aforementioned Act was passed on 25.09.2015. There is no complaint that opportunity was not granted. Rather more than sufficient opportunity was granted and directions were also issued to produce the resolution books and the record books maintained by the writ petitioner Society.

12. On perusal of the same, the first respondent had come to the



conclusion that the order impugned had been primarily passed by the President of the Society and that there is no proper document or record to show that the subcommittee had actually passed the order or that there was a resolution passed by the subcommittee to actually pass the order. It was also complained that the resolution number which had been given referred to some other resolution and not to the specific resolution of examining the enquiry report so far as the second respondent is concerned. In its order, to put it briefly, it was concluded that the subcommittee had not actually passed the order of dismissal from service. It was also concluded that there was no evidence to show that the entire records relating to the charges framed and the explanations given, the statement of witnesses, the analysis of the evidence and the enquiry report had actually been placed before the subcommittee. It was also stated that if the members had so examined all these records, every member of the subcommittee should have affixed their signature in the relevant records. It was further observed that on 20.04.2015, the date of the meeting of the subcommittee, it had been unanimously resolved to dismiss the second respondent from service.



13. It was specifically stated that this particular proceeding was quite contrary to Rule 29 of the Rules. It was specifically found that the second respondent had been removed from service rather dismissed from service even without the formation of the subcommittee.

14. Holding as above, which went to the root of the passing of the order, the first respondent interfered with the punishment of dismissal from service and directed reinstatement of the second respondent.

15. Aggrieved by this particular finding, the petitioner Society had filed a review taking advantage of Section 154 of the Tamil Nadu Co-operatives Societies Act 1983. It is only understandable, they did so because the order under Section 153 of the Tamil Nadu Co-operatives Societies Act 1983 had been passed doubting the very records of the petitioner society. It would only appropriate that they had filed such a review. But the said review also suffered an order of dismissal. That order is dated 01.04.2016. Once again, the first respondent had re-examined the records and once again had reiterated that there was no material defect in the earlier order passed under Section 153 of the Act and once again



reiterated the view that the order of dismissal requires to be set aside. The review application was dismissed. Questioning both these orders, these present two Writ Petitions have been filed.

16. The entire issue revolves around the records maintained by the petitioner themselves.

17. The learned counsel for the second respondent brought to the notice of this Court to Rule 58 of the Tamil Nadu Co-operatives Societies Rules 1988. Rule 58 is as follows:-

“58. Meeting of the board and failure to attend meeting, etc. __

(1) The managing director, where there is no managing director, the president shall arrange to send notice of the meeting of the board together with the agenda therefor to every member of the board by one or more of the following modes, namely:-



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(a) by giving or tendering it to such member under his acknowledgment; or

(b) if the member is not found, by giving or tendering it to some adult member of his family under his acknowledgment; or

(c) by post under certificate of posting.

(2) Meetings of the board shall be held at the premises of the society, the address of which is registered under section 37 or at any other place within the area of operations of the society, to which all the members of the board shall have access.

(3) The agenda for the meeting of the board shall contain specific subjects in brief. Each subject in the agenda shall be supported by a clear and brief note wherever necessary.

(4) No subject other than those included in the agenda sent to the members shall be discussed or decided upon at the meeting of the board.

(5) Every decision of the board shall be



taken only at an ordinary or special meeting of the board convened in accordance with the provisions of the Act and these rules and in no case a resolution of the board shall be passed by circulation of papers among the members of the board.

(6) Any member of the board ceasing to hold office under clause (d) of sub-section (2) of section 34, may make an application within fifteen days from the date of the last meeting for condonation of his absence specifying the reasons for such absence. ”

18. This is with respect to the meeting of the Board. It had been very specifically pointed out by the learned counsel for the second respondent that before there is a meeting, the President should arrange to send notice of the meeting together with agenda to every member of the Board. The agenda of the Board shall contain the special subject in brief and every decision of the Board shall be taken only at an ordinary or special meeting of the Board convened in accordance the provisions of the Act and Rules.

19. Rule 65 of the aforementioned rules referred to Constitution of



the subcommittee. It should contain members not exceeding seven. It also provided that it either the President or the Vice President, could be a member of a subcommittee. It also stipulated that the Board constituted under Rule 58 can delegate its power to the subcommittee.

20. The learned counsel for the petitioner in this regard, then drew the notice of this Court to the order of dismissal and pointed out the references and stated that the order of dismissal has been referred as also, the proceedings of the subcommittee dated 20.04.2015 and the proceedings of the Board dated 25.04.2015. It is therefore contended that though the President had signed the order of dismissal, it was done so only on authorisation of the subcommittee and of the Board.

21. I am also informed that the records had been perused by my learned predecessor on a particular hearing and though it was found as a fact that the resolution number was wrong and there were certain discrepancies in the records maintained, it was opined that they could be ratified.



22. But that is a procedure which has to be followed. As on date the records stands. As on date, the records have been perused by the competent authority, namely, the first respondent. As on date, the records do not reflect that the board meeting was called in accordance with the rules or that the subcommittee had independently applied its mind as to whether the charges which had been framed invited a serious punishment of dismissal from service.

23. The petitioner could have imposed any other punishment. That is a matter of opinion and is certainly not binding on the petitioner herein. On hindsight, the petitioner should realise that they must have imposed a lesser punishment.

24. Be that as it may, this Court is sitting under judicial review and the scope is very narrow and examination cannot go beyond the records. The punishment of dismissal of service has been interfered with by the first respondent to one of reinstatement.

25. The term reinstatement would have to be read as stated in the



order of the first respondent. It is not for this Court to give additional grounds or grant additional guidelines for such reinstatement. It would be extremely inappropriate if this Court, were to sit as a Court of Appeal and examine whether the evidence was sufficient for an order of reinstatement and whether the first respondent had applied its mind before passing both the orders in revision and review.

26. In the instant case, there is no complaint that the procedure had not been followed or that opportunity had not been extended. Records had been directed to be produced. Records which had been produced. Records had been perused by the first respondent.

27. The conclusion is that the President had passed the order of dismissal. That had been set aside by the first respondent. This Court cannot interfere with the same. The writ has to suffer an order of dismissal.

28. In so far as W.P.No. 26445 of 2016 is concerned, I would place an obligation on the sixth respondent therein, namely, Social Welfare Department Employees Cooperative Thrift and Credit Society Ltd., to put



into effect the order of the fourth respondent therein / Additional Registrar of Co-operative Societies, Chennai, within a period of 16 weeks from the date of receipt of a copy of this order.

29. I am informed that the petitioner therein had retired on attaining the age of superannuation. But she is entitled to receive the advantage of the order of the Additional Registrar of Co-operative Societies and to put that into effect, the outer time limit of 16 weeks is granted to the sixth respondent.

30. In effect:-

- (i)** W.P.No. 17603 of 2016 is dismissed;
- (ii)** W.P.No. 26445 of 2016 is allowed;
- (iii)** W.M.P.No. 9358 of 2017 is dismissed as having become otiose;

and

(iv) No costs.

10.07.2023

vsg

Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order



To

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1. The Additional Registrar of Co-operative Societies
Chennai Region
TANFED Building
Raja Annamalaipuram
Chennai – 600 0281.
2. The Principal Secretary
Cooperative Food and Consumer Protection Department
Government of Tamilnadu
Fort St. George
Chennai – 600 009.
3. The Secretary
Labour and Employment Department
Government of Tamilnadu
Fort St. George
Chennai – 600 009.
4. The Registrar of Cooperative Societies
170 Periyar EVR High Road,
Kilpauk, Chennai – 600 010.
5. Additional Registrar of Co-operative Societies
Chennai Region
91, St. Marys Road
TANFED Building, 3rd floor,
Abhiramapuram,
Chennai – 600 108.



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C.V.KARTHIKEYAN, J.,

vsg

6. Deputy Registrar of Cooperative Societies (Credit)
Kuralagam 2nd Floor
Chennai – 600 108.
7. Social Welfare Department Employees Cooperative
Thrift and Credit Society Ltd.,
Chepauk, Chennai – 600 005
Represented by its President.

W.P.Nos. 17603 & 26445 of 2016

And

W.M.P.No. 4426 of 2022

And

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