



W.P.No.17175 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.17175 of 2021

R.Balaguru

...

Petitioner

/vs/

1. The Joint Registrar of Co-operative Societies,
Ariyalur Region,
Ariyalur District.
2. The Deputy Registrar of Co-operative Societies,
Ariyalur Region,
Ariyalur District.
3. The President,
Y-A 89, Periyathukurichi Primary Agricultural
Co-operative Credit Society,
Periyathukurichi & Post,
Kavarapalayam via Udayarpalayam Taluk,
Ariyalur District.
4. The Assistant Commissioner of Labour,
Trichy,
Trichy District.

... Respondents



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Writ Petition is filed under Article 226 of the Constitution of India to

issue a Writ of Certiorarified Mandamus to call for the records in connection with the impugned order in Na.Ka.No.1/2019 passed by the third respondent dated 21.12.2019 and quash the same and further direct the third respondent to pay the arrears of salary from 12.05.2014 till his retirement on 30.04.2018.

For Petitioner ... Mr.P.Ganeshan
Mr.M.Kaviveerappan

For Respondents ... Mr.T.Chezhiyan
Additional Govt. Pleader for R1,R2&R4
No appearance for R3

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records in connection with the impugned order in Na.Ka.No.1/2019 passed by the third respondent dated 21.12.2019 and quash the same and further to direct the third respondent to pay the arrears of salary to the petitioner from 12.05.2014 till his retirement on 30.04.2018.



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2. The petitioner who was functioning as Secretary of third respondent society was dismissed from service on 30.07.2012 due to his involvement in certain alleged irregularities. A criminal case has also been registered against the petitioner and others in this regard and it is charge sheeted and taken on file in C.C.No.309 of 2009 by the learned Judicial Magistrate-I, Ariyalur. Even while the said case was pending, a 12(3) settlement was entered into between the petitioner and third respondent. Subsequently, the fourth respondent had passed an order on 12.05.2014 in terms of settlement. Subsequent to that the petitioner has given a request dated 10.09.2014 to the first and second respondents to reinstate him in accordance with the above settlement. Since no order has been passed the petitioner had filed a Writ Petition in W.P.No.31445 of 2014 seeking direction to the respondents to implement the order passed by the fourth respondent. After the direction of this Court, the second respondent has passed the impugned order by rejecting the request of the petitioner. Aggrieved over that the present writ petition has been filed.



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3. The second respondent has filed a counter by stating that the copy of the order of the Court in W.P.No.31445/2014 was received only on 26.09.2019; the impugned order has been passed only in accordance with the bye-laws of the society; in the criminal case pending before the learned Judicial Magistrate I, Ariyalur, a finding has been rendered as to the guilt of the petitioner and hence the petitioner cannot seek any order for reinstatement; the petitioner's claim in respect of 12(3) settlement ought to be proved; the petitioner caused loss to the society because of his irresponsibility and failure to execute his essential duties; the second respondent has passed an order only in accordance with the rules; the petitioner has to workout only the statutory remedies in accordance with the law.

4. At the time when the impugned order was passed, the criminal case pending against the petitioner got disposed. Even though the petitioner was released under Section 4(3) of the Probation of Offenders Act, without any punishment found guilty, he was not sentenced with any imprisonment.



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5. In pursuant to the 12(3) settlement entered into between the petitioner and the third respondent, the fourth respondent has also passed an order on 12.05.2014 for adopting the terms of settlement. The petitioners gave a representation dated 10.09.2014 to the respondents 1 to 2 to reinstate him into service by giving the benefit of settlement. As the petitioner's representation did not fructify into any action, he has filed a Writ Petition in W.P.No.31445 of 2019 and in which the following has been made on 24.04.2019 :

“ 5. It is also not disputed by the parties concerned that the second respondent had not taken any action against the third respondent society for entering 12(3) Settlement agreement between the parties. Therefore, this Court assumes that the second respondent had not agitated the matter and not taken action for cancellation of the said order.

6. In view of the above said fact and submission, this Court is inclined to direct the second respondent to pass appropriate orders by directing the third respondent to implement the order of the fourth respondent, if there is no legal impediment, as expeditiously as possible, within a period of four months from the date of receipt of a copy of this order.”

6. At no point of time the second respondent has taken any efforts to challenge the 12(3) settlement entered into between the petitioner and the third respondent. Neither the second respondent had claimed that the order



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of the fourth respondent attached to the request of the petitioner is a concocted or forged one. Even though the second respondent has stated that the 12(3) settlement is not legally enforceable, such a contention was not made before the Court in W.P.No.31445 of 2014. Even after the disposal of the said writ petition, no apparent action has been taken by the second respondent to cancel the settlement or to challenge its legality. After having acquiesced the second respondent cannot come now and claim that the impugned settlement is illegal and not enforceable. The second and third respondents have to interpret the order of learned single Judge passed in W.P.No.31445/2014 in its true letter and spirit. The Court has also made an observation in the said order that the second respondent has not chosen to challenge the settlement.

7. Since the impugned order has been passed without properly understanding the spirit of the order of this Court in W.P.31445/2019, the said order is liable to be set aside. Since the petitioner had attained the age of superannuation in the year 30.04.2018, the respondents have to reinstate the petitioner and then allow him to retire thereafter.



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8. Accordingly this Writ Petition is allowed and the impugned order passed by the third respondent in Na.Ka.No.1/2019 dated 21.12.2019 is hereby quashed and the respondents are directed to reinstate the petitioner and allow him to retire thereafter and pay the backwages from 12.05.2014 till his retirement on 30.04.2018 within a period of four weeks from the date of receipt of a copy of this order. No costs.

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Index: Yes / No

Speaking order / Non-speaking order

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R.N.MANJULA ,J.

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To:

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