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WP.Nos.18833 & 20212/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.Nos.18833 & 20212/2016

and

WMP.Nos.16441 & 17385/2016

R.Pandian

... Petitioner in both Writ
Petitions

Versus

1.Registrar of Cooperative Societies
Kilpauk, Chennai-10.

2.Joint Registrar of Cooperative Societies
Thiruvallur Region, Thiruvallur [Post & District].

3.Joint Registrar of Cooperative Societies
Thiruvannamalai Region
Thiruvannamalai [Po] & [Dt]

4.The Deputy Registrar of Cooperative
Societies, Cheyyar Circle,
Cheyyar Post and Taluk.

... Respondents in
WP.No.18833/2016

1.Registrar of Cooperative Societies
170, Periyar EVR High Road
Kilpauk, Chennai 600 010.



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2.Joint Registrar of Cooperative Societies
Thiruvallur Region, Collectorate Complex
Tiruvallur Post and District.

3.Deputy Registrar of Cooperative Societies
Ponneri Circle, Ponneri Post and Taluk.

... Respondents in
WP.No.20212/2016

Prayer in WP.No.18833/2016 :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent relating to her order in RC.No.81160/2007/EM1[1] dated 24.05.2016 and quash the same and consequently direct the respondents to treat that the petitioner has peacefully retired from the post of Cooperative Sub Registrar with all retirement benefits.

Prayer in WP.No.20212/2016 :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 2nd respondent relating to his order Rc.No.1075/2016 A1 dated 30.05.2016 and quash the same and consequently direct the respondents to sanction and disburse all the retirement benefits due to the petitioner before a date that may be specified.

For Petitioner in both Writ Petitions	:	Mr.R.Anbarasan
For Respondents in both Writ Petitions	:	Mr.S.Ravikumar, Spl.GP



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COMMON ORDER

- (1) The two writ petitions have been filed by the same petitioner and the facts relate to the same issue namely with respect to the issuance of charges under Rule 17[b] of the Tamil Nadu Civil Service [Discipline and Appeal] Rules [hereinafter referred to as 'the Rules'] and the consequent punishment imposed and also the order, not permitting the petitioner to retire from service which was passed a date before the date of retirement on attaining the age of superannuation by the petitioner herein.
- (2) Since the facts overlap, it is only prudent that a common order is passed.
- (3) In WP.No.18833/2016, the petitioner had sought a certiorarified mandamus to be issued calling for the records of the 1st respondent, Registrar of Cooperative Societies at Chennai, relating to an order dated 24.05.2016 and to quash the same and to treat that the petitioner as having peacefully retired from the post of Cooperative Sub Registrar and also grant all retirement benefits, as would have accrued to that particular post.



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- (4) In the order dated 24.05.2016, which is impugned in the said writ petition, it had been stated that the petitioner who was working as Senior Inspector, was considered for promotion as Cooperative Sub Registrar as on 01.05.1997. He was included in the panel for such promotion. However, charges under Section 17[b] of the Rules had been framed against the petitioner on 18.09.1998. Therefore, the petitioner was not granted with any promotion. Questioning that particular fact, he had filed OA.No.169/1999 before the Tamil Nadu Administrative Tribunal. An interim direction was given by the Tribunal to post the petitioner as Cooperative Sub Registrar within a period of two weeks by an order dated 13.01.1999. The respondents complied with that particular direction and appointed the petitioner as Cooperative Sub Registrar.
- (5) Subsequently, the Original Application was transferred to this Court and renumbered as WP.No.42767/2006. On 09.07.2008, the learned counsel for the petitioner had withdrawn the said writ petition. The writ petition was dismissed as withdrawn. Effectively, then any order which has been passed in the course of the writ petition or earlier in



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the Original Application, would stand nullified. Thereafter, the respondents had proceeded with the enquiry and by proceedings dated 29.08.2008, a punishment of stoppage of increment for two years with cumulative effect was imposed. It was therefore stated that the petitioner was not eligible for promotion as Cooperative Sub Registrar in the panel in which he was originally included on 01.05.1997. Thereafter, the petitioner was issued with a show cause notice calling upon him to explain as to why his name should not be deleted from the approved list of those who were due for promotion as Cooperative Sub Registrars. The petitioner had given an explanation, but finding that the explanation was not to the satisfaction of the respondents, the post to which the petitioner had been posted consequent to the order of the Tamil Nadu Tribunal, namely, as Cooperative Sub Registrar, was interfered with and the petitioner stood demoted as Senior Inspector of Cooperative Societies. Questioning that particular order, WP.No.18833/2016 had been filed.

(6) The second writ petition, namely, WP.No.20212/2016 had been filed



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by the very same petitioner again in the nature of a certiorarified mandamus, seeking to call for records of the 2nd respondent, Joint Registrar of Cooperative Societies, at Tiruvallur, dated 30.05.2016 and to quash the same and to direct the respondents to disburse the retirement benefits to the petitioner herein.

- (7) In the order impugned dated 30.05.2016, it had been stated that there were two enquiries pending against the petitioner herein and charges had been framed under Rule 17[b] of the Rules by a Charge Memo dated 05.05.2016 and another Charge Memo dated 25.05.2016. Since the Charge Memos were pending, the Impugned Order came to be passed, not permitting the petitioner to retire from service and imposing necessary conditions about payment of subsistence allowance. That order had been challenged in WP.No.20212/2016.
- (8) In the affidavit filed in support of WP.No.20212/2016, which is the second writ petition and in which the entire facts had been stated, the petitioner had stated that he was working as Cooperative Sub Registrar since 15.02.1999 and was due to retire on 31.05.2016. He also stated that about five days before the date of his superannuation,



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the 1st respondent had passed an order reverting him as Senior Inspector of Cooperative Societies from the post of Cooperative Sub Registrar. Thereafter, a Charge Memo had been issued to the petitioner and the petitioner claims that it had been anti-dated and related to events which had allegedly happened for the period from 19.05.2003 to 07.09.2006. It had been stated in the affidavit that therefore, an order had been passed on 30.05.2016 placing the petitioner under suspension. The petitioner claimed that the said order was also anti-dated.

- (9) In the counter affidavit filed with respect to the said writ petition, it had been stated that the petitioner was appointed as Senior Inspector of Cooperative Societies and later, his name was considered to be included in the promotion panel for the post of Cooperative Sub Registrar, but however, a punishment had been imposed upon him and thereafter, he had approached the Tamil Nadu Administrative Tribunal by filing OA.No.169/1999 and an interim direction was given to post him as Cooperative Sub Registrar. It had been stated that though he was not eligible consequent to the punishment



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imposed, still, to comply with the directions of the Tribunal, he was posted as Cooperative Sub Registrar. It had also been stated that thereafter, the petitioner had withdrawn the said Original Application after it had been transferred to this Court. It had further been stated that the petitioner had indulged in financial irregularities and caused a loss of Rs.15,36,696/-. A statutory enquiry under Section 82 of the Tamil Nadu Cooperative Societies Act, 1983, had been initiated. Surcharge proceedings were also initiated. Further, criminal cases in CC.No.5/2005 and CC.No.1/2008 had also been preferred and they were pending before the Judicial Magistrate Court at Chengalpattu. It was also stated that the petitioner had not filed any appeal under Section 152 of the Tamil Nadu Cooperative Societies Act, 1983, against the Surcharge Order. It had been stated that only a sum of Rs.20,000/- had been recovered and a balance sum of Rs.15,19,800/- was due and payable by the petitioner and recoverable. It had therefore been stated that since the petitioner was due to retire on attaining the age of superannuation on 31.05.2016, an order had been passed not permitting the petitioner to retire.



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(10) Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

(11) The facts are quite clear. The petitioner was working as Senior Inspector in Cooperative Societies Department. At that time, a Charge Memo under Rule 17[b] of the Rules had been issued to the petitioner herein. An enquiry was conducted. The petitioner had not complained about the procedure adopted during the enquiry nor is there any complaint that principles of natural justice had been violated during the process of enquiry. Thereafter, since charges had been framed, the petitioner, though was eligible to be promoted in the panel in the year 1997, was not given promotion as Cooperative Sub Registrar. The petitioner then approached the Tamil Nadu Administrative Tribunal by filing OA.No.169/1999. An interim order was passed on 13.01.1999 directing the petitioner to be posted as Cooperative Sub Registrar. That particular posting was therefore only dependent on final orders being passed in the said Original Application. The Original Application was then transferred to this Court and renumbered as WP.No.42767/2006.



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(12) The learned counsel for the petitioner had for some reason, taken a decision to withdraw the said writ petition. Once the said writ petition was withdrawn and had been dismissed as withdrawn, any order passed which were interim in nature, stood nullified. Therefore, the petitioner cannot claim as a right, to be promoted as Cooperative Sub Registrar. It was all dependent on the charges which had been framed against him and his explanation to the said charges and his participation in the enquiry. Realising that he had been working as Cooperative Sub Registrar only according to the direction of the Tamil Nadu Administrative Tribunal and the subsequent writ petition had been withdrawn and dismissed as such, further notice had been issued to the petitioner herein questioning his continuity in the post of Cooperative Sub Registrar. On finding his explanation not satisfactory, he had been reverted back to his original post of Senior Inspector. It is also seen that a punishment had been imposed, namely, stoppage of increment for two years with cumulative effect. This order was passed on 29.08.2008, but related back to the period



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of the delinquency namely in the year 1997 and therefore, the petitioner could never had been promoted as Cooperative Sub Registrar. The order therefore, demoting him back to the post of Senior Inspector is perfectly in order as there is no record to show that he had questioned the punishment imposed on him.

- (13) It is also seen that subsequently, further Charge Memos had also been issued and it is on record that owing to various acts of commission and omission, the petitioner had been charged with misappropriation of funds amounting to Rs.15,36,696/-. A statutory enquiry under Section 82 of the Tamil Nadu Cooperative Societies Act, 1983, had been initiated and the said charge stood proved. The petitioner had not filed any appeal under Section 152 of the Tamil Nadu Cooperative Societies Act, 1983. The said order therefore, had become final in nature. The recovery of a sum of Rs.20,000/- alone had been made from the salary of the petitioner till the date of his retirement. A further amount of Rs.15,19,800/- is due and payable by the petitioner and recoverable from him. Therefore, it was only appropriate that the order impugned in WP.No.20212/2016 was



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issued not permitting the petitioner to retire and to proceed further with the enquiry.

- (14) The matter had been adjourned on the last occasion for specific instructions to be forwarded by the learned counsel for the petitioner to inform about the status of the enquiry.
- (15) The learned counsel for the petitioner however was not able to get such instructions. It is also seen from the records that consequent to the acts of misappropriation, two complaints had been lodged against the petitioner culminating in CC.No.5/2005 and CC.No.1/2008, both pending before the Judicial Magistrate Court at Chengalpattu. It is thus seen that the respondents have not recovered the amount from the benefits payable to the petitioner herein which amount was Rs.15,19,800/- on the date of filing of the counter affidavit in February 2018 and also the petitioner will also have to take appropriate steps to defend himself in two Calendar Cases. All these steps will have to be taken by the petitioner before he could seek any relief from the Court. He is facing two criminal trials. He has also not filed any appeal questioning the Surcharge Order passed against him



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for recovery of amount of Rs.15,36,696/-. He had been promoted only due to the orders of the Tribunal which order, stood nullified on withdrawal of the earlier writ petition filed by the petitioner herein. The respondents have every right to proceed against the petitioner in manner known to law. Both the writ petitions suffer an order of dismissal and accordingly, the writ petitions are **dismissed**.

- (16) The only observation the Court can make is that the respondents can expedite the enquiry process and ensure that they come to a conclusion within a reasonable period of time, provided of course, the petitioner cooperates in such enquiry. No costs. Consequently, connected miscellaneous petitions are closed.

12.09.2023

AP
Internet : Yes



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- 2.Joint Registrar of Cooperative Societies
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- 3.Joint Registrar of Cooperative Societies
Thiruvannamalai Region
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- 4.The Deputy Registrar of Cooperative
Societies, Cheyyar Circle,
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- 5.Deputy Registrar of Cooperative Societies
Ponneri Circle, Ponneri Post and Taluk.



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C.V.KARTHIKEYAN, J.,

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