



W.P.(MD)No. 19969 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 19969 of 2016
and
W.M.P.(MD).No.14370 of 2016

G.Baskaran

... Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,
Pudukottai Region,
Pudukottai.

2.M.M.379, Kavinadu Melavatta in Primary
Agricultural Co-operative Society,
Represented by its President,
Thiruvapoor,
Pudukkottai District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records of the 1st respondent in Na.Ka.No.6733/2014 அட dated 22.04.2016 and quash the same as arbitrary and illegal and in consequence there of direct the respondents to reinstate the petitioner in service at once.



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For Petitioner : Mr.P.Ganapathi Subramanian
For R-1 : Mr.A.Sivanupandian,
Government Advocate.
For R-2 : No appearance

ORDER

This writ petition is filed to quash the order dated 22.04.2016 passed by the first respondent with a consequential relief to direct the respondents to reinstate the petitioner in service at once.

2. The petitioner joined the 2nd respondent society as Attender on 19.05.1983. While he was working as a Sales Man at Sellukkudi Angadi, a charge memo dated 18.05.2009 and 02.06.2009 was issued alleging that there is shortage of certain materials, fertilizer and also irregularities in disposing loan amount to the Women Self Help Group. The petitioner submitted his explanation refuting the allegations against him. Without considering the petitioner's explanation, an enquiry was conducted and the charges were held proved and thereafter the second respondent dismissed the petitioner from service on 21.11.2009. Against



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the order of dismissal, the petitioner filed a Revision Petition and the first respondent vide order dated 27.03.2010 rejected the Revision Petition by confirming the order of dismissal. Aggrieved over the same, the petitioner filed W.P.(MD)No.4719 of 2010 and the petitioner was advised to withdraw the Writ Petition and submit the Review Petition before the second respondent. The second respondent vide order dated 12.03.2014 recommended the first respondent to reinstate the petitioner into service since there was no financial loss to the society.

3. The contention of the petitioner is that even the enquiry officer submitted a report that some of the charges leveled against the petitioner were not proved. The delay in remittance of the sale amount was one day or two days delay and the same was remitted and there is no loss. For the charge of shortage of fertilizer, the charge was framed after the lapse of 15 years. The charge relating to non-repayment of loan by the Self Help Group found to be not proved, since the entire amount had been remitted by the concerned members of the Self Help Group.



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4. The further contention of the petitioner is that the second respondent is the competent authority to review the earlier order passed by the then Special Officer of the second respondent Society. The first respondent vide letter dated 03.09.2014 states that there is no scope for reviewing the order, since the review application was preferred after the lapse of 90 days. Again, the petitioner preferred the Review Application along with condone delay petition before the first respondent under Section 154 of Tamil Nadu Co-operatives Act, 1988. The second respondent also held that the Society has no objection in considering the Review Petition. Without considering the same, the first respondent passed the impugned order dated 22.04.2016. Aggrieved over the same, the present Writ Petition is filed.

5. The respondents have filed a counter stating that the charges are relating to shortage of certain materials, fertilizer, late remittance of the sale amount and also irregularities in disposing loan amount to the Women Self Help Group, which were entrusted to the petitioner. The first respondent has been vested with the authority and power under the Tamil Nadu Co-operative Societies Act, 1983 to pass the impugned order. The Review Petition ought to be preferred within 90



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days from the date of receipt of impugned order. In the instant case, the then first respondent has dismissed the Revision Petition of the petitioner on 27.03.2010 itself. However, the Review Application has been submitted by the petitioner only on 24.11.2014. The delay is enormous and abnormal. Hence, the impugned order was passed. Therefore, the respondents prayed to dismiss the writ petition.

6. Heard Mr.P.Ganapathi Subramanian, learned counsel appearing for the petitioner and Mr.A.Sivanupandian, learned Government Advocate appearing for the first respondent and perused the records.

7. On considering the rival submissions submitted on either side, this Court has given its anxious consideration. The claim of the petitioner is that while he was on duty, he has taken additional charge as Secretary, since the Secretary was on leave and due to work pressure, there was some delay in remittance of the sale amount. However, the same was paid in due course of time. Therefore, there is no loss to the society at all. As far as the charge relating to non-repayment of loan by the Self Help Group is concerned, the enquiry officer has held the same as not proved, since the entire amount had been remitted by the concerned members of



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the Self Help Group. As far as the charge of shortage of fertilizer and certain materials are concerned, the charge was framed after the lapse of 15 years and therefore this Court is of the considered opinion based on delayed charges the said charge cannot be entertained. Therefore, this Court is of the considered opinion that except for the charge of late remittance, the other charges cannot be taken into account. For delayed remittance also, the petitioner has claimed that it is additional charge, since the incumbent was on leave. Moreover, it is not the question of non-remittance, but only delayed remittance, that too due to additional work / work burden, hence the punishment of dismissal is disproportionate to the allegation.

8. Therefore, this Court is of the considered opinion that the impugned order is liable to be quashed and hence quashed. The respondents are directed to reinstate the petitioner. However, the petitioner was dismissed in the year 2009, therefore, this Court is of the considered opinion that the petitioner is entitled to 25% back wages alone with continuity of service. The said exercise shall be completed within a period of (8) eight weeks from the date of receipt of a copy of the order.



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9. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
Nsr

23.02.2023

To

The Joint Registrar of Co-operative Societies,
Pudukottai Region,
Pudukottai.



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S.SRIMATHY, J

Nsr

Order made in
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