



W.P(MD)No.15957 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15957 of 2020

and

W.M.P.(MD)Nos.13376 and 13379 of 2020

S.Thanga Pandian

... Petitioner

Vs.

1.The District Collector /

Chairman of District Supply and Marketing Society /
Tamilnadu Corporation for Development for Women Ltd.,
Office of the District Collector,
Ramanathapuram,
Ramanathapuram District.

2.The Enquiry Officer /

The Assistant Director (Audit),
Rural Development,
Ramanathapuram,
Ramanathapuram District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the impugned order passed by the 1st respondent dated 23.01.2020 made in Na.ka.No.A5/1839/2014 and quash the same as illegal and devoid of merits and consequently direct the 1st respondents to reinstate the petitioner into service as a Manager in the District Supply



W.P(MD)No.15957 of 2020

and Marketing Society, Ramanathauram, Ramanthapuram District with all monetary, attendant and all consequential benefits forthwith.

For Petitioner : Mr.N.Dilipkumar,
For Mr.J.Sankara Pandian

For Respondents : Mr.Veerakathiravan,
Addl. Advocate General,
Assisted by Mr.G.Suriyananth,
Addl. Government Pleader.

ORDER

Heard the learned counsel for the writ petitioner and the learned Additional Advocate General assisted by the learned Additional Government Pleader for the respondents.

2.The petitioner was appointed as Secretary of District Supply and Marketing Society, Ramanathapuram vide proceedings dated 19.09.2005 issued by the District Collector, Ramanathapuram. He was thereafter deployed as Manager of the said society vide proceedings dated 13.05.2008 issued by the Project Director. Vide proceedings dated 16.10.2014, the petitioner was dismissed. Challenging the same, the



W.P.(MD)No.15957 of 2020

petitioner filed W.P.(MD)No.771 of 2015. The order of dismissal was set aside and the matter was remitted to the file of the authority for fresh consideration by following due process of law. The petitioner was reinstated vide order dated 23.03.2015. However, he was issued with charge memo dated 31.03.2015. He was once again terminated from service vide order dated 19.09.2015. Questioning the same, the petitioner filed W.P.(MD)No.20367 of 2015. The said writ petition was allowed vide order dated 03.10.2019. Paragraph Nos.9 to 11 of the said order read as follows:-

“9.From the nature of order, this Court is unable to sustain as one in adherence to the principles of natural justice. Giving reasons to support the order of termination is one of the mandatory requirement to show fairness in every quasi judicial function. Courts have recognized and acknowledged that giving reasons is an essential element of administration of justice. Any decision can be judged only by the reasons for the decision. A party to a lis is entitled to know the grounds on which the authority has rejected his claim. The reason for rejecting the explanation should be stated. The failure to give reasons in this case vitiate the impugned order. The termination of petitioner from service is a decision affecting the civil rights of the petitioner.



W.P(MD)No.15957 of 2020

10.The contention of the respondent that the petitioner was appointed temporarily and that his appointment is liable to be terminated for want of renewal based on actual appraisal regarding performance of the petitioner etc., are not acceptable. When the impugned order is in violation of principles of natural justice, the respondent cannot sustain the order by referring to something which is not available in the order. It is well settled that the order impugned has to stand on its own and the respondent cannot supplement new reasons to sustain the order impugned in the writ petition. In the present case, the termination of petitioner without considering the explanation or assigning reason with standard expressions is in violation of principles of natural justice. Hence, without going into the merits of the charges, this Court is of the view that the writ petition has to be allowed for want of reasons which is acknowledged as an integral part of principles of natural justice.

11.As a result, this writ petition is allowed and the impugned order passed by the first respondent/District Collector in Na.Ka.No.A6/1839/2010, dated 19.09.2015 is set aside. However, it is open to the District Collector, to pass an order afresh after considering the explanation offered by the petitioner to the second show cause notice and other materials to be produced by the petitioner. The



W.P(MD)No.15957 of 2020

first respondent is directed to give personal hearing to the petitioner before passing any order afresh. The first respondent shall pass final orders after hearing the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.”

3. Thereafter, the petitioner submitted his explanation dated 22.01.2020. The petitioner's explanation was considered charge wise and the District Collector, Ramanathapuram accepted the petitioner's explanation in respect of some of the charges and rejected the same in respect of the remaining charges. The order dated 23.01.2020 was passed holding that it is not appropriate to reinstate the petitioner as Manager of the society. Challenging the said order, the present writ petition has been filed.

4. The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.



W.P(MD)No.15957 of 2020

5.The respondents have filed a detailed counter affidavit and the learned Additional Advocate General took me through its contents. The primary contention of the learned Additional Advocate General is that the petitioner was inducted only in a contractual capacity and he cannot be considered as a regular government employee. In any event, since a stigmatic order was passed and since this Court had directed the authorities to adhere to due process, the petitioner was given due opportunity to offer his explanation in respect of each of the charges framed against him. The explanation given by the petitioner was considered carefully and that is why, in respect of quite few charges, the petitioner's explanation was accepted by the District Collector, Ramanathapuram. The fact remains that the petitioner was not diligent in carrying out his functions. As a result of the petitioner's indifference, the society's activities remained dormant. A commercial complex constructed for the benefit of self help groups remained substantially unutilized and as a result, there was also revenue loss to the society. The learned Additional Advocate General placed heavy reliance on the decision reported in **2022 Live Law (SC) 998 (Union of India and Others Vs. Subrata Nath)**. The the Hon'ble Supreme Court after



W.P(MD)No.15957 of 2020

referring to catena of earlier precedents had held that the Writ Court ought not to interfere in disciplinary matters except under certain circumstances. According to the learned Additional Advocate General, such circumstances which provide for interference are totally absent in this case. He submitted that the respondents have taken a conscious and considered decision not to take back the petitioner in service and such a decision is based on well founded reasons and therefore, the matter does not call for interference. He pressed for dismissal of the writ petition.

6.I carefully considered the rival contentions and went through the materials on record. It appears that Government of Tamilnadu took a policy decision to promote District Supply and Marketing Societies in various districts of Tamilnadu. That is how, the petitioner was appointed originally as Secretary and later as Manager of the District Supply and Marketing Society, Ramanathapuram. Subsequently, Government of Tamilnadu issued G.O.(Ms)No.111, Rural Development and Panchayat Raj Department, dated 19.11.2012 laying down specific policy guidelines. The primary charge against the petitioner is that he did not discharge the duties of Manager. I, therefore, called upon the



W.P(MD)No.15957 of 2020

respondents to produce the duty chart or job chart of a Manager. The learned Additional Advocate General took me through the contents of the aforesaid G.O.(Ms)No.111, dated 19.11.2012. It is true that the said government order mandates that a Manager (District Supply and Marketing Society) should be placed in each district to take care of the activities of the society. The Manager should be a person who can guide and discharge all the functions / listed activities in an effective manner. The relevant portion of the aforesaid G.O.(Ms)No.111, dated 19.11.2012 is as follows:-

“Streamlining of District Supply and Marketing Society

The following activities need to be streamlined for the effective functioning of District Supply and Marketing Society.

- *The society should be renewed annually on time and should be alive and functional always.*

- *The Society has been brought under Tamil Nadu Corporation for Development of Women Limited from 2008-09 and the Executive Committee and the General Body may be reconstituted to accommodate the changes and to suit the new mandate. The Collector will be the Chairman and the Project Officer (Mahalir Thittam) will be the Secretary of the Society. Other members of the Society may include officers from line*



WEB COPY



W.P(MD)No.15957 of 2020

departments, Bankers with more representation from Self Help Groups / Panchayat Level Federations / Common Livelihood Groups / Economic Activity Federations / Activity Clusters etc.

- *The accounts of District Supply and Marketing Society should be audited annually by a Chartered Accountant appointed by the General Body.*

- *The audited statement should be placed before the Annual General Body meeting within the stipulated time frame fixed in the bye law and copy of the report should be sent to Tamil Nadu Corporation for Development of Women Limited.*

- *The Empowered Committee meeting as well as the General Body meeting should be conducted as stipulated in the bye law without fail. Project Officer (Mahalir Thittam) and Manager (District Supply and Marketing Society) will be responsible for conducting the meetings. The minutes of the meetings should be communicated to Tamil Nadu Corporation for Development of Women Limited immediately after the completion of the meetings.*

Further, a Manager (District Supply and Marketing Society) should be in place in each district to take care of the activities under the Society. He may be assisted by one or more Executives, Data Entry Operator and a Watchman on need basis. The Manager and the Executive may be selected based



WEB COPY



W.P(MD)No.15957 of 2020

on the following qualifications. The Manager DSMS should be a person who can guide and discharge all functions listed activities above in an effective manner.”

7.From a reading of the above, I am not in a position to come to the conclusion that a Manager has been entrusted with particular functions or responsibility. The government order is rather general in nature. On the other hand, the mode of selection set out in the very same government order contains the key. The relevant portion is as follows:-

“Mode of selection

The performance appraisal of the existing District Supply and Marketing Society Managers will be done by Project Officer (Mahalir Thittam) and sent through the District Collector. Tamil Nadu Corporation for Development of Women Limited will take up evaluation of existing District Supply and Marketing Society Managers as per the Job Chart and evaluation criteria developed by Tamil Nadu Corporation for Development of Women Limited. Those qualifying from the evaluation exercise will be retained based on the above conditions. All posts which fall vacant after the evaluation exercise will be filled through a HR agency identified at the State level. The remaining positions (positions 2 to 4) will be filled up through manpower agency



WEB COPY



W.P(MD)No.15957 of 2020

as decided at the district level. The age limit prescribed for the above posts is fixed as 40 years and below.”

8.From the above, one can notice that the job chart of the Manager will have to be developed by the Tamil Nadu Corporation for Development of Women Limited. The learned counsel for the petitioner categorically asserts that no job chart was ever made available or served on the petitioner. This case was taken up on quite a few occasions. I repeatedly nudged the respondents to produce the job chart and evaluation criteria; it was not produced before me. If the petitioner is to be charged with breach of duties and responsibilities, then, there must be touch stone on which the petitioner's conduct and activities could be tested. If the touch stones cannot be made available, then, it is difficult to impute any misconduct to the petitioner herein.

9.Essentially, the case against the petitioner rests on two charges. The first one is that he had not annually renewed the registration of the society. It is admitted by the respondents that the society in question was registered under the provisions of Tamil Nadu Societies Registration Act,



W.P(MD)No.15957 of 2020

1975. It is well known that once a society has been registered, it will continue to exist till it is declared as defunct in the manner known to law. The Act does not contemplate renewal of registration every year. Therefore, the basic charge levelled against the petitioner has to necessarily fail as not maintainable.

10.The other charge is that the petitioner had not properly utilized the commercial complex by letting out in favour of self help groups. I carefully went through the entire order. It is seen therefrom that the Project Director had taken a decision that the commercial complex can be let out after renovating the same. The findings set out in the operative paragraph of the impugned order is not in consonance with the remark passed by the District Collector in respect of charge No.7. Charge Nos.7 and 8 in fact go together. Charge No.7 cannot be divorced from charge No.8. If the petitioner's explanation was acceptable in respect of charge No.7, then obviously, it should have been found acceptable in respect of charge No.8 also.



W.P(MD)No.15957 of 2020

11. There is yet another aspect. In terms of G.O.(Ms)No.111, dated 19.11.2012, the petitioner passed muster and the Managing Director of Tamil Nadu Corporation for Development of Women Limited issued proceedings dated 04.03.2014 in favour of the petitioner permitting him to continue to work as Manager of the society on contractual basis. It is therefore surprising that he was found ineligible six months later ie., on 16.10.2014. Since the competent authority after evaluating the petitioner's functioning cleared him and also permitted him to continue to function as Manager vide proceedings dated 04.03.2014, only events subsequent to 04.03.2014 could have been taken into account. What happened prior to 04.03.2014 could not have formed the subject-matter of charges against the petitioner herein. Looked at from any angle, the impugned order suffers from perversity and irregularity. It is set aside. The learned counsel for the petitioner on instructions states that the petitioner would be more than satisfied if he is reinstated in service and he has no claim on any past service or backwages. The said submission made by the learned counsel for the petitioner on instructions is placed on record. The first respondent is directed to issue proceedings reinstating the petitioner as Manager forthwith and without any delay.



W.P(MD)No.15957 of 2020

WEB COPY

12.The writ petition is allowed accordingly. No costs.

Consequently, connected miscellaneous petitions are closed.

29.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias

To:-

1.The District Collector /
Chairman of District Supply and Marketing Society /
Tamilnadu Corporation for Development for Women Ltd.,
Office of the District Collector,
Ramanathapuram,
Ramanathapuram District.

2.The Enquiry Officer /
The Assistant Director (Audit),
Rural Development,
Ramanathapuram,
Ramanathapuram District.



WEB COPY



W.P(MD)No.15957 of 2020



WEB COPY



W.P(MD)No.15957 of 2020

G.R.SWAMINATHAN, J.

ias

W.P(MD)No.15957 of 2020

29.03.2023