



W.A.No.2461 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.2461 of 2018
and CMP.No.19863 of 2018

C.Udayakumar

...appellant

Vs.

1. The Deputy Registrar of Co-operative Societies,
Hosur Circle, Hosur,
Krishnagiri District.
2. K.K.127, Hosur Primary Agricultural
Co-operative Credit Society Ltd.,
Rep. by its President,
Hosur, Krishnagiri District.
3. M.Nagaraj
President,
K.K.127, Hosur Primary Agricultural
Co-operative Credit Society Ltd.,
Hosur, Krishnagiri District.

...respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 16.04.2018 in WP.No.6735 of 2018 passed by the Single Judge of this Court.



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For appellant : Mr.Balan Haridas

For respondents

for R1 : Mr.G.Nanmaran, Spl.G.P.

for R2 : Ms.T.Girija

for R3 : Ms.M.Sudha

JUDGMENT

(The Judgment of the Court was delivered by R.SUBRAMANIAN, J)

Challenge in this appeal is to the order of the Writ Court, dismissing the Writ Petition on the ground of availability of alternative remedy.

2. The appellant, who was working as a Secretary with the Co-operative Society, was charge sheeted for several delinquencies. The Enquiry Officer after conducting enquiry found that the charges against the appellant have not been proved. The Disciplinary Authority, however, chose to differ and issued a show cause notice on 19.06.2017 seeking explanation from the appellant as to why maximum punishment should not be imposed on him. This was challenged by the appellant in WP.No.32381 of 2017, which came to be disposed of on 13.12.2017 directing the Disciplinary Authority to issue a fresh show cause notice and decide the matter afresh after giving an opportunity to the appellant. Pursuant to the said decision, a



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fresh show cause notice was issued on 25.01.2018, to which, the appellant sent a reply seeking documents. The Disciplinary Authority however imposed the punishment of dismissal from service. The said order of dismissal was challenged by way of a Writ Petition. The Writ Court found that the appellant has an alternative remedy under Section 153 of the Tamil Nadu Co-operative Societies Act and hence, refused to exercise its jurisdiction under Article 226 of the Constitution of India. Hence, this appeal.

3. Mr.Balan Haridas, learned counsel appearing for the appellant would submit that the show cause notice dated 25.01.2018 is not in compliance with the direction of this Court in WP.No.32381 of 2017. Relying upon certain portions of the said notice, the learned counsel would submit that a decision has been taken to differ and thereafter, an opportunity is sought to be provided. This according to the learned counsel is not in consonance with the judgments of the Hon'ble Supreme Court.

4. Contending contra, Ms.T.Girija, learned counsel appearing for the second respondent would submit that the objects sought to be achieved by providing an opportunity to the delinquent employee in the event the



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Disciplinary Authority seeks to differ from the conclusion of the enquiry officer has been achieved by issuance of the notice dated 25.01.2018 and hence, the direction of the Writ Court in WP.No.32821 of 2017 has been complied with in its letter and spirit. Pointing out the language used in the notice dated 25.01.2018, learned counsel would submit that the appellant has been asked to show cause as to why the Disciplinary Authority should not differ from the conclusions of the enquiry officer. The fact that certain language that has been employed which could lead to an inference a decision has already been taken cannot by itself lead to the conclusion that the Disciplinary Authority had already decided to differ from the Enquiry Officer.

5. Mr.Balan Haridas, learned counsel appearing for the appellant would also contend that the documents have not been furnished to him. The exercise of extraordinary Writ jurisdiction under Article 226 is subject to certain self imposed restrictions and one of them is availability of alternative remedy. The Writ Court has dismissed the Writ Petition on the ground of alternative remedy. Unless it is shown that there is a violation of fundamental right or that there is an alternative remedy, which is only superficial and it is not an effective alternative remedy, we cannot interfere



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with the conclusions of the Writ Court. The argument on the question

whether the documents were furnished or not is a factual issue, which can

be better appreciated by the Revisional Authority, who can go into facts.

Sitting under Article 226, the Writ Court does not possess the advantages

which the Revisional Authority would possess in deciding the questions of

fact. We therefore do not think we should go into those questions at this

stage. Since there is substantial compliance of the requirements of law with

reference to the provision of opportunity to the delinquent employee before

a decision to differ from the conclusions of the Enquiry Officer, we do not

think we could fault the Writ Court for dismissing the Writ Petition on the

ground of maintainability. We therefore affirm the decision of the Writ

Court. The Writ Appeal fails and it is accordingly dismissed.

6. However, since the Writ Petition was dismissed on the ground of maintainability and the Writ Appeal was entertained, the appellant will have the right to move the Revisional Authority under Section 153 of the Co-operative Societies Act. The time consumed before the the Writ Court as well as during the pendency of the Writ Appeal will stand excluded in computing the period of limitation if any for filing an application under Section 153 of the Act. It is open to the appellant to raise all grounds before



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the Revisional Authority. Any observation made in this order should not be taken as a final conclusion. The Revisional Authority will at liberty to decide all questions afresh on the basis of the material that is placed before it. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.J.) (S.S.K.J.)
31.01.2023

Index : No
Speaking order: Yes
pvs



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To

1. The Deputy Registrar of Co-operative Societies,
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Krishnagiri District.
2. The President,
K.K.127, Hosur Primary Agricultural
Co-operative Credit Society Ltd.,
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