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W.P.(MD)No.2956 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.2956 of 2017

K.Ashok Kumar

... Petitioner

vs.

1.The Joint Registrar,
Co-operative Societies,
Karur Region,
Karur-District.

2.The Special Officer,
MM.88, Melapalayam Primary Agricultural
Co-operative Society Limited,
S.Vellapatti- Post,
Karur Taluk,
Karur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records, pertaining to the impugned order passed by the 1st respondent, as Na.Ka.No.2195/2016 Sa.Pa.(R.P.No.1/2016 Sa.Pa), dated 06.12.2016 and to quash the same as void and illegal and thereby, to direct the



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respondents to reinstate the petitioner in the same post he was holding.

For Petitioners : Mr.F.X.Eugene

For Respondents : Mr.SRA.Ramachandran

Additional Government Pleader

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order passed by the 1st respondent, dated 06.12.2016 and to direct the respondents to reinstate the petitioner in the same post he was holding.

2. The petitioner was initially appointed as Assistant in the Cooperative Department through employment exchange on 15.04.1987. Subsequently, he was upgraded as Senior Assistant. Thereafter, he was posted as Secretary in-charge. On 13.01.2010, the petitioner was suspended from service. The petitioner preferred a revision under Section 153 of Tamil Nadu Co-operative Societies Act and the same was rejected without numbering, challenging the same W.P.(MD)No.6768 of 2011 was



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filed and this Court quashed the same and directed the respondents to take the revision petition on file and pass orders on merits. Thereafter, the petitioner was reinstated on 27.11.2014 and posted as Senior Assistant.

3. On 05.10.2015, the respondents levelled some charges against the petitioner. The petitioner submitted an explanation. After conducting the enquiry, the petitioner was dismissed from service. The petitioner preferred a revision under Section 153 of Tamil Nadu Cooperative Societies Act and the dismissal order was confirmed through the order, dated 06.12.2016. Aggrieved over the same, the present writ petition is filed.

4. The respondents have filed a counter affidavit stating that the petitioner was charged for certain irregularities which are serious in nature. The petitioner had indulged in temporary misappropriation two



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times. Moreover, the petitioner has not taken proper initiative for recovering the debt amount from the members of the Society, thereby, 10 charges were imputed against the petitioner. Moreover, Section 81 enquiry was also conducted. After inspection and scrutinizing the documents, loss amount is quantified as Rs.2,42,256/-, through order, dated 09.03.2017. Simultaneously, the criminal case was also registered in Crime No.2 of 2017 and the same was taken on the file as C.C.No.1 of 2019 and the same is pending. Thus, the respondents pray to dismiss the writ petition.

5. Heard Mr.F.X.Eugene, learned Counsel appearing for the petitioner and Mr.SRA.Ramachandran, learned Additional Government Pleader appearing for the respondents and perused the records.

6. The learned Counsel appearing for the petitioner pointed out that the enquiry was not conducted properly. The allegation against the



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petitioner is that he had received the amount for jewel loan but has not handed over the jewel to the members. However, the petitioner submitted that the members requested to retain the jewel for safety purpose and the petitioner relied on the statement of the members who had requested to retain the jewels. The respondents have not recorded the statements of such members and has also not produced such members for enquiry to ascertain the veracity of the petitioner's statement.

7. The next contention of the petitioner is that there is allegation against the petitioner that he has not initiated any action to recover the debt from the members. However, the petitioner submitted that there was a order restraining to take action against such debts which were beyond the period of limitation. The respondents have not taken all these explanations into account. Therefore, this Court is inclined to remit the case back to the authorities to conduct re-enquiry.



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8. At this juncture the Learned Counsel appearing for both sides submitted that the petitioner had attained superannuation on 30.09.2017. Even if remitted back there will not be employer and employee relationship.

9. The charge against the petitioner is that he had not handed over the jewels to the owners but the petitioner submitted that the owners requested to retain the same for safety purpose and the other charge is that the petitioner has not initiated action against the debtors but the petitioner submitted there is an order restraining to take action against the time barred debt. On reading this charges this Court is of the considered opinion that the charges framed against the petitioner could not be treated as an act of misconduct warranting dismissal from service. It is also seen that there is no allegation of misappropriation. Hence the punishment is hitting the conscious of this Court. It is seen from the records that the petitioner has served from 15.04.1987 until 28.03.2016



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and has attained superannuation on 30.09.2017.

10. Therefore, this Court is inclined to modify the punishment of dismissal from service to compulsory retirement by fixing the date of dismissal as the date of compulsory retirement, i.e., 28.03.2016. The respondents are directed to pay all the terminal benefits by calculating this period from 15.04.1987 to 28.03.2016 as the period of service.

11. The learned Counsel appearing for the petitioner further submitted that surcharge proceedings were initiated against the petitioner under Section 87 enquiry and the amount is quantified as Rs.2,42,256/- and submitted that the respondents may deduct the said amount from the terminal benefits. However the respondents shall not impose any interest to the said amount and is directed to recovery Rs.2,42,256/- alone.

12. The respondents shall deduct the above said amount and the



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balance amount shall be paid to the petitioner. The entire exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. With the above said observation, the writ petition is disposed of. No costs.

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

28.02.2023

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To

- 1.The Joint Registrar,
Co-operative Societies,
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S.SRIMATHY, J

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