



W.P(MD)Nos.4522 & 3767 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.4522 & 3767 of 2019

and

W.M.P.(MD)Nos.3601, 3602, 2956 & 2957 of 2019

and

W.M.P.(MD)Nos.21774 & 22804 of 2022

In W.P.(MD)No.4522 of 2019

S.Asraf Ali Bathusha

... Petitioner

Vs.

1.The Joint Registrar of Cooperative Societies,
Thoothukudi Region,
Thoothukudi.

2.The Deputy Registrar of Cooperative Societies,
Thiruchendur Taluk,
Thoothukudi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the entire records pertaining to the proceeding of the order passed by the second respondent in j.e.1/2018-2019, dated 20.08.2018 as well as his consequential communication made vide notice in e.f.2015/2018 rg dated 04.02.2019 and quash the same.



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For Petitioner : Mr.R.Anand
For Respondents : Mr.A.Baskaran
Additional Government Pleader

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1.S.Samuel

2.K.P.Kanthan Asari

3.K.Vijaya

4.R.Gunanasekar

5.R.Chitrtavathi

6.S.Kalyani

7.A.Rajendran

8.E.Pechimuthu

9.V.Muthu

10.S.Mumtaj Begum

... Petitioners

Vs.

1.The Joint Registrar of Cooperative Societies,
Thoothukudi Region,
Thoothukudi.

2.The Deputy Registrar of Cooperative Societies,
Thiruchendur Taluk,
Thoothukudi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,



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praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the Deputy Registrar of Cooperative Societies, Thiruchendur, dated 20.08.2018 in Tha.Na.1/2018-19 and quash the same insofar as the petitioners concerned.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.A.Baskaran
Additional Government Pleader

COMMON ORDER

Heard the learned counsel appearing for the petitioners and the learned Additional Government Pleader appearing for the respondents.

2. The writ petitioners are the office bearers of Udankudi Primary Agricultural Cooperative Thrift Society. Vacancy arose in the post of office assistant / sub-staff. The petitioners appointed one Abishkumar Gladin to the said post. He was also drawing salary. At this stage, enquiry under Section 82 of the Tamil Nadu Cooperative Society Act was ordered and based on the said report, the impugned surcharge proceedings were initiated against the petitioners. According to the respondents, on account of the act committed by the petitioners, the society suffered loss to the tune of Rs.2,91,602/-. Challenging the said notice, the present writ petitions came to be filed.



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3. The learned counsel appearing for the petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petitions. He called upon this Court to quash the impugned notice as without jurisdiction and allow the writ petitions as prayed for.

4. The respondents have filed the counter affidavits and the learned Additional Government Pleader took me through its contents. The learned Additional Government Pleader would point out that the writ petitions are not maintainable because it has been filed at the notice stage. According to him, the petitioners' rights have not been infringed in any manner. They can always move this Court, if they feel aggrieved by the final order. According to him, the writ petitions have been prematurely filed. He also reiterated the reasons set out in the impugned notice. When the surplus staffs are available, the board members erred in appointing an individual in the post of sub-staffs. He pressed for dismissal of these writ petitions.

5. I carefully considered the rival contentions and went through the materials on record.

6. It is true that the writ court will be hesitant to interfere at the notice



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stage itself. But, where it is not shown that notice has been issued without any basis whatsoever, the Writ Court will be justified in considering the writ petition on merits. Here is a case where a person was appointed as Sub-staff and salary was paid to him. The learned counsel appearing for the petitioners drew my attention to the order dated 17.12.2009 in W.P.(MD)No.2336 of 2007 (K.Arumugaperumal and four others Vs. The Presiding Officer), wherein it was held that the amount paid towards salary for the work extracted will not amount to cause loss to the society. I am not fully persuaded by the aforesaid proposition. I therefore called upon the petitioner's counsel to demonstrate that appointment was made to a sanctioned post. The petitioner's counsel draws my attention to the relevant proceedings wherein it has been stated that one post of sub-staff / night watchman was sanctioned and that it has not been filled up. I therefore hold that the proceedings were justified in appointing the aforesaid individual as sub-staff. It was only against the sanctioned vacancies. It is true that during the relevant time, there was a surplus personnel in the post of Junior Clerk. But such a person who has been rendered in the post of Junior Clerk cannot be downgraded and appointed as sub-staff. Hence, the conduct of the petitioners cannot be faulted. Section 87 of the Tamil Nadu Co-operative Societies Act can be invoked only if loss is caused to the society by willful negligence on the part of the persons concerned. This is a condition precedent.



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This condition is totally absent in this case. The petitioners have acted correctly. By no stretch of imagination, the act of the petitioners would constitute willful negligence. The learned counsel appearing for the writ petitioners is right in his contention. The impugned proceedings are bereft of jurisdiction.

7. In view of the matter, the impugned proceedings stand quashed. The writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

02.01.2023

Index : Yes / No
Internet : Yes/ No
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To

- 1.The Joint Registrar of Cooperative Societies,
Thoothukudi Region,
Thoothukudi.
- 2.The Deputy Registrar of Cooperative Societies,
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G.R.SWAMINATHAN, J.

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