



Writ Petition Nos.11309 & 17656 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

ORDER RESERVED ON : 23.01.2023

ORDER PRONOUNCED ON : 27.01.2023

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Writ Petition Nos.11309 & 17656 of 2020

and

W.M.P.Nos.13794, 13795, 21900 & 21901 of 2020

W.P.No.11309 of 2020

K.Venkataraman

.. Petitioner

Vs.

1.Joint Registrar of Cooperative Societies,
Vellore Zone,
Vellore.

2.The Management
V.L.(Thani) 213, Sathambakkam,
Primary Agricultural Cooperative Credit Society,
Wallaja Taluk, Vellore District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the concerned records from the first respondent, quash the order of the first respondent dated 27.07.2019 in Na.Ka.No.6043/2019 A2 Revision Petition



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No.06/2019 A2 insofar as treating the period from the date of dismissal till reinstatement as one on eligible leave and imposing the punishment of stoppage of increment for three years without cumulative effect and the order of the first respondent dated 21.02.2020 bearing Na.Ka.No.5349/2019 A2 Review Petition No.1/2020 A2 insofar as denying the period from the date of dismissal till reinstatement as a period of no work no pay and imposing the punishment of stoppage of increment for three years without cumulative effect as illegal, arbitrary and contrary to law and consequently, direct the second respondent to reinstate the petitioner with full backwages, continuity of service and all other attendant benefits.

For Petitioner : Mr.Balan Haridas
For Respondents : Mr.D.Ravichander
Special Government Pleader [R1]
Mr.C.Prakasam [R2]

W.P.No.17656 of 2020

V.L.(SPL) 213, Sathampakkam Primary
Agricultural Cooperative Credit Society,
represented by its President,
E.Duraisamy S/o.Ellappan
Sathampakkam Village,
Walaja Taluk, Ranipet District.

.. Petitioner

Vs.

1.The Joint Registrar of Cooperative Societies,
Vellore Region, Vellore,
Vellore District.

2.K.Venkataraman
S/o.Krishnan

.. Respondents



Writ Petition Nos.11309 & 17656 of 2020

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the entire records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.No.6043/2019/A2/Revision Petition No.06/2019/A2, dated 27.07.2019 and consequential order passed by the first respondent in Revision Petition in his proceedings Na.Ka.No.5349/2019/A2-Review Petition No.01/2020 A2, dated 21.02.2020 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.D.Ravichander
Special Government Pleader [R1]
Mr.Balan Haridas [R2]

COMMON ORDER

The subject matter of challenge in both these writ petitions pertains to the impugned proceedings of the first respondent in Na.Ka.No.6043/2019 A2 Revision Petition No.06/2019 A2, dated 27.07.2019 and the subsequent order passed by the first respondent in the Review Petition bearing proceedings Na.Ka.No.5349/2019/A2-Review Petition No.01/2020 A2, dated 21.02.2020.

2. W.P.No.11309 of 2020 has been filed by the Secretary of the Sathampakkam Primary Agricultural Co-operative Credit Society and



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W.P.No.17656 of 2020 has been filed by the concerned society. In view of the same, both the writ petitions are dealt with together and this common order is passed.

3. For the sake of convenience, the petitioner in W.P.No.11309 of 2020 will be addressed as the petitioner and the petitioner in W.P.No.17656 of 2020 will be addressed as the second respondent Society.

4. The case of the petitioner is that he was working as a salesman in the second respondent Society having joined originally in 1989. In 2009, he was promoted as Assistant and thereafter as Secretary. On 04.04.2014, he was placed under suspension on the ground that he had misappropriated a sum of Rs.3,07,426/-, received towards crop insurance.

5. Thereafter a charge memo was issued on 21.05.2014 and despite the explanation by the petitioner denying the charges, an enquiry was conducted into the charges. After conclusion of the enquiry, a report was submitted holding that Charge Nos. 1, 2, 3 and 5 were fully proved and



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charge No.4 was partly proved. Ultimately, by order dated 24.03.2015, the petitioner was dismissed from service.

6. The petitioner thereafter filed a revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 [hereinafter referred to as "the Act"]. The first respondent, after consideration of the revision petition, *vide* order dated 06.07.2015 set aside the order of dismissal and modified the punishment into one of stoppage of increment for one year without cumulative effect. However, the second respondent Society without implementing the order of the first respondent has approached this Court by filing a Writ Petition in W.P.No.26349 of 2015.

7. This Court, *vide* order dated 27.03.2019, allowed the said Writ Petition on the ground that the order of the first respondent was a non-speaking order and directed the first respondent to decide the revision petition on merits and pass a reasoned order.



8. In pursuance of the order of this Court, the first respondent *vide* order dated 27.07.2019 modified the original order of punishment into one of stoppage of increment for three years without cumulative effect and treated the period from the date of dismissal till reinstatement as one of leave.

9. The second respondent, even thereafter, did not reinstate the petitioner which necessitated the petitioner to file a review petition before the first respondent. In the said circumstances, the petitioner was constrained to file W.P.No.33882 of 2019 seeking a direction to the second respondent to reinstate him with all consequential benefits in terms of order dated 27.07.2019.

10. This Court disposed the aforesaid Writ Petition on 18.12.2019 directing the first respondent to pass orders on the review petition within a period of four weeks. Thereafter, the first respondent *vide* order dated 21.02.2020 while confirming the order passed in the revision petition modified the earlier order in regard to payment of subsistence allowance



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during the period of suspension of the petitioner and treated the period from the date of dismissal till the date of reinstatement as no work no pay.

11. Challenging both the orders of the first respondent dated 27.07.2019 and 21.02.2020, both the Secretary as well as the Primary Agricultural Co-operative Credit Society have filed the above writ petitions.

12. During the pendency of the above writ petitions, the petitioner filed W.M.P.No.13796 of 2020 in W.P.No.11309 of 2020 before this Court and this Court, through an order dated 22.12.2021, directed the second respondent to pay a sum of Rs.15,000/- every month to the petitioner commencing from 01.02.2021, till the disposal of the writ petition. It is brought to the notice of this Court that this order has been complied with by the second respondent Society.

13. Heard Mr.Balan Haridas, learned counsel for the petitioner, Mr.D.Ravichander, learned Special Government Pleader, appearing for the first respondent and Mr.C.Prakasam, learned counsel, appearing for the second respondent.



14. The petitioner was promoted and posted as the Secretary by the second respondent Society in the year 2009. The second respondent Society represented by its President issued an order dated 04.04.2014, placing the petitioner under suspension on the ground that the petitioner misappropriated a sum of Rs.3,07,426/- received towards crop insurance and he also falsified the Society accounts. Thereafter, the second respondent Society issued a charge memo dated 21.05.2014 and five charges were levelled against the petitioner. For proper appreciation, the charges that were levelled against the petitioner are briefly stated hereunder:

"Charge 1

Allegation - I:

The first allegation is that petitioner preferred appeal against the order cancelling the surcharge proceedings in respect of Muralidharan, Ex-Secretary and clerk without the permission from Manager and Deputy Registrar.

Allegation - II:

The second allegation is that petitioner did not maintain the service register of the employee and consequently the terminal benefits of one Mrs.Manorama Devi, who retired from service of the second respondent Society, could not be paid.

Allegation III:

Petitioner did not collect the daily sales money from the Salesman Suresh Kumar and this resulted in stock deficit.



Allegation IV:

When the petitioner placed under suspension, petitioner was directed to handover charges to Murugan, clerk and that petitioner did not divulge the password of the society computer to Murugan and consequently the work in the second respondent society could not be carried out.

Charge 2:

The second charge is that a sum of Rs.3,07,925/- had been received by the second respondent society for its member towards crop insurance and the said sum had not been paid to the members and that petitioner had misappropriated the same. This charge had been split into two parts.

Part 1:

The first part of the second charge is that the year 2007 to 2008 the member of the society received Rs.3,07,926/- towards Crop Insurance, that petitioner did not utilize the said sum to close the loan amount of the members. Petitioner forged and utilized the said sum and misappropriated the same. It has been further alleged that petitioner did not pay interest of Rs.2,04,430/- for the aforesaid sum.

Part 2:

In respect of the misappropriation done in the crop insurance several complaints were received and the Deputy Registrar has ordered for an inquiry under section 82 and the inquiry reveal that there is sufficient material against petitioner.

Charge 3:

Petitioner is not respecting the management of the second respondent Society and further defaming the society with general public. This charge has been split in to two parts.



Part 1:

Petitioner is talking with the public and informing that the elected board of the second respondent Society is not necessary and it has to be dissolved. It is further alleged that petitioner instigating the public to give complaint against the President and Board of Directors to the officials.

Part 2:

Petitioner had sent notice to the President of the second respondent Society regarding the appointment of Mr.Suresh Kumar thereby defamed the President.

Charge 4:

Petitioner frequently travelling to Chennai without the permission of the President. Petitioner made entry in the camp register as if he had gone to Chennai and received salary. Thereby caused loss to the Society. Petitioner made entry in the camp register and visiting Chennai to meet Advocate regarding cases without the permission of the President. It has been further alleged that there is no communication calling petitioner to visit Chennai regarding cases. It was further alleged that for his personal work he visited Chennai thereby abused his position.

Charge 5:

Petitioner was committed the Charge Nos.1 and 4, the Society lost the confidence in him."

15. The petitioner gave an explanation for the above charges on 09.06.2014 denying all the charges levelled against him. An Enquiry Officer was appointed and based on the enquiry, a report was submitted on 18.12.2014 as if Charge Nos.1, 2, 3 and 4 were fully proved and Charge



No.4 was partly proved. Explanation was called for from the petitioner by furnishing a copy of the enquiry report and the petitioner gave his objections to the enquiry report on 06.02.2015.

16. The petitioner further alleged that no subsistence allowance was paid to him for the period from 04.04.2014 when he was placed under suspension. The prolonged suspension also came to be challenged before the Joint Registrar of Co-operative Societies u/s.153 of the Act. The Joint Registrar through order dated 02.03.2015 set aside the order of suspension. The petitioner made a representation to the second respondent Society to revoke the order of suspension and to permit him to join duty. However, the second respondent Society proceeded to pass the order of dismissal on 24.03.2015 and it is only at that point of time, the subsistence allowance came to be paid to the petitioner for the period from 05.04.2014 to 24.03.2015.

17. The petitioner also raised a substantial ground before the first respondent to the effect that the order of dismissal from service was passed even without providing an opportunity to the petitioner.



18. The revision petition filed by the petitioner u/s.153 of the Act against the dismissal from service, was taken up by the first respondent. The first respondent passed an order on 06.07.2015 modifying the punishment as one of stoppage of increment for one year without cumulative effect and set aside the order of dismissal. This order passed by the first respondent became the subject matter of challenge in W.P.No.26059 of 2015. This Court passed an order on 27.03.2019 and the order passed by the first respondent, dated 06.07.2015 was set aside on the ground that the order was bereft of reasons and the matter was remanded back to the file of the first respondent.

19. It is also pertinent to note that with regard to Charge No.2, which deals with misappropriation of the amount by the petitioner, proceedings were initiated u/s.82 of the Act and it resulted in initiation of surcharge proceedings against the petitioner u/s.87 of the Act. A surcharge order was passed on 10.08.2015 for recovery of the amount from the petitioner. The same became the subject matter of challenge before the Co-operative Tribunal in CTA No.20/15 and the Tribunal, by an order dated 24.04.2019,



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set aside the surcharge order. Learned counsel for the second respondent Society submitted that as against this order, a Civil Revision Petition has been filed before this Court and the same is pending in CRP (NPD) No.263/2022.

20. The Enquiry Officer, while submitting the enquiry report dated 18.12.2014, has dealt with every charge that was framed against the petitioner. The finding that was given by the Enquiry Officer as against each charge was not in line with the actual charge that was made against the petitioner.

21. This was specifically questioned by the petitioner and the first respondent while passing the order in the revision petition, dated 27.07.2019, has not dealt with the findings on the charges, given by the Enquiry Officer and has straight away concluded that the petitioner has misappropriated a sum of Rs.3,07,926/- and that the petitioner is working against the interest of the second respondent Society and the Society has lost its confidence in the petitioner. These findings have been rendered



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without assigning any reasons whatsoever. However, the first respondent took into consideration the fact that the petitioner was not paid the subsistence allowance when he was placed under suspension and when the enquiry proceedings were going on against the petitioner. The first respondent also took into consideration the fact that the major punishment of dismissal from service was imposed without affording an opportunity to the petitioner and that it was disproportionate to the charges levelled against the petitioner. Accordingly, the first respondent set aside the order of dismissal from service and modified the punishment into one of stoppage of increment for three years without cumulative effect and to treat the period from the date of dismissal till the date of reinstatement as one of leave.

22. In the considered view of this Court, the findings rendered by the first respondent in the order dated 27.07.2019 are liable to be interfered with by this Court on the simple ground that the findings rendered by the first respondent as if the petitioner committed misappropriation and is working against the interest of the Society, are not supported by any reason. That apart, admittedly, the subsistence allowance was given to the petitioner only



after he was dismissed from service. Hence, the entire disciplinary proceedings gets vitiated due to the non-payment of subsistence allowance.

The law on this issue is too well settled and useful reference can be made to the judgment of the Apex Court in *Jagdamba Prasad Shukla v. State of U.P and others* reported in *2000 JT (9) SC 457*.

23. The non-payment of the subsistence allowance during the period of suspension, which suspension ultimately got set aside by the Joint Registrar by order dated 02.03.2015 and the hasty manner in which, the punishment of dismissal was imposed by the second respondent through the order dated 24.03.2015, certainly caused grave prejudice to the petitioner and it vitiated the entire proceedings which resulted in the order of dismissal passed against the petitioner.

24. The second respondent Society approached the first respondent and filed a review petition u/s.154 of the Act. The first respondent in the review petition once again committed the very same mistake of not dealing with the charges and the explanation given by the petitioner and the findings



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rendered by the Enquiry Officer. The first respondent took into consideration the fact that the subsistence allowance bills were passed and they were ready for payment and disbursement and the petitioner had received the amounts for the period from April'2014 to March'2015 on various dates. Hence, insofar as the non-payment of subsistence allowance is concerned, the finding that was rendered in the revision petition was reversed. That apart, the period of suspension of the petitioner was directed to be treated as no work no pay from the date of dismissal till the date of reinstatement.

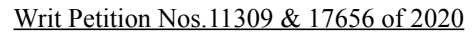
25. The first respondent once again went on the basis that the petitioner had committed misappropriation and subsequently, had repaid the amount.

26. The order passed by the first respondent in the review petition on 21.02.2020 is also liable to be interfered with by this Court since there is absolutely no discussion on the charges, findings of the Enquiry Officer and the explanation that was given by the petitioner. Under normal



circumstances, this Court would have remanded the matter back to the file of the first respondent for fresh consideration. However, such a remand would result in a second remand being made by this Court and this process cannot go on endlessly. In view of the same, this Court is inclined to go into the findings on the charges by the Enquiry Officer.

27. Insofar as the first charge is concerned, it has totally four allegations against the petitioner. The first allegation is that the petitioner filed an appeal without permission. This finding is baseless since the petitioner as the Secretary of the Society is entitled to file an appeal. Insofar as the second allegation is concerned, the charge pertains to non-maintenance of the service register and non-payment of the terminal benefits of one Mrs.Manorama Devi. However, the findings for this charge is that the petitioner did not maintain the records properly. The Enquiry Officer failed to see that the petitioner was holding the post of Secretary from the year 2009 and the second allegation pertains to a prior period. The third allegation pertains to non-collection of daily sales money from the salesman named Suresh Kumar. The said Suresh Kumar had committed



28. Insofar as the second charge of misappropriation is concerned, it appears that the amount was used to crop insurance for the year 2007-08 and it was ultimately repaid to the members loan account in the year 2010. There is no dispute that the amount ultimately reached the loan account of the members and there is nothing to show that the petitioner took away the amount and did not repay it, after, repaid it and this becomes even more evident since the petitioner was charged as the Secretary only in the year 2009. The surcharge proceedings initiated on the very same charge ended in the surcharge order being set aside.



29. Insofar as the Charge Nos.3, 4 and 5 are concerned, they are not serious charges and they are more general in nature. In any case, the explanation given by the petitioner for these charges is satisfactory and the findings rendered by the Enquiry Officer is unsustainable.

30. It is quite unfortunate that this Court had to undertake the exercise of testing the findings on each charge that was levelled against the petitioner and this exercise ought to have been done by the first respondent. Two opportunities were given to the first respondent in this regard and the first respondent did not care to deal with the charges based on the explanation given by the petitioner and the findings rendered by the Enquiry Officer. Hence, these proceedings must come to an end at some point of time and this Court thought it fit to bring it to an end in these writ petitions.

31. In the light of the above findings, this Court has absolutely no hesitation to interfere with the impugned proceedings of the first respondent in Na.Ka.No.6043/2019 A2 Revision Petition No.06/2019 A2, dated 27.07.2019 and the subsequent order passed by the first respondent in the



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Revision Petition bearing proceedings Na.Ka.No.5349/2019/A2-Review

Petition No.01/2020 A2, dated 21.02.2020 and the same are hereby set aside.

32. The second respondent Society is directed to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits. While arriving at the amount payable to the petitioner, a sum of Rs.15,000/- that is being paid every month by virtue of the order passed in W.M.P.No.13796 of 2020 in W.P.No.11309 of 2020 dated 22.12.2021, shall be given due credit. This process shall be completed by the second respondent Society within a period of four weeks from the date of receipt of a copy of this order.

In the result, W.P.No.11309 of 2020 stands allowed and W.P.No.17656 of 2020 stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

27.01.2023

Index: Yes
Speaking Order/Non-Speaking Order
Neutral citation: Yes
gm

20/22



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To
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The Joint Registrar of Cooperative Societies,
Vellore Zone,
Vellore.



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N.ANAND VENKATESH, J

gm

Pre-delivery Order
in
Writ Petition Nos.11309 & 17656 of 2020

27.01.2023