



W.P.(MD).No.15631 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.15631 of 2023

and

W.M.P(MD) Nos.13131,13132, 18355 and 22924 of 2023

B.Mani Kandan
Office Assistant (under dismissal)
Ottuvalmadam P.A.C.C.S Limited Y-296,
Orruvalmadam, Kottaru Post,
Nagercoil – 629 002,
Kanyakumari District.

... Petitioner

Vs.

1. The Deputy Registrar of Co-operative Societies
Nagercoil,
Kanyakumari District.

2. The President,
Ottuvalmadam P.A.C.C.S Limited Y-296,
Ottuvalmadam, Kottaru Post,
Nagercoil – 629 002,
Kanyakumari District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the first



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respondent in Na.Ka.4467/2022 ThoVesa, dated 13.05.2023 and the consequential impugned dismissal order cum recovery order passed by the second respondent in its proceedings dated 02.06.2023 and quash the same as illegal and consequently direct the respondents to permit the petitioner to discharge the functions of Office Assistant and disburse the monetary benefits and other eligible benefits with the period that may be stipulated by this Court.

For Petitioner : Mr.M.Jerin Mathew

For Respondents : Mr.S.Shaji Bino
Special Government Pleader – for R1

: Mr.V.H.S.Prathap – for R2

ORDER

The present writ petition has been filed by a fertilizers salesman challenging the order passed by the President of Co-operative Society, wherein, he was removed from service.

2. According to the learned counsel appearing for the writ petitioner, the writ petitioner was appointed as Office Assistant by way of resolution passed by the Board. Alleging that his appointment is irregular in nature, enquiry under Section 81 of the Co-operative Societies Act, was conducted.



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Pursuant to the said enquiry, the Deputy Registrar of the Co-operative Societies had arrived at a finding that his appointment is irregular in nature and thereafter, addressed a communication to the President of Co-operative Society on 05.05.2023 directing him to remove the writ petitioner from service. The Department communication is challenged by the writ petitioner by filing W.P(MD) No.12161 of 2023. This Court, by an order, dated 25.05.2023 has dismissed the writ petition on the ground that it is premature in nature. Paragraph Nos. 2 to 4 of the said order are hereby extracted:

“2. Even though the order states that the petitioner should be removed from service, the cause of action for the petitioner to challenge the order would arise only when it culminates into an order of punishment removing him from the service.

3. It is needless to point out that if the President of the Society intends to take nay departmental action against the petitioner, he would be entitled for prior notice and an enquiry has to be conducted as per the provisions of the Tamil Nadu Co-operative Societies Act, 1983.

4. In this background, I am of the view



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*that the present writ Petition is premature,
Accordingly, this Writ Petition stands closed. No
costs, Consequently, connected miscellaneous
petitions are closed.*

3. Thereafter, the Deputy Registrar of Co-operative Society has addressed another communication to the President of the Society on 13.05.2023, warning the President of the Society to initiate immediate action to remove the writ petitioner from service. Based upon the said letter, on 02.06.2023, under the present impugned order, the petitioner has been removed from service by the second respondent herein. This order is under challenge in the present writ petition.

4. According to the learned counsel appearing for the writ petitioner, in view of the orders of this Court, dated 25.05.2023 made in W.P(MD) No. 12161 of 2023, without issuing show cause notice and conducting an enquiry, he cannot be removed from service.

5. This Court is inclined to accept the said contentions and passes the following order:



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(i) The order impugned in the writ petition is set aside and the matter is remitted back to the file of the second respondent herein for issuing a show cause notice and conducting enquiry and to pass final orders within a period of three months from the date of receipt of a copy of this order;

(ii). Till the enquiry proceedings are completed, the petitioner shall be placed under suspension; and

(iii) During the enquiry period, the promotion granted to R.Rishopmenakath shall not be disturbed.

6. With the above said observations, this Writ Petition stands allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

08.12.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Deputy Registrar of Co-operative Societies
Nagercoil,
Kanyakumari District.

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R.VIJAYAKUMAR,J.

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