



W.P.(MD)No.2413 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.2413 of 2023

and

W.M.P.(MD).No.2201 of 2023

C.Marcus

... Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
51. Muthulakshmi Illam,
Govindaraju Salai, Aruna Nagar,
Karaikudi, Sivagangai District.

2.President, Q.633. Nerkuppai Primary Agricultural
Co-operative Credit Society Ltd, Nerkuppai,
Thiruppathur Taluk,
Sivagangai District – 630405.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent relating to the impugned order in Na.Ka.No:5140/2015 Thova dated 16.08.2022, quash the same and direct the respondents to pay the Medical Leave Salary for the period between 26.06.2015 and



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10.01.2016 Rs.1,84,112/- salary, for the period of suspension between 11.01.2016 and 26.02.2016 Rs.45,981/- salary, for the period of service between 27.02.2016 and 06.11.2018 Rs.10,91,330/-, thereby Rs.13,21,423/- with interest, to the petitioner, by fixing a time frame.

For Petitioner : Mr.J.Mathesh

For R1 : A.Baskar

Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned order passed by the first respondent, dated 16.08.2022 and to quash the same and consequently, direct the respondents to pay the Medical Leave Salary for the period between 26.06.2015 and 10.01.2016 Rs.1,84,112/-, for the period of suspension between 11.01.2016 and 26.02.2016 Rs.45,981/- salary, for the period of service between 27.02.2016 and 06.11.2018 Rs.10,91,330/-, thereby Rs.13,21,423/- with interest, to the petitioner.

2. The case of the petitioner is that he is working as the Secretary in the second respondent Society in the year 1992. One Mr.P.S.Nagarajan



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was declared as elected to the Board and also elected as the President to the Board of the Society and he assumed charge on 09.05.2013. During his earlier term, proceeding was initiated against him under Section 36 of the Tamil Nadu Co-operative Societies Act and declared that he was permanently disqualified from holding the office as a Member of any Board of any Co-operative Society. He challenged the same successfully and in view of the order passed by this Court, he was restored into position on technical reasons. He was of the impression that due to the petitioner's indulgence, his earlier qualification came out and that he suffered also 'no confidence' move. The availing of medical leave by the petitioner between 28.06.2015 and 10.01.2016 enabled the President to vindicate his grudge by way of passing an order of suspension against the petitioner on 12.10.2015. Challenging the same, the petitioner has filed a writ petition in W.P. (MD).No.19219 of 2015. This Court, by order dated 26.10.2015, granted interim stay against the suspension. But the President of the Society refused to allow the petitioner into service. Hence, he made a representation to the Joint Registrar of Co-operative Societies, Sivagangai, to allow him to join duty. When there was no proper response, he made a complaint to the Sub



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Inspector of Police on 21.01.2016. But there was no response. Hence, he made further representation to the second respondent on 23.02.2016, with a copy to the Joint Registrar of Co-operative Societies, Sivagangai. Thereafter, the Joint Registrar of Co-operative Societies, Sivagangai instructed the first respondent on 19.02.2016, to execute the order of this Court. In compliance with the order of this Court in Cont.P.(MD).No.505 of 2016, the order of suspension was revoked on 16.03.2016 and the contempt petition was closed. Subsequently, the petitioner has made a representation on 20.06.2016. However, no order was passed. Hence, again the petitioner has filed a writ petition in W.P.(MD).No.10274 of 2016 before this Court.

3. This Court, by order dated 10.06.2016, directed the President to permit the petitioner to join duty forthwith. Thereafter, the President permitted him to report duty. The petitioner reported duty on 13.06.2016. But, once again the then President took away the attendance register from the office on 08.07.2016 and kept the same in his custody and prevented him from signing in it and orally compelled the petitioner to withdraw the cases filed against him. Hence, the petitioner has sent a representation to the



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Regional Joint Registrar of Co-operative Societies and the Field Officer.

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When there is no effective reaction, the petitioner's advocate sent a notice to the respondents on 20.11.2017, to allow him into the office and pay salary from July 2015 onwards. That notice was also not responded. Hence, the petitioner has filed a writ petition in W.P.(MD).No.7243 of 2018, seeking direction to the Joint Director of Co-operative Societies, Sivagangai and the first respondent herein to instruct the second respondent to allow the petitioner into service. During the pendency of the writ petition, new Board elected and the petitioner has made further representation to the Board pressing his demands. The Board allowed the petitioner into service on 07.11.2018 and paid wages from that date onwards. The first respondent has filed a counter stating that the petitioner was reinstated into service and as far as the back wages are concerned, the petitioner gave an undertaking to forego in lieu of his reinstatement and hence, he is not entitled to wages. Recording the undertaking given by the petitioner, this writ petition was closed and the President agreed to disburse the arrears. When the financial position of the Society attained satisfactory level, he once again placed a representation to the President and the first respondent on 27.07.2022,



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seeking to pay arrears. However, the same was not considered by the first respondent, vide impugned order dated 16.08.2022. Challenging the same, the present writ petition has been filed.

4. The learned counsel appearing for the petitioner would submit that the petitioner is entitled for arrears of pay during the period of suspension and declining the arrears of pay is not sustainable one. Hence, the impugned order is liable to be set aside.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the first respondent.

6. The learned Additional Government Pleader appearing for the first respondent has produced the entire records. A perusal of the entire records reveals that the petitioner was appointed as Secretary in the second respondent Society through employment exchange in the year 1992 and in the year 2013, an election was conducted. In the said election, one Mr.P.S.Nagarajan was elected as the President of the Society in the month of



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May 2013. The said Mr.P.S.Nagarajan has been disqualified under Section 36 (1) of the Tamil Nadu Co-operative Societies Act by the Joint Registrar of Co-operative Societies. Thereafter, the said Nagarajan has approached this Court and obtained an order of interim stay as against the disqualification in W.P.(MD).No.23389 of 2017. Thereafter, a fresh election was conducted and new Society Board has been formed headed by one Selvam and the said Board is now functioning. The allegation against the petitioner is that he has misappropriated a sum of Rs.19,00,000/-. Hence, surcharge proceedings were initiated against him on 09.02.2005 and 18.12.2007 respectively. Further, criminal cases were also registered as against him and the same are pending before the learned Judicial Magistrate No.II, Sivagangai in C.C.Nos.1 to 4 of 2008 and C.C.No.53 of 2008. Thereafter, he was absent from duty with effect from 26.06.2015. Hence, he was placed under suspension on 12.10.2015, as per the Board Resolution dated 12.10.2015.

7. Challenging the order of suspension, the petitioner has filed a writ petition in W.P.(MD).No.19219 of 2015 before this Court and got an



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order of interim stay. Thereafter, due to non-compliance of the order of this Court, he has filed a contempt petition in Cont.P.(MD).No.505 of 2016. However, the said Contempt Petition was closed. Subsequently, the petitioner has filed a writ petition in W.P.(MD).No.7243 of 2018, for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to instruct the third respondent to allow the petitioner into the service of the Q. 633, Nerkuppai Primary Agricultural Co-operative Credit Society Limited, Nerkuppai, to work as the Secretary, allow him to sign in the regular Attendance Register and to pay Rs.10,57,008/- salary due to the petitioner from July 2015 to March 2018. This Court, by order dated 25.11.2021, disposed the writ petition, by recording that the petitioner has filed an undertaking affidavit on 04.10.2018, that considering the financial crunch faced by the third respondent Society, he foregoes his salary from 01.07.2015 onwards, in lieu of reinstatement of his service. However, this Court has issued a direction to the third respondent to consider the petitioner's representation. Pursuant to which, the present impugned order has been passed.



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8. The petitioner, in the present writ petition did not reveal the entire particulars with regard to the surcharge proceedings and the criminal case pending against him. Admittedly, two surcharge proceedings were issued against him. However, the said surcharge proceedings are not challenged. Further, one of the criminal case ended against the petitioner and the other criminal case is pending. Further, the petitioner has also filed an undertaking affidavit that he foregoes his salary from 01.07.2015 onwards, in lieu of reinstatement of his service. The official respondents have not properly contested the case before this Court and this Court, on its own, disposed the writ petition, by issuing order. However, till date the second respondent Society shall not managed properly. Hence, the petitioner tried to achieve something contrary to surcharge proceedings and criminal case, which cannot be allowed to continue and contrary to the undertaking affidavit, the petitioner has made the claim, which is not sustainable one. Hence, this Court is not inclined to interfere with the order impugned in this writ petition. Accordingly, this writ petition is dismissed and the first respondent is directed to conduct detail enquiry whether the petitioner is



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entitled to continue the service in the second respondent Society and pass appropriate orders for implementation of surcharge proceedings and logical conclusion to the criminal case, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

07.02.2023

akv

To

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- 2.The President, Q.633. Nerkuppai Primary Agricultural
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M.DHANDAPANI,J.

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