



W.P.No.9020 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Reserved on:19.06.2023**

**Delivered on: 23.06.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**W.P.No.9020 of 2017**

**&**

**W.M.P.Nos.9938 of 2017 and 10642 of 2018**

Sri Mushnam Centre Teachers Co-op  
Thrift and Credit Society (E.2424)  
Rep by its President  
Mr.R.Selvam  
No.67, Sannathi Street  
Sri Mushnam-608 703  
Cuddalore District

... Petitioner

**Vs.**

1.The Joint Registrar of Co-op Societies  
Revision Authority  
Cuddalore

2.The Deputy Registrar of Co-op Societies  
Chidambaram Circle  
Cuddalore District

3.Mrs.P.Motcharackini

... Respondents



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**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1<sup>st</sup> respondent impugned order passed in Na.Ka.5946/2015, TVT.1, dated 18.11.2016 and quash the same.

For Petitioner : Mr.P.Paramasivadoss

For Respondents : Mr.T.M.Rajangam, G.A for R1 and 2

Mr.M.S.Palaniswamy for R3

**ORDER**

The petitioner has approached this Court seeking issuance of a Writ of Certiorari to quash the order of the 1<sup>st</sup> respondent in Na.Ka.5946/2015, TVT.1, dated 18.11.2016.

2. The petitioner's case is that the petitioner society is functioning from 1962 and as many as 42 Government aided schools come under the petitioner society. The petitioner societies' accounts were originally maintained by a retired teacher till the year 2000 and thereafter by one M.Chitrarasan on pro-bono basis. Subsequently, Special Officer was appointed for the Society on



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24.05.2001. However, the Society has been functioning without even a single employee. In such circumstances, the 3<sup>rd</sup> respondent was appointed as temporary office assistant on 01.03.2001 on daily wages basis. Later it was discovered that petitioner's appointment was not proper as she did not possess the necessary qualifications. It also came to light that the 3<sup>rd</sup> respondent was involved in serious misconduct and several misappropriations as a result of which petitioner society faced severe losses. An inspection was ordered u/s.82 of the Tamil Nadu Co-operative Societies Act,1983 to enquire about the complaint on the petitioner society and the Sub-Registrar of Co-operative Society was appointed to inspect and enquire into the allegations. The said officer recommended severe disciplinary action against the 3<sup>rd</sup> respondent. The 3<sup>rd</sup> respondent was suspended by the petitioner society on 21.12.2013 and subsequently served with a charge memo on 11.02.2014. The 3<sup>rd</sup> respondent gave her reply on 27.02.2014. A retired Co-operative Sub-Registrar was appointed as the Domestic Enquiry officer to enquire into the charges levelled against the 3<sup>rd</sup> respondent. The Domestic Enquiry Officer found the 3<sup>rd</sup> respondent guilty and filed his report on



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05.05.2014. Based upon the said enquiry report, the petitioner society issued a show cause notice once again to the petitioner on 03.06.2015 asking her explanation and also calling upon her to hand over the records of the society which were available with her. The 3<sup>rd</sup> respondent did not come forward to handover the records or her appointment letter and therefore she was terminated from service on 25.07.2015. The 3<sup>rd</sup> respondent aggrieved by the said order filed a Revision on 05.08.2015 before the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent passed the impugned order 18.11.2016 setting aside the termination of service of the 3<sup>rd</sup> respondent and reducing the punishment to stoppage of increment without cumulative effect.

3. The petitioner society being aggrieved by the said order has come forward with the present Writ Petition on the ground that the impugned order is illegal and that the 1<sup>st</sup> respondent failed to consider the gravity of charges levelled against the 3<sup>rd</sup> respondent and her very appointment itself was fraudulent and that the 3<sup>rd</sup> respondent had custody of all records and files of the petitioner's Society, outside the office of the Society.



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4. The 3<sup>rd</sup> respondent who is the contesting respondent filed a detailed counter affidavit stating that the Revision filed by her before the 1<sup>st</sup> respondent was passed only after considering the merits and demerits of the case of both the parties and the same does not warrant interference by way of an order in this Writ Petition.

5. Heard Mr.P.Paramasivadosh, learned counsel appearing for the petitioner and Mr.T.M.Rajangam, learned Government Advocate, appearing for the respondents 1 and 2 and Mr.M.S.Palaniswamy, learned counsel appearing for the 3<sup>rd</sup> respondent.

6. This Court has also perused the available materials on record besides also the judgments relied on by the counsel for petitioner and 3<sup>rd</sup> respondent. It is an admitted fact that initially, in and by a charge memo dated 11.02.2014 two charges were framed against the 3<sup>rd</sup> respondent. The first charge was more general in nature, alleging dereliction of duty. The second charge pertained to calculation of monthly interest in respect of loans and



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thereby causing wrongful loss to the Society. In respect of one member, the 3<sup>rd</sup> respondent is alleged to have made a wrong calculation of Rs.34,705/- and in respect of another member she has made a wrong calculation of Rs.30,536/- and in respect of a third member, she has made a wrong calculation of Rs.6,680/- thereby a deficit of Rs.71,291/- was caused which is loss to the petitioner society. The 3<sup>rd</sup> respondent gave her explanation which was not considered by the society or the Domestic Enquiry Officer. However, before the Revisional Authority, despite finding that the charges were proved, the authority found that the punishment indicted was disproportionate to the charges proved and proceeded to modify the punishment from termination to stoppage of increment, without cumulative effect.

7. Learned counsel for the petitioner would vehemently contend that the 3<sup>rd</sup> respondent has misappropriated funds and the dereliction of duty on her part is serious. Moreover, she has admitted to all the charges including the claim of the petitioner's Society by way of a second show cause notice



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with regard to custody of all original records of the petitioner's society and prayed that such persons should not be shown any indulgence as it would not be in the larger interest of the Society. Learned counsel also relied on the following judgments:

1. *Executive Director, Corporation Bank, Mangalore and Ors Vs. P.R.Shantharam*, reported in *2021(4) CTC 269 (Mad)*
2. *State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya*, reported in *(2011) 4 SCC 584*
3. *Chief Executive Officer, Krishna Direct Co-operative Central Bank Limited and another Vs. K.Hanumantha Rao and another*, reported in *(2017) 2 SCC 528*

and would conclude his submissions stating that it was not within the jurisdiction of the Revisional Authority to interfere in such matters.

8. In *State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya*, reported in *(2011) 4 SCC 584*, the Hon'ble Supreme Court held that when a Court is considering whether the punishment of termination from service is



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shockingly disproportionate to the gravity of the misconduct, the loss of confidence in employee should be a relevant factor and employer would be justified in contending that a dishonest person was not fit to continue in service.

9. Per contra, learned counsel for the 3<sup>rd</sup> respondent would contend that the society has not been put to any loss whatsoever and the amounts in respect of both the charges have been recovered. He would also state that extraneous matters ought not to have been taken into account while issuing a show cause notice pursuant to the findings of the Domestic Enquiry Officer and therefore the Revisional Authority was absolutely well within his jurisdiction and right to not to go into such new charges levelled against the petitioner and he limited his findings with regard to the only two charges that were originally levelled against the 3<sup>rd</sup> respondent. In this connection, learned counsel for the 3<sup>rd</sup> respondent would place reliance on the decision of this Court in M.Ramachandran Vs. The Board of Directors, Cheran Transport Corporation Ltd and another, reported in 2001 Writ L.R.86



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10. This Court has also perused the second show cause notice as well as the impugned order. With regard to the aspect of proof of charges levelled the 3<sup>rd</sup> respondent herself has admitted that she was at fault. She only justifies the same on the ground that it was not willful and therefore a lenient view ought to be taken in her case. No doubt, as rightly pointed out by the learned counsel for the petitioner, the attempt on the part of the 3<sup>rd</sup> respondent to try and put the blame on the petitioner's society for not giving her proper instructions cannot be appreciated. When admittedly the 3<sup>rd</sup> respondent has been able to arrive at a proper calculation with regard to 65 odd members and only when it comes to two or three members, the 3<sup>rd</sup> respondent raises such a defence in her favour, then certainly the 3<sup>rd</sup> respondent's plea cannot be accepted at all. However, at the same time it is to be noted that as a delinquent facing charges it would always be open to the 3<sup>rd</sup> respondent to put forth all her available defence and it is well settled law that even in a Civil Suit, a defendant is entitled to take mutually inconsistent pleas. This Court, therefore, does not find fault with the 3<sup>rd</sup> respondent for taking a defence trying to shift the blame on the Petitioner's Society.



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11. Be that as it may, the fact that the amounts that were admittedly a shortfall because of the wrong calculation of interest made by the 3<sup>rd</sup> respondent have been recovered and the petitioner's Society cannot claim that there has been a loss to them. The first charge, as already found, was only a general charge of dereliction of duty which can at best be viewed in relation to the second charge. In so far as the second charge, as already discussed above there has been no monetary loss to the Society and the Revisional Authority U/s. 153 was justified in holding that the punishment was disproportionate to the charges proved while reducing the punishment.

12. In so far as the claims of the petitioner, the 3<sup>rd</sup> respondent employing a third party to carry out her duties and having custody of the records of the petitioner society outside the office of Society are concerned, admittedly these were not charges that were originally levelled against the 3<sup>rd</sup> respondent. If at all the petitioner's society deemed it fit that such charges were also grave or serious in nature warranting disciplinary action against the 3<sup>rd</sup> respondent the petitioner's society was well within its right to have issued



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a fresh charge memo and proceeded in accordance with law. However, no such steps have been taken. Instead after the Enquiry Officer found charges 1 and 2 to be proved against the 3<sup>rd</sup> respondent and when a show cause notice came to be issued on 03.06.2015, apart from citing the charges held proved against the 3<sup>rd</sup> respondent, the petitioner society made fresh charges against the 3<sup>rd</sup> respondent and these charges are now put against the 3<sup>rd</sup> respondent and the order passed in Revision by the 1<sup>st</sup> respondent. Such an approach cannot be appreciated. The Revisional Authority was concerned only with the initial charges which were levelled against the 3<sup>rd</sup> respondent and cannot be faulted for not addressing fresh charges that have been levelled against the 3<sup>rd</sup> respondent subsequently. The decision relied on by the counsel for the 3<sup>rd</sup> respondent in M.Ramachandran's case mentioned supra lays down the ratio that when enquiry was held on specific charges and it was improper for the disciplinary authorities to consider new allegations in respect of which no charges were framed. This Court held that the enquiry officer's finding on matters beyond the scope of enquiry was bereft of authority or jurisdiction. In this case also as already discussed herein above, the petitioner cannot find



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fault with the Revisional Authority for not taking cognizance of fresh charges levelled by way of second show cause notice.

13. The Revisional Authority has assigned valid reasons for not awarding major penalty of termination from service. Such a reasoned order does not warrant interference, that too, in a Writ Petition.

14. For all the foregoing reasons, Writ Petition fails and accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

23.06.2023.

Internet:Yes  
Index:Yes/No  
Neutral Citaion:Yes/No  
Speaking/Non-speaking order  
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1.The Joint Registrar of Co-op Societies  
Revision Authority  
Cuddalore

2.The Deputy Registrar of Co-op Societies  
Chidambaram Circle  
Cuddalore District



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**P.B.BALAJI, J.,**  
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**Pre-delivery order in**  
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