



WEB COPY



W.P.No.20266 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.20266 of 2020

and

W.M.P.No.25060 of 2020

N.Poomalai

... Petitioner

Vs.

1.The Deputy Registrar,
O/o Deputy Registrar of Co-operative Societies,
Jayapuram, Tindivanam.

2.The Administrator Melpakkam
Primary Agricultural Credit Society,
Melpakkam Village,
Iyanthoppu Post, Tindivanam Taluk,
Vilupuram District TN – 604 307.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Mandamus forbearing 1st respondent from proceeding further on the basis of the proceedings dated 23.12.2020 against the petitioner without initiating any action on the basis of the enquiry report dated 18.11.2020 submitted by the enquiry officer.



W.P.No.20266 of 2020

WEB COPY

For Petitioner : Mr.R.Karunagaran

For Respondent 1 : Mr.K.Tamil Vendan,
Government Advocate

For Respondent 2 : Mr.L.P.Shanmugasundaram

ORDER

The relief sought by the petitioner in this writ petition is to forbear the 1st respondent from proceeding further on the basis of the proceedings dated 23.12.2020 against the petitioner without initiating any action on the basis of the enquiry report dated 18.11.2020 submitted by the enquiry officer.

2. The case of the petitioner is that the petitioner has worked as Attendar at Malpakkam Primary Agricultural Co-operative Credit Society from the year 2012 and subsequently promoted as Clerk from 15.10.2015. This being so, against the petitioner, the first respondent has issued surcharge proceedings notice dated 14.02.2019 and enquiry has been initiated under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, the petitioner has filed writ petition in W.P.No.14109 of 2019 and the same



was allowed. This being so, one J.Ruben Kennedy has framed charges against the petitioner as if he has abetted the secretary of above said society in his misappropriation, for the same, the petitioner has filed his detailed reply on 08.05.2020. Subsequently, one Mr.Mani has been appointed as enquiry officer and during the enquiry, the petitioner has submitted his explanation, however, the same was not considered.

2.2. On 18.11.2020, the enquiry officer has submitted his report and held that the petitioner has abetted the misappropriation by the secretary. Further, on 21.11.2020, the enquiry officer, who conducted the surcharge proceedings has become administrator of the Melpakkam Primary Agricultural Cooperative Society and issued a show cause notice. Subsequently, the petitioner has given his written explanation on 03.12.2020 and without considering the same, personal hearing notice was issued on petitioner. The second respondent, who being the prosecutor, administrator and disciplinary authority cannot in law call the petitioner to attend the personal hearing without setting aside the enquiry report or ordering the De-novo to be conducted afresh on 31.12.2020. Hence, the petitioner has come



W.P.No.20266 of 2020

forward with the present writ petition.

WEB COPY

3. When the matter was taken up for hearing, learned counsel appearing for the second respondent submitted that pending this writ petition, the punishment of dismissal from service was awarded to the petitioner on 06.01.2021 and the same has to be challenged by way of filing Revision Petition under Section 153 of Tamil Nadu Co-operative Societies Act, 1983, for which 90 days is a limitation period from the date of award i.e., on 06.01.2021.

4. Learned counsel for the petitioner submitted that since the writ petition is pending, the delay may be condoned by the first respondent/Joint Director. Hence, he prayed this Court to direct the first respondent/Joint Director to condone the delay.

5. Heard the learned counsel on either side and perused the materials available on record.



6. It is pertinent to note that during the pendency of the writ petition, **the award of dismissal was issued to the petitioner on 06.01.2021 and in order to challenge the same, the petitioner has to file a Revision Petition under Section 153 of the Tamil Nadu Co-operative societies Act, 1983 and for filing the same 90 days is the limitation period.** For better appreciation, Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 is extracted hereunder:

“ 153. Revision.__(1) The Registrar may of his own motion or on application, call for and examine the record of any officer subordinate to him or of the board or any officer of a registered society or of the competent authority constituted under sub-section (3) of section 75 and the Government may, of their own motion or on application, call for and examine the record of the Registrar, in respect of any proceedings under this Act or the rules or the by-laws not being a proceeding in respect of which an appeal to the Tribunal is provided by sub-section (1) of section 152 to satisfy himself or themselves as to the regularity of such proceedings, or the correctness, legality or propriety of any decision passed or order made therein; and, if, in any case, it appears to the Registrar or the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, he or they may pass orders accordingly:

Provided that every application to the Registrar or the Government for the exercise of the powers under this section shall be preferred within ninety days from the date on which the



WEB COPY



W.P.No.20266 of 2020

proceedings, decision or order to which the application relates was communicated to the applicant.

(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.

(3) The Registrar or the Government, as the case may be, may suspend the execution of the decision or order pending the exercise of his or their power under sub-section (1) in respect thereof.

(4) The Registrar or the Government may award costs in any proceedings under this section to be paid either out of the funds of the society or by such party to the application for revision as the Registrar or the Government may deem fit.”

In the present case on hand, the limitation period of 90 days got over due to the pendency of the writ petition and the learned counsel for the petitioner prayed to this Court to exclude the period of the pendency of the writ petition for the purpose of limitation so as to enable the petitioner to file the review petition before the Competent Authority.

7. In view of the above facts and circumstances and the submission made by the learned counsel on either side, the period of the pendency of the writ petition is excluded for the purpose of calculating the period of limitation for filing the Revision Petition under Section 153 of the Tamil



W.P.No.20266 of 2020

Nadu Co-operative Societies Act, 1983, before the Competent Authority.

WEB COPY

8. This writ petition is disposed of with the aforesaid observation . No costs. Consequently, connected miscellaneous petition is closed.

25.07.2023

vm

Index : Yes/No

Speaking Order : Yes/No

To:

1.The Deputy Registrar,
O/o Deputy Registrar of Co-operative Societies,
Jayapuram, Tindivanam.

2.The Administrator Melpakkam
Primary Agricultural Credit Society,
Melpakkam Village,
Iyanthoppu Post, Tindivanam Taluk,
Vilupuram District TN – 604 307.



WEB COPY



W.P.No.20266 of 2020

J.SATHYA NARAYANA PRASAD,J.

vm



WEB COPY



W.P.No.20266 of 2020

W.P.No.20266 of 2020

25.07.2023