



WP.No.18867/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.18867/2017

S.Manoharan

... Petitioner

Versus

1.The Joint Registrar of Cooperative Societies/
Chairman, Common Cadre Authority
Nagapattinam Region, Nagapattinam.

2.The President
Za, 78, Venkidangal Primiary Agri.
Cooperative Credit Society,
Venkidangal, Okkur Post
Kilvelur Taluk, Nagapattinam District.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent in Na.Ka.No.3682/2012/A3 dated 21.06.2017 confirming the earlier order of dismissal from service passed in Na.Ka.No.6010/2006/Ku.Vi.Ka dated 29.06.2010 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all monetary and other attendant benefits.



WP.No.18867/2017

For Petitioner : Mr.S.Kamadevan
For R1 : Mr.S.Ravikumar, Spl.GP
For R2 : Mr.L.P.Shanmugasundaram

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking the records of the 1st respondent, Joint Registrar of Cooperative Societies/Chairman, Common Cadre Authority, Nagapattinam Region in Nagapattinam in Na.Ka.No.3682/2013/A3 dated 21.06.2017 by which the 1st respondent had confirmed the earlier order of dismissal from service passed against the petitioner in Na.Ka.No.6010/2006/Ku.Vi.Ka dated 29.06.2010 and to quash the same and to direct the respondents to reinstate the petitioner into service with monetary and other attendant benefits.
- (2) In the affidavit filed in support of the writ petition, it had been stated that the petitioner was working as Secretary in the 2nd respondent, Venkidangal Primary Agricultural Cooperative Credit Society at Kilvelur Taluk, Nagapattinam District. He was placed under



WEB COPY



WP.No.18867/2017

suspension on 12.10.2006 by the orders of the 1st respondent. The order of suspension was initially passed for a period of six months and thereafter, extended periodically. It had been stated that thereafter, a charge memo was issued against the petitioner herein on 29.12.2006. The charges surrounded the accounts of the 2nd respondent and it stated that the petitioner had not submitted the accounts of the 2nd respondent to the Special Officer for verification and had also, without intimation or applying for leave, not reported for duty and had also failed to discharge his duties by not applying to the Kumbakonam Central Cooperative Bank for getting Samba crop loan and had also incidentally, broken the front gate of the Society by using the key which was in his possession and removing ledgers and documents. The charge memo also contained a charge that a sum of Rs.75,525.20 p. had been received from one Kaliyaperumal, Salesman of the 2nd respondent Society, but receipt was not issued and the amount was also not brought into the account of the Society and therefore, the petitioner had committed misappropriation of funds. It was also stated that the petitioner had violated the stay



WP.No.18867/2017

granted by the Hon'ble Supreme Court and also the Bye laws of the Society by enrolling new members to the Society. It had also been stated that in the Audit Report submitted between 2004 and 2005, the expenditure vouchers for a sum of Rs.50,954.85p. were entered twice and there was a double payment to a particular Kerosene Dealer Mr.Rathinasabapathy Mudaliyar and this amounted to misappropriation of the aforementioned sum. It was also stated that a cash balance of Rs.3,28,431.52 p. was not brought to the notice at the time of audit for verification. On the basis of these charges, an Enquiry Officer had been appointed and the enquiry proceeded and finally, by an order dated 29.06.2010, in Na.Ka.No.6010/2006/Ku.Vi.Ka, the petitioner suffered an order of dismissal from service.

- (3) The petitioner then preferred a revision under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983, before the Registrar of Cooperative Societies. The Additional Registrar, who examined the revision, by an order dated 27.10.2012, had set aside the order of dismissal and remanded the matter back to the 1st respondent for fresh



WEB COPY



WP.No.18867/2017

enquiry by appointing another domestic Enquiry Officer. The petitioner then filed WP.No.15017/2012 questioning the order of remand. The petitioner also prayed for reinstatement into service. The writ petition was disposed of on 20.07.2012 directing the respondents to disburse the subsistence allowance within a period of eight weeks. The respondents then filed a writ appeal in WA.No.1285/2013 and a direction was given in the writ appeal to pay the subsistence allowance in instalments. The petitioner claimed that after the order of remand, he was not permitted to rejoin duty. Thereafter, the Enquiry Officer who had been appointed afresh, issued a notice on 12.02.2013, fixing the date of enquiry on 18.02.2013. The petitioner complained that principles of natural justice had not been followed and raised objections for the domestic enquiry to be conducted. It was also stated that the petitioner had an enmity with the Presenting Officer, Mr.Sethuraman, Secretary [in-charge] of the 2nd respondent Society. These objections were rejected and it is complained that the enquiry proceeded ex-parte. Thereafter, after the findings of the Enquiry Officer, a second show cause notice



WEB COPY



WP.No.18867/2017

was issued to the petitioner on 27.06.2013. The petitioner then filed WP.No.19507/2013 and an order was passed on 25.07.2013 to proceed with the disciplinary proceedings after paying the subsistence allowance. But the petitioner gave a detailed explanation on 27.02.2017 for the second show cause notice. It had been stated that however, the order now impugned was passed dismissing the petitioner from service stating that the order is dated back to the first order of dismissal, namely, 29.06.2010.

- (4) A counter affidavit had been filed on behalf of the 1st respondent, the Joint Registrar of Cooperative Societies, Nagapattinam, wherein it has been stated that the petitioner who was working as Secretary is the 2nd respondent Society, was suspended on three occasions prior to the fourth suspension for alleged misappropriation of money and acts of omission and commission. It is claimed that he was first suspended on 24.01.1997 for alleged misappropriation of a sum of Rs.67,358.75 p. He was suspended for the 2nd time on 29.01.2001 and again, for the third time on 08.10.2001. Punishments were imposed and the petitioner was reinstated to service. The petitioner



WEB COPY



WP.No.18867/2017

was again suspended on 30.09.2006. It is claimed therefore that the petitioner was very consistent in disobeying the orders of the Special Officer.

- (5) It was also stated that the petitioner had first filed WP.No.39337.2006 claiming that the Special Officer had no power to suspend him. He also filed WP.No.41158/2006¹. That writ petition was dismissed on 05.10.2007. It had also been stated that the petitioner then filed WP.No.21128/2014 which was also dismissed. The first writ petition in WP.No.39337/2006 was also dismissed on 01.12.2012. Thereafter, eight charges had been framed against the petitioner herein. However, the petitioner did not participate in the domestic enquiry which had proceeded ex parte and a report was given on 25.08.2007. The petitioner was then asked to give his further explanation. But, he did not come forward to present his further explanation. He then received the show cause notice only on 15.04.2008 and also simultaneously filed WP.No.23834/2008 questioning the order of the 1st respondent. That writ petition was dismissed on 25.11.2009. The authority of the 1st respondent was confirmed.



WP.No.18867/2017

(6) WEB COPY

The petitioner then gave his explanation and the final order of dismissal was passed on 29.09.2010. The petitioner then filed a revision under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983. He also filed WP.No.27744/2010 seeking quick disposal of the revision petition. Directions were also issued and the revision petition was ordered by remanding the matter back to the Enquiry Officer. It had been stated that the enquiry was conducted and a report was also communicated to the petitioner who had also given his explanation. The petitioner then filed a writ petition in WP.No.19507/2013 and it was directed that appropriate orders should be passed by an order dated 25.07.2013. A Writ Appeal was filed in WA.No.1285/2013 and again, in the Writ Appeal, directions were given to pay the subsistence allowance in instalments. It had been stated that the enquiry was thereafter conducted and charges were held to be proved. Even during the course of enquiry, the petitioner sought change in the Enquiry Officer and change in the Presenting Officer. It had also been stated that the petitioner had filed eight earlier writ petitions and the present writ petition is the ninth one. It had been further stated that the 1st



WEB COPY



WP.No.18867/2017

respondent/Society was under no obligation to pay the subsistence allowance any further to the petitioner herein in view of the fact that it was the petitioner who was solely responsible for the matter being dragged on and the enquiry not being completed. It had been stated that independently, the petitioner had also suffered a money decree for a sum of Rs.31,53,205/- for the loss caused by him during his tenure as Secretary. He had filed WP.No.13813/2012 questioning such decree. It is thus being stated in the counter that the petitioner had not come to Court with bona fide reasons and that the writ petition should be dismissed.

- (7) Heard the arguments advanced.
- (8) It is the contention of the learned counsel for the petitioner that the 2nd respondent had not paid the subsistence allowance. The petitioner had been put under suspension for a considerable period of time. The earlier direction in the writ petition was to pay the subsistence allowance. Later, in the writ appeal, the subsistence allowance was again directed to be paid, but in instalments. Though the respondents had complied with the same, it is stated that from the year 2013 onwards, the petitioner had



WEB COPY



WP.No.18867/2017

not been paid with subsistence allowance. Learned counsel also took the Court through the Enquiry Report and stated that the Enquiry Officer had given his findings in practically the last page after reducing the pleadings. It had been stated that the order had been passed mechanically without application of mind. It is also stated by the learned counsel for the petitioner that the order of dismissal related back to the original order of dismissal namely, the order dated 29.06.2010. It is contended that the second enquiry after remand, was a fresh proceedings and therefore, even if an order of dismissal is to be passed, it would relate to that particular proceedings alone and not to the earlier proceedings. It is contended that no reasons at all had been given in the order, but after reducing the charges and explanations given, by one paragraph, the Enquiry Officer passed the order of dismissal. On all these grounds, the learned counsel urged that this Court should allow the writ petition and quash the orders of termination and permit the petitioner to put back in service.

- (9) Learned Special Government Pleader however pointed out the counter affidavit filed and the list of writ petitions filed by the petitioner which



WEB COPY



WP.No.18867/2017

had been detailed supra. It had been complained that the petitioner had filed nearly eight writ petitions prior to this particular writ petition. It had been stated that all the writ petitions had been dismissed by this Court and even if it had been stated as disposed of, directions adverse to the interest of the petitioner alone had been passed. It is also contended by the learned Special Government Pleader that it was the petitioner who was the reason for the delay in the enquiry process to be dragged on for such a long time. It is therefore contended that the respondents were not under any obligation to pay the subsistence allowance. It is also contended that the enquiry was a continuation of the original charges which had been issued and fresh charges had not been framed. It had been stated that the enquiry recommenced from the stage where it was directed to be once again done on remand and it is therefore, stated that the punishment would necessarily have to relate back to the date of the original order and it is hence contended by the learned Special Government Pleader that in view of the misappropriation committed by the petitioner herein which is a significant factor, this Court should dismiss the writ petition.



WP.No.18867/2017

WEB COPY

(10) I have considered the arguments and perused the material records.

(11) The petitioner may or may not be very adept in discharging his duties as Secretary of the 2nd respondent Society, but in one aspect he was very adept and that is, in filing writ petitions after writ petitions before this Court. He filed eight writ petitions as is seen from the pleadings and this writ petition is the ninth. Quite independent of this petition, writ petitions were filed questioning the actions taken by the respondents consequent to the charges of misappropriation of funds. The petitioner had also filed yet another writ petition in the year 2012, questioning a money decree suffered by him towards money loss which according to the 2nd respondent, had been misappropriated by him. Even though there is an inherent right in every person to approach the Court seeking necessary remedy, but at some point of time, the petitioner should realise that he should abide by the Rule of law. The Rule of law which he should abide are the Rules and Regulations as stipulated by the 2nd respondent Society where he worked as Secretary. He could have very well worked within the jurisdiction granted to him and within his authority as Secretary. He appears to have far exceeded such authority.



WEB COPY



WP.No.18867/2017

Charges had been framed against him which are quite serious in nature.

Though in a writ petition, the Court need not examine the fact whether the charges are established or not, still, the charges are also an added factor to be considered.

- (12) It is seen that the petitioner had not given receipts for the money received. It is also alleged that the petitioner had not disclosed monies which had been received during the period of audit. It is also seen that the petitioner had committed misappropriation of the amounts belonging to the 2nd respondent Society. As a matter of fact, in the counter affidavit filed, it had been stated that the finances of the 2nd respondent Society is also not very strong. The 2nd respondent had no other alternative but to place the petitioner under suspension. Thereafter, the first domestic enquiry was conducted. The petitioner did not participate in the same. It is the duty of the petitioner to participate. The petitioner has not raised any ground that he was not aware of the pendency of the domestic enquiry or the disciplinary proceedings. He knew about them. The charges had been served on him. There was a duty cast on him to participate in the enquiry. He had not participated and thereafter,



WP.No.18867/2017

WEB COPY

suffered an order of dismissal in the year 2010.

- (13) The petitioner filed a revision under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983. The Revisional Authority had thought it fit to give one more opportunity to the petitioner herein and had remanded the matter back to the original authority for fresh enquiry to be conducted. It must be kept in mind that fresh charges were not framed against the petitioner. The enquiry which was conducted after it has been remanded, was based on the same charges. On the basis of the same charges, the petitioner was directed to participate in the enquiry. He however sought change in the domestic Enquiry Officer. That was complied with. A fresh domestic Enquiry Officer was appointed. He then sought change in the Presenting Officer. He claimed that the Presenting Officer who was the in-charge Secretary of the 2nd respondent Society, was enmical to him.
- (14) In the counter, it had been stated that there was a quarrel between the petitioner and the Presenting Officer which actually led to a case of assault and a criminal case had been filed against the petitioner in that regard. The petitioner should first introspect as to his actions. He



WP.No.18867/2017

should realise that as a Secretary, he has a burden and onus and responsibility to be hold in trust the finances of the 2nd respondent. He is the custodian of those finances. He should have exhibited some more seriousness and should be more responsible in discharging his duties. Thereafter, the enquiry proceeded and finally, the impugned order was passed.

- (15) It is the contention of the learned counsel for the petitioner that there were no findings at all given by the Enquiry Officer and that the entire reasoning was given only in one paragraph at the end. The manner in which an order or quasi judicial order should be written, cannot be dictated to anybody. Everybody has their own manner in analysing the facts. A perusal of the Enquiry Report and the order passed shows that the entire facts had been reduced. While reducing the entire facts, there is always an application of mind. Every charge had been stated. Explanation to every charge had been given and the earlier findings of the Enquiry Officer with respect to each charge had been reduced. The correctness of that had been affirmed by the Enquiry Officer. The Enquiry Officer was conscious that the entire exercise had been done



WEB COPY



WP.No.18867/2017

once and he was only re-examining the earlier Report. It is for that reason when the order of punishment was imposed, it was related back to the first order of dismissal from service. There cannot be a direction given as to how a particular order is to be written or in what manner the facts should be appreciated. It is to the personal satisfaction and subjective satisfaction of the authority who passes that particular order. Reasons must be stated. Reasons are found within the order itself. There need not be repetition of the reasons at every paragraph and also at the end of the order.

- (16) A reading of the order now impugned makes it very clear that the entire facts had been stated and again explanations have been stated and the findings have been confirmed. Each quasi judicial officer would have his own manner in writing orders and in appreciating evidence. But, that does not mean that the Court should interfere with the entire findings and the entire order and direct the order to be written in a particular manner. That is beyond the scope and analysis of the case. It is not necessary. It is uncalled for. The petitioner has a long history of filing litigations against the 2nd respondent Society when he could have,



WEB COPY



WP.No.18867/2017

simply been more responsible and could have addressed and questioned the charges. On the other hand, he had questioned the authority of the Enquiry Officer. That would not help him at all. He should question the facts stated in the charges and participate in the enquiry and rebutted the charges. It is not that opportunity was not granted to him. It is not that notice was not served on him. It is not that he was not aware of the pendency of the enquiry proceedings. He was aware of all these facts. Therefore, the argument that the Enquiry Report suffers from non giving of reasons, is rejected by me.

- (17) The petitioner is well aware of the reasons why the final order was passed for dismissal. The reasons are that the charges have been substantiated. Charges include misappropriation of funds. The petitioner should abide by that particular order. The issue of subsistence allowance was also pointed out by the learned counsel for the petitioner. As stated, the delay is on the part of the petitioner himself. He could have participated in the first enquiry and participated by adducing evidence, by producing documents and by rebutting the charges. The matter was remanded back. Again he should have participated. The



WEB COPY



WP.No.18867/2017

matter had dragged on and on not because of the Enquiry Officer wanted to drag on the matter, but because the petitioner thought by postponing the event, the final result would not fall. The final result will fall at some point of time. The order had been related back to the year 2010. As repeatedly pointed out by me, it related back to the date to which the first order was passed. There is no infirmity in the order. There is no infirmity in the order relating back to the year 2010. The issue of subsistence allowance is something which independently the petitioner has to take up. But again, I am not inclined to pass any orders.

- (18) The writ petition stands **dismissed** and the order of dismissal from service passed by the 1st respondent dated 21.06.2017 is hereby confirmed. No costs.

02.08.2023

AP
Internet : Yes



WEB COPY



WP.No.18867/2017

To

- 1.The Joint Registrar of Cooperative Societies/
Chairman, Common Cadre Authority
Nagapattinam Region, Nagapattinam.
- 2.The President
Za, 78, Venkidangal Primiary Agri.
Cooperative Credit Society,
Venkidangal, Okkur Post
Kilvelur Taluk, Nagapattinam District.



WEB COPY



WP.No.18867/2017

C.V.KARTHIKEYAN, J.,

AP

WP.No.18867/2017

02.08.2023