



WP No.31409 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.07.2023**

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

WP No.31409 of 2017

And

W.M.P.No. 34539 of 2017

S.Kasinathan

... Petitioner

-Vs-

1. The Secretary to Government
Department of Co-operation, Food & Consumer Protection
Fort St. George, Chennai – 600 009.
2. The Registrar of Co-operative Societies
No.170, E.V.R. Periyar High Road,
Kilpauk, Chennai – 600 010.
3. The Additional Registrar of Co-operative Societies
(Marketing, Planning, Development and
Banking System),
No. 170, EVR Periyar High Road,
Kilpauk,
Chennai – 600 010.
4. The Joint Registrar of Co-operatives Societies



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Coimbatore Region
Coimbatore.

5. The Coimbatore District Central Co-operative Bank
Represented by its Managing Director,
Coimbatore 641 018.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order issued by the third respondent in proceedings Na.Ka.46652/2002/Sa.Pa 1 dated 19.07.2005 and the impugned order issued by the 4th respondent in proceedings Na.Ka 989/2016 Ve 2 dated 11.07.2016 and the impugned order issued by the first respondent in Letter No. 19099/C.P1/2016-1 dated 19.12.2016 and the subsequent impugned order of the first respondent in Letter No. 1665/C.P.1/2017-1, dated 07.03.2017 and quash these orders and consequently direct the 4th respondent to consider the Revision Petition of the petitioner dated 27.01.2017.

For Petitioner	:	Mr. R.Peram Narayan
For RR 1 to 4	:	Mr.S.Ravi Kumar Special Government Pleader
For 5 th Respondent	:	Mr. L.P.Shanmugasundaram



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ORDER

Writ Petition has been filed in the nature of Certiorarified Mandamus seeking interference with an order passed by the third respondent / the Additional Registrar of Co-operative Societies, (Marketing, Planning, Development and Banking system) at Chennai, dated 19.07.2005 and also with the order of the fourth respondent/ the Joint Registrar of Co-operative Societies, Coimbatore Region, Coimbatore, dated 11.07.2016 and the order of the first respondent / the Secretary to Government, Department of Co-operation, Food & Consumer Protection, Chennai, dated 19.12.2016 and the further order of the first respondent dated 07.03.2017.

2. The petitioners seeks consideration of the revision petition filed by the petitioner dated 27.01.2017. The petitioner was working as Assistant / Cashier in the fifth respondent / Coimbatore District Central Co-operative Bank at Coimbatore. He was originally placed under suspension on 23.03.1999 and a charge memo containing four charges were issued to him. The charges related to misappropriation of funds amounting to



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Rs.8,64,500/-. The petitioner gave his explanation. The Departmental proceedings were then initiated and the petitioner participated in the same. The enquiry report was communicated since the Enquiry Officer held the charges as having been established. The petitioner gave his further explanation. However, the fifth respondent had issued an order dismissing the petitioner from service by proceedings dated 09.10.2001.

3. The petitioner then filed Revision Petition under Section 153 of the Tamil Nadu Co-operative Society Act, 1983. He did not prosecute the same. As a matter of fact, he had shifted his residence. Notices sent for his appearance were in vain. Therefore, the said Revision Petition filed by him was dismissed for non prosecution on 19.07.2005.

4. Consequent to the charge of misappropriation, an FIR had also been registered against the petitioner herein and after investigation, final report had been filed before the learned Judicial Magistrate No.IV, Coimbatore, who had taken cognizance of the same as C.C.No. 1 of 2004. The trial proceeded in that particular calendar case and by a Judgment dated



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13.08.2015, the petitioner was convicted but released under Section 4(1) of the Probation of Offenders Act. The petitioner was also directed to pay a sum of Rs.1000/- as costs to the Government under Section 5(1)(b) of the said Act.

5. Thereafter, since he had been released under the Probation of Offenders Act, the petitioner then sent representations seeking reinstatement. Since, no order was passed, he filed an independent Revision Petition again under Section 153 of the Tamil Nadu Co-operative Societies Act on 16.02.2016. This was rejected on 11.07.2016 on the issue of delay. The petitioner then sent several representations. Since no orders were passed, he preferred a Revision before the first respondent on 17.10.2016.

6. By an order dated 19.12.2016 the first respondent again rejected the revision petition again on the ground of delay. The petitioner then filed Review Application before the first respondent, which was also rejected by an order dated 07.03.2017. It had been stated that no fresh



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ground had been given for the first respondent to review the order. In effect, the case of the petitioner had not been examined on merits when he had filed the application under Section 153 of the Tamil Nadu Co-operative Societies Act.

7. It is seen from what is stated above that the petitioner had filed two separate revisions. One questioning the order of dismissal which was dismissed for non prosecution on 19.07.2005. Consequent after the Judgment of the Criminal Code and which was pronounced on 13.08.2015 a revision against that was filed on 16.02.2016. The second set of proceedings were rejected on the ground of limitation. The petitioner could have reasonably sought to revive the first revision petition filed which was dismissed for non prosecution on 19.07.2005.

8. The respondents in their counter affidavit again have stated the facts and had stated that not only was there a charge of misappropriation of funds but also of moral turpitude.

9. It is the contention of the learned counsel for the petitioner that



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his revision application had been rejected on the ground of delay. The petitioner seeks that atleast earlier the revision petition which had been dismissed for non prosecution be revived. But of-course, the respondents should be granted an opportunity to examine the delay in restoring the same.

10. After balancing both sides, it would only be appropriate instead of granting the relief sought for by the petitioner in the nature of Certiorarified Mandamus against the order passed, I would grant liberty to the petitioner to file necessary application to revive Revision Petition filed under Section 153 of the Tamil Nadu Co-operative Societies Act, which was dismissed for non prosecution on 19.07.2005.

11. I am conscious that this order is passed to revive a petition which had been dismissed for non prosecution about 18 years back. But let the respondents examine the case on merits. The petitioner will have to explain as to why he permitted the said revision petition to be dismissed for non prosecution. Those reasons will have to be given by him. He will also have to give reasons as to why he had not filed an application at the earliest point of time to revive the said Revision Petition. He will also have to



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explain whether conviction and release under the Probation of Offenders Act would apply to the petitioner herein in view of the fact that he had been incarcerated for a period of 52 days and had also been directed to pay costs of Rs.1000/- to the Government, also taking into consideration the nature of charges which had been imposed on him.

12. The respondents have every right to contest every explanation given by the petitioner herein including the issue of delay, including the issue that even if the petitioner had been released under the Probation of Offenders Act since there is a conviction, technically the petitioner's request for reinstatement cannot be granted as he stands as a person convicted of an offence. These are all facts to be considered under a Revision Petition under Section 153 of the Tamil Nadu Co-operative Societies Act. If the petitioner files necessary application on or before 18.08.2023, the same may be taken on file. If it is filed after the date, the same cannot be and should not be taken on file by the revisional authority. Even if it is taken on record, notice may be issued. Opportunity must be granted for filing counters and thereafter, let the authority take a final decision. The final decision would not only be questioning the order of dismissal but must also address the



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effect of the order of conviction / release under the Probation of Offenders Act by the Judicial Magistrate No.IV, Coimbatore. The reasons for delay and the reasons surrounding the same may also be explained and adjudicated.

13. The Writ Petition stands disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

20.07.2023

vsg

Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order

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4. The Joint Registrar of Co-operatives Societies
Coimbatore Region
Coimbatore.
5. The Managing Director
The Coimbatore District Central Co-operative Bank
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C.V.KARTHIKEYAN, J.,

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