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W.P.(MD)No.26263 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.26263 of 2019

and

W.M.P.(MD)Nos.22676 and 22677 of 2019

Jeyamani

... Petitioner

vs.

1.The Joint Registrar of Co-operative
Societies, Sivagangai.

2.The Deputy Registrar of Co-operative
Societies, Karaikudi,
Sivagangai District.

3.The President,
R.T.145, Tamil Nadu Transport Corporation
Employee's Thrift and Credit Society,
Kovilur, Karaikudi,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the 2nd



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respondent in Na.Ka.2214/2019/Sa.Pa(2), dated 24.10.2019 and to quash the same as illegal and arbitrary.

For Petitioner : Mr.P.Ganapathi Subramanian
For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

This writ petition is filed for issuance of a writ of Certiorari, to quash the impugned records dated 24.10.2019 of the 2nd respondent.

2. The petitioner joined the 3rd respondent society as Secretary on 18.02.1995. The petitioner was placed under suspension for some lapses occurred in the Society on 23.11.2007. An enquiry was conducted and the petitioner was removed from service on 26.09.2009. The appeal and revision preferred by the petitioner was dismissed by the 1st and 2nd respondents. Apart from the petitioner, eight other co-employees were implicated in this case and misappropriation allegation was leveled



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against them and whenever the employees remitted the alleged misappropriated money they were reinstated in service. The total loss caused was Rs.9,48,823/- and the petitioner had remitted Rs.5,38,422/- on 03.03.2018 and Rs.6,335/- on 31.01.2019. The Revision Petition filed under section 153 was dismissed on 15.03.2010 for non-prosecution. The contention of the petitioner is that the necessary documents are in the criminal court, the petitioner could not access to the said documents and the respondents have not supplied the copies of the documents and hence the petitioner could not effectively prosecute the case in the disciplinary proceedings. Since the revision was not decided on merits, the petitioner submitted a representation to review the dismissal order and filed W.P. (MD)No.6206 of 2016 and this Court, vide order, dated 30.03.2016, directed the 3rd respondent to dispose the representation of the petitioner, dated 10.03.2015, on merits within four weeks. The 2nd respondent vide, proceedings dated 12.05.2016 ordered for domestic enquiry, then 3rd



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respondent appointed enquiry officer on 29.04.2017, then enquiry officer submitted his findings, dated 28.03.2018 and observed that some of the charges were proved and rest of the charges were not proved. After analyzing the said report, the 3rd respondent called for a report from Inspector of Police, C.C.I.W.C.I.D., Sivagangai, who had given his opinion for the petitioner's reinstatement. Since the amount was paid, the Board by its resolution, dated 28.05.2019, imposed a punishment of stoppage of increment for three years and reinstated the petitioner subject to the outcome of the judgment in the criminal case. The 3rd respondent, vide proceedings, dated 28.05.2019, reinstated the petitioner. The 2nd respondent, vide proceedings, dated 24.10.2019, directed the 3rd respondent to terminate the petitioner, since criminal case was pending and the amount due to the society was not recovered. 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 further



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contention of the petitioner is that the 3rd respondent is the competent authority to review the earlier order passed by the then Special Officer of the Society. But the 2nd respondent has passed the impugned order, dated 24.10.2019. Aggrieved over the same, the present writ petition is filed.

3. The 2nd respondent has filed a counter stating that the petitioner has committed serious financial irregularities and misappropriated several lakhs of rupees and caused financial loss to the society to the extent of Rs.16.47 Lakhs. The petitioner filed W.P.(MD)No.8438 of 2008 challenging the enquiry and the Hon'ble Court dismissed the writ petition on 01.09.2009. The petitioner did not attend the enquiry, hence, the enquiry was completed ex-parte and the enquiry officer submitted his report on 30.06.2009 stating that the charges are proved. The 3rd respondent reinstated the petitioner without considering the material facts that the petitioner paid only a fraction of amount misappropriated



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by him. Moreover, two criminal cases pending against the petitioner and the petitioner has misappropriated Rs.16.47 Lakhs and caused financial loss to the society. Hence, the impugned order was passed. Therefore, the 2nd respondent prayed to dismiss the writ petition.

4. Heard Mr.P.Ganapathi Subramanian, learned counsel appearing for the petitioner and Mr.S.Shanmugavel, learned Government Advocate appearing for the respondents and perused the records.

5. On considering the rival submissions submitted on either side, this Court has given its anxious consideration.

6. It is seen that the petitioner could not effectively participate in the disciplinary proceedings since the relevant original documents are before the Criminal Court, hence an exparte disciplinary proceedings was



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conducted and the petitioner was dismissed from service. Subsequently the petitioner approached this Court to direct the respondents to reconsider the punishment. The respondents after conducting the enquiry had held that some of the charges were not proved and some of the charges are proved. Moreover the 3rd respondent had called for a report from Inspector of Police, C.C.I.W.C.I.D., Sivagangai and the 3rd respondent by relying on the report has come to the conclusion that the petitioner may be reinstated. It is also seen that the petitioner has remitted Rs.5,38,422/- on 03.03.2018 for the alleged loss. The objection of the 2nd respondent is that the loss is Rs.16.47 Lakhs, but the petitioner has only paid Rs.5,38,422/-. This contention of the respondent cannot be accepted since the alleged allegation of misappropriation is against eight persons and the petitioner has remitted his share of loss. Moreover, still the criminal case is pending coupled with the fact that the enquiry officer has held that some of the charges are not proved, hence the Board has



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rightly come to the conclusion until the conclusion of criminal case, the petitioner shall continue the work. Therefore, this Court is of the considered opinion that the impugned order is liable to be quashed and hence quashed. The respondents shall consider the case of the petitioner and take a call on the issue after the disposal of the criminal case. The respondents are directed to reinstate the petitioner, but in a non-sensitive post. The petitioner was dismissed in the year 2009, therefore, this Court is of the considered opinion that the petitioner is entitled to continuity of service. As far as backwages is concerned the respondents shall consider the same after the conclusion of the criminal case. The said exercise shall be completed within a period of (8) eight weeks from the date of receipt of a copy of the order.

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



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miscellaneous petitions are closed.

Index : Yes / No

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Internet : Yes

NCC : Yes / No

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To

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