



W.P.No.25230 of 2017

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

Reserved on:16.06.2023

Delivered on: 08.09.2023

**CORAM:**

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

**W.P.No.25230 of 2017**

**&**

**W.M.P.No.26675 of 2017**

V.Balasubramanian

... Petitioner

Vs.

1.The Registrar of Cooperative Society (Housing),  
Nandanam, Chennai-600 035.

2.The Special Officer,  
No.K1655,  
Udumalpet Cooperative Housing Society Ltd.,  
Gandhi Nagar,  
Palani Road, Udumalpet-642 154.

3.V.Elangovan

4.The Deputy Registrar,  
Cooperative (Housing)  
Coimbatore  
No.1288, Rajsri Complex,  
Trichy Road,  
Coimbatore-641 018.

... Respondents



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**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for records connected with the impugned order passed by the 1<sup>st</sup> Respondent in RC.No.3774/2014 SF1 dated 16.12.2015 which confirmed the order of termination passed by the 2<sup>nd</sup> Respondent in his order dated 13.10.2010 and quash the same and consequently direct the 2<sup>nd</sup> Respondent to reinstate the Petitioner into service with continuity of service with back wages and all other attendant and other service benefits.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.T.Chezhian, Additional Govt. Pleader  
for R1 & R4

Mr.M.S.Palaniswamy for R2

No Appearance (for R3)

### **ORDER**

The Writ Petitioner has preferred the above Writ Petition seeking issuance of a Writ of Certiorarified Mandamus to quash the order dated 16.12.2015 passed by the 1<sup>st</sup> respondent, confirming the order of termination passed by the 2<sup>nd</sup> respondent vide order dated 13.10.2010 and to consequently direct the 2<sup>nd</sup> respondent to reinstate the petitioner into service with



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continuity of service, backwages and all other attendant service benefits.

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2. The case of the Writ Petitioner is that he was recruited through the Employment Exchange and appointed as a clerk on 23.05.1986 in the 2<sup>nd</sup> respondent Society. Subsequently he was regularized with effect from 31.08.1988. On 15.06.1992, he was suspended from service on certain charges, which order of suspension was subsequently revoked and charges also being dropped by the 2<sup>nd</sup> respondent.

3. The petitioner's further case is that he was promoted to the post of Secretary on 01.06.1997 in the existing vacancy on the recommendation of the 4<sup>th</sup> respondent. It is the further case of the petitioner that the elected Board of the 2<sup>nd</sup> respondent has proposed to sell the land allotted for public purpose and the petitioner being the Secretary, expressed objections and unwillingness and in order to take vengeance against the petitioner, the 2<sup>nd</sup> respondent Board had suspended him from service. The enquiry was conducted, though improperly and without giving any opportunity to the



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petitioner and was completed in a hasty manner. A second show cause notice dated 27.04.2000 was issued to the petitioner calling for an explanation as to why he should not be terminated from service. The petitioner challenged the said Show Cause Notice in Review Petition No.RC.6020/2000/C2 U/s. 153 of the Tamil Nadu Co-operative Societies Act, 1983 (in short 'Act') before the 1<sup>st</sup> respondent. However, the 2<sup>nd</sup> respondent terminated the petitioner from service by an order dated 19.05.2000. The petitioner has challenged the said termination order in RC.No.8048/2000/C2 U/s. 153 of the Act and the said Review Petition came to be allowed by order dated 23.05.2002. The 2<sup>nd</sup> respondent did not prefer any appeal against the said order dated 23.05.2002 and thereafter the petitioner was also reinstated into service and he rejoined duty on 17.06.2002. A further charge memo was issued to the petitioner on 31.03.2009. An enquiry officer was appointed to enquire into the charges levelled against the petitioner. It is the case of the petitioner that the enquiry was conducted in violation of principles of natural justice. Though the petitioner requested for documents, the same was denied by the 2<sup>nd</sup> respondent. The petitioner gave a written reply on 03.04.2000. Subsequently,



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the petitioner was terminated on 13.10.2010. The petitioner preferred a Revision U/s. 153(1) of the Act, challenging the order of termination passed by the 2<sup>nd</sup> respondent on 13.10.2010. The 4<sup>th</sup> respondent passed the order in the said Revision preferred by the petitioner and set aside the order of termination and chose to modify it to 'one demotion'. However, even thereafter the petitioner was not permitted to join duty, despite the order of termination being set aside. In the meantime, the 2<sup>nd</sup> respondent filed a Review Petition on 28.04.2014 U/s. 154 of the Act before the 1<sup>st</sup> respondent. It is the specific case of the petitioner that the said Review Petition is not maintainable, besides also being barred by limitation.

4. However, despite his valid objections, an order came to be passed on 16.12.2015 confirming the termination order dated 13.10.2010 dismissing the petitioner from service. Hence, the Writ Petition has been filed.

5. The 1<sup>st</sup> respondent, Registrar of Co-operative Societies has filed a counter affidavit praying for dismissal of the Writ Petition on the grounds of



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delay and laches, having approached the Court after lapse of two years.

6. The 2<sup>nd</sup> respondent has filed a counter stating that the charges levelled against the petitioner were very grave in nature and the petitioner has caused huge monetary loss to Society. Surcharge proceedings were also initiated U/s. 87 of the Act and surcharge order also came to be passed on 28.02.2018, directing the petitioner to pay Rs.4,15,711/- together with 18% interest. The petitioner has not chosen to deny any of the charges levelled against him and even his past records were not satisfactory and he was suspended and thereafter reinstated in service after issuance of a warning. Again in 1999, for various irregularities, he was dismissed from service and subsequently by an order of the 1<sup>st</sup> respondent alone he was reinstated into service. Therefore, it is contended by the 2<sup>nd</sup> respondent that no leniency can be shown to the petitioner and also stated that the Writ Petition, without exhausting the alternative remedy is not maintainable.

7. Heard Mr.C.Prakasam, learned counsel for the petitioner,



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Mr.Chezhian, learned Additional Government Pleader for the respondents 1 and 4 and Mr.M.S.Palansamy, learned counsel for the 2<sup>nd</sup> respondent and I have also perused the records and also the decision of the Hon'ble Supreme Court relied on by the counsel for the 2<sup>nd</sup> respondent.

8. After initially hearing the counsel, it was brought to my notice that C.M.A.No.36 of 2012, which was pending on the file of the II Additional District and Sessions Court, Tiruppur at the time of the filing of the Writ Petition was subsequently disposed of on 28.02.2018, pending the Writ Petition and that a Revision in C.R.P.No.3048 of 2021 had been filed before this Court and that the Revision was already argued and orders were reserved. Since the subject matter in the Writ Petition overlaps with the subject matter in C.R.P, I awaited the decision of this Court in C.R.P.No.3048 of 2021.

9. On 17.08.2023, this Court dismissed the C.R.P.No.3048 of 2021, in and by a detailed order. The said revision was filed by the 2<sup>nd</sup> respondent



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herein challenging the judgment passed in C.M.A.No.36 of 2012 dated 28.02.2018 thereby Writ Petitioner's appeal against the surcharge proceedings came to be allowed.

10. The findings rendered by the Additional District and Sessions Judge that the surcharge proceedings were held without a proper enquiry and without following the principles of fairness equity and its functions came to be confirmed by this Court in the aforementioned C.R.P.No.3048 of 2021.

11. However, at the sametime, it is seen that the issue in the Civil Miscellaneous Appeal before the Additional District and Sessions Judge and the C.R.P before this Court in C.R.P.No.3048 of 2021 was that the petitioner had received salary over and above his regular salary, without getting appropriate orders from his superiors. On a perusal of the charge memo dated 31.03.2009, it is seen that the charges against the petitioner was multifold. One of the charges pertain to the sum of Rs.4,15,711/- said to have been received by the petitioner in excess of his due salary. The other charges



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pertain to misappropriation of the Society's funds, concealment of rental income accruing to the Society and misappropriation of the same, refusal to hand over documents of the Society and consequent dereliction of the duties.

12. In view of the judgment of Additional District and Sessions Judge, Tiruppur and which has also come to be confirmed by this Court in C.R.P.No.3048 of 2021, nothing survives for consideration in so far as the first charge is concerned. However, in respect of the other charges, the enquiry officer has specifically found against the Writ Petitioner and the petitioner was given due opportunity and he has also submitted his explanation on 20.09.2010. Only thereafter, based on the report of the enquiry officer and all relevant documents, the 2<sup>nd</sup> respondent has passed the order dated 13.10.2010 dismissing the petitioner from service. No doubt, the Revision is preferred against the said order of dismissal. The 1<sup>st</sup> respondent set aside the order of dismissal and demoted the petitioner to the immediate lower rank. The said order was challenged by the 2<sup>nd</sup> respondent by way of Revision before the Secretary to Government. However, the Secretary to



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Government, in and by letter dated 08.04.2014, directed the 2<sup>nd</sup> respondent to approach the 1<sup>st</sup> respondent and thereafter the 1<sup>st</sup> respondent in and by order dated 16.12.2015 set aside the earlier order passed on 18.05.2012. The three contentions raised and argued by the counsel for the parties are to be answered:

i) Whether the Review Petition U/s. 153 decided by the 1<sup>st</sup> respondent is maintainable in view of the earlier order dated 18.05.2012, which also came to be passed by the 1<sup>st</sup> respondent?

ii) Whether the Writ Petition, without invoking the remedy available under Statute by way of a Revision U/s. 153 is maintainable?

iii) Whether the Writ Petition is liable to be dismissed on the ground of delay and laches?

iv) Whether the Writ Court can entertain the Writ Petition and set aside the concurrent orders passed by the Disciplinary authorities?

i) The 1<sup>st</sup> contention of the learned counsel for the petitioner is that the 1<sup>st</sup> respondent having earlier passed a considered order on 18.05.2012, setting aside the order of dismissal from service, thereafter



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cannot reopen the closed subject once again and come to a different conclusion and that the impugned order of termination dated 16.12.2015 is without jurisdiction. However, I am unable to accept this said limb of argument of the counsel for the petitioner. Within the stipulated time, it is seen from the records that the 2<sup>nd</sup> respondent filed a Revision U/s. 153 of the Act. However, the Revision was preferred to the Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai-9. Subsequently the Secretary to Government, in and by its communication dated 08.04.2014, directed the 2<sup>nd</sup> respondent to approach the 1<sup>st</sup> respondent. Only under such circumstances, the matter came to be heard once again by the 1<sup>st</sup> respondent and thereafter an order came to be passed on 16.12.2015. Under such circumstances it cannot be stated that the order passed by the 1<sup>st</sup> respondent is without jurisdiction.

ii) In so far as the alternative remedy being available under the Statute, no doubt U/s.153 there is an avenue to redress the grievances of the petitioner. At the same time, it is to be noted that the Writ Petition came to be filed in the year 2017 and the Writ Petition was also admitted by this Court



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on 21.09.2017. The said Writ Petition has been pending for over six years.

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Now, at this stage, to uphold the objection of the respondents that there is a remedy available under the Statute and without exhausting the same, the petition ought not have been filed cannot be accepted. If at all the respondents were vigilant and a preliminary objection had been taken by them and the issue of maintainability of the Writ Petition in view of availability of an alternative remedy was canvassed immediately upon the Writ Petition being admitted or taken on file, then things become different. However, at this stage where the Writ Petition has been taken up for final hearing, it would not be fair or equitable to direct the petitioner to exhaust the alternative remedy available to him under the Statute. For these reasons, I am unable to accept the contentions of the respondents that the Writ Petition has to be dismissed.

iii) In so far as the objections with regard to delay and laches in approaching this Court, there is merit in the submissions advanced by the counsel for the respondents. Admittedly, the petitioner's termination from service was confirmed in Revision by the 1<sup>st</sup> respondent on 16.12.2015. The



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petitioner has slept over the matter and has chosen to file the Writ Petition only on 10.08.2017. In a matter like this, where the petitioner has been terminated/removed from service, the manner in which he has kept idle and chosen to approach this Court at once, after 20 months is clearly a conduct that is not expected of a reasonable or prudent person. The petitioner ought to have approached this Court especially when he has bye-passed the available statutory remedy and invoked the Writ jurisdiction of this Court under Article 226 of the Constitution of India. Therefore, this Court finds that the delay of 20 months is indeed fatal to the case of the petitioner and the Writ Petition is liable to be dismissed on the ground of delay and laches.

iv) Even on merits, the respondents have concurrently found that the petitioner has misappropriated the funds of the Society. As rightly pointed out by the respondents, the petitioner has not only not denied the charges levelled against him, he has merely proceeded on a technical ground that the 1<sup>st</sup> respondent ought not have reviewed its own order and come to a different conclusion. The subsequent order passed in C.R.P.No.3048 of 2021 dated 17.08.2023 also does not help the petitioner, excepting for the fact that



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one of the many grave charges levelled against the petitioner stands excluded, in view of the said order passed by this Court in C.R.P.No.3048 of 2021.

13. This Court as well as the Apex Court have repeatedly held that the High Court, exercising Writ jurisdiction under Article 226 should be slow to interfere with concurrent findings rendered by the Disciplinary authorities especially when the charges levelled against the delinquent are serious or grave in nature. It is also seen that even on earlier occasions, the petitioner has been suspended for various irregularities and subsequently by orders passed by the Registrar viz., the 1<sup>st</sup> respondent alone, he was reinstated in service. Thus, it can be seen that the petitioner has been habitual in misconducting himself while in service.

1. The decision relied on by the counsel for the 2<sup>nd</sup> respondent in the case of ***Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) vs The Secretary, Sahakari Noukarara Sangha and***



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*others* reported in *(2000) 7 SCC 517* would also apply to the facts of the present case. The Apex Court held that, where in a case of proved misappropriation, it is the discretion of the employer to consider the issue of punishment to be meted out to the delinquent and whatever the amount of misappropriation may be, whether small or large, the question of showing sympathy is uncalled for. In the instant case also, as already set out herein above, the petitioner has not even denied the charges levelled against him except for attacking the impugned orders on technical grounds of being without jurisdiction and time barred. Even the 1<sup>st</sup> respondent has given plausible reasons for confirming the order of termination passed by the 2<sup>nd</sup> respondent. Therefore, in the light of the ratio laid down by the Hon'ble Supreme Court, exercising Writ jurisdiction, I am unable to interfere with impugned orders as prayed for by the Writ Petitioner.



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15. For the foregoing reasons, the Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

08.09.2023.

Internet: Yes  
Index: Yes/No  
Speaking order  
Neutral Citation: Yes/No  
mjs

To

1. The Registrar of Cooperative Society (Housing),  
Nandanam, Chennai-600 035.
2. The Special Officer,  
No.K1655,  
Udumalpet Cooperative Housing Society Ltd.,  
Gandhi Nagar,  
Palani Road, Udumalpet-642 154.
3. The Deputy Registrar,  
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No.1288, Rajsri Complex,  
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**P.B.BALAJI, J.,**  
mjs

**Pre-delivery order in**  
**W.P.No.25230 of 2017**  
**and**  
**W.M.P.No.26675 of 2017**

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