



W.P.(MD)No.17921 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.17921 of 2017

and

W.M.P.(MD)Nos.14437 and 16053 of 2017

K.Porselvan

... Petitioner

vs.

1.The Registrar of Cooperative
Societies,
Office of the Registrar of Cooperative
Societies,
Kilpauk, Chennai 600 010.

2.The Joint Registrar of Cooperative
Societies,
Office of the Joint Registrar of
Cooperative Societies,
Ramanathapuram,
Ramanathapuram District.



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3.The Deputy Registrar of Cooperative Societies,
Office of the Deputy Registrar of Cooperative Societies,
Ramanathapuram,
Ramanathapuram District.

4.The President,
Q 203, Keelakarai Primary Agricultural Cooperative Credit Society,
Keelakarai, Ramanathapuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, pertaining to the impugned order, dated 14.09.2017, issued by the 4th respondent and to quash the same and consequently, to direct the respondents to re-instate the petitioner into service, regularizing his service and pay all monetary benefits.

For Petitioner	: Mr.C.Jeganathan for M/s.Veera Associates
For R1 to 3	: Mr.R.Ragavendran Government Advocate
For R4	: No appearance *****



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ORDER

This writ petition is filed for writ of Certiorarified Mandamus to quash the impugned order, dated 14.09.2017 issued by the 4th respondent and consequently to direct the respondents to reinstate the petitioner into service, then regularize the service and pay all monetary benefits.

2. The petitioner was appointed as a Clerk under the 4th respondent society through Employment Exchange on 15.12.1989 and thereafter he was promoted as Secretary of the said Society during the year 1994. On 09.03.2017 suspension order was issued by the 4th respondent. Subsequently, the third respondent issued proceedings, dated 13.03.2017, directing the 4th respondent to give a report regarding prior permission obtained from the Disciplinary Action Review Committee before issuing the suspension order. In the said proceedings, it was clearly mentioned if



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any departmental proceedings ought to be initiated against any employee of the society, prior permission must be obtained from the Disciplinary Action Review Committee which was constituted by the 2nd respondent based on the circular issued by the 1st respondent. But no such permission was obtained by the 4th respondent, therefore, the petitioner was permitted to continue to work as Secretary in the 4th respondent without any hindrance.

3. On 05.06.2017, the 4th respondent issued a charge memo based on the audit report for the year 2015-16, leveling 14 charges against the petitioner. The charge is that the petitioner has misappropriated the funds of the Society and also some allegations for which the petitioner has given a detailed explanation on 21.06.2017 denying all the charges. After receipt of the said explanation, an Enquiry Officer was appointed. After enquiry, a report was submitted on 21.07.2017 wherein the Enquiry



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Officer has held that all the charges were proved.

4. The contention of the petitioner is that there is no iota of truth or evidence to substantiate the charges. Based on such enquiry report, a second show cause notice was issued on 31.07.2017 by 4th respondent calling for further explanation and also informing about the proposed punishment that would be imposed on the petitioner. The petitioner had submitted detailed explanation on 24.08.2017 stating that the enquiry was conducted in a biased manner, no witnesses were examined on the side of the society and also raised various other grounds. Again on 02.09.2017, the petitioner submitted a representation seeking further time to appear before the 4th respondent in person. But the 4th respondent has passed the impugned order, dated 14.09.2017, wherein he has imposed the major penalty of termination from service. Challenging the same, the present writ petition is filed.



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5. At the time of admission this Court has granted interim stay of the order. The 4th respondent has filed a counter affidavit along with the vacate stay petition stating that the Registrar of Cooperative Societies is the ultimate authority and his instructions would be followed by the Society. But as far as the service conditions and provisions of by-laws are concerned, any change ought to be made legally and as per laid down procedures. The Registrar or his Subordinate should amend the by-laws if any special standing instructions are issued contra to the provisions of by-laws of special by-laws of the society. But the Registrar of Cooperative Societies, vide circular, dated 09.02.2016, instructed all the Joint Registrars of Cooperative Societies to convene Disciplinary Committee so as to avoid the illegal and vindictive attitude of the Management of the society against its employees. However, the circular, dated 31.10.2016, was not at all intimated to the petitioner as well as all the Managements of the Cooperative Societies. Further, the so-called



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committee convened by the Joint Registrar of Cooperative Societies, Ramanathapuram, was also not intimated to the petitioner and there is no evidence produced by the petitioner to establish the facts that on what basis and on what circumstances the 2nd respondent convened the meeting. After the said circular, there is no amendment in the by-laws. As per the existing provisions, the special bylaw pertaining to the service conditions, the 4th respondent alone is empowered to initiate disciplinary action as well as to pass final orders. Further, if any workers agreed with the said final orders, they may prefer revision petition under Section 153. As per the said alleged circular, the 2nd respondent is the President of the said committee and if he gives any permission to any management to dismiss an employee, then the particular employee cannot seek remedy under Section 153. This legal impediment was not properly considered by the Regional Joint Director of Cooperative Societies, Ramanathapuram. Therefore, convening the Disciplinary Action Review



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Committee is against law as well as against the provisions of special by-laws. Moreover, it is pertinent to note that the circular does not disclose in what way the Review Committee was formed. Therefore, the 4th respondent prayed to dismiss the writ petition.

6. The 3rd respondent has filed a counter affidavit stating that before constituting Disciplinary Action Review Committee, the Special Officer/the President of the particular Cooperative Society alone was the competent authority to take disciplinary action as against its employees. There were complaints that the employees of the cooperative societies have been wrongly implicated in the disciplinary actions. Hence, in order to avoid such situations, the Register of the Cooperative Societies namely the 1st respondent has formed a committee to review disciplinary action cases and modified the existing procedures of disciplinary action as against the Cooperative Society Employees. In that connection, the



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circular was issued by the 1st respondent dated 09.02.2016, by which "Disciplinary Action Review Committee" was newly constituted with the following members in respect of Ramanthapuram District:

ஒழுங்கு நடவடிக்கை ஆய்வுக்குழு

தலைவர்	மண்டல இணைப்பதிவாளர்
உறுப்பினர்கள்	1. சரகத் துணைப்பதிவாளர்கள், இராமநாதபுரம்/பரமக்குடி (தொடர்புடைய சரகம்) 2. துணைப்பதிவாளர்/முதன்மை வருவாய் அலுவலர், இராமநாதபுரம் மாவட்ட மத்திய கூட்டுறவு வங்கி, இராமநாதபுரம். 3. கூட்டுறவு சார்பதிவாளர்கள்/ கள அலுவலர்கள் (தொடர்புடைய வட்டாரம்) 4. தொடக்க வேளாண்மை கூட்டுறவு கடன் சங்க உறுப்பினர் (TACEBA, இராமநாதபுரம்)

7. Admittedly, before passing the impugned order, dated 14.09.2017, the 4th respondent has not obtained prior permission from the



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Disciplinary Action Review Committee. Hence, the impugned order is totally against the existing law in force. The petitioner has attained superannuation on 30.04.2023. Therefore, the respondents have allowed the petitioner to retire from service without prejudice to the final orders passed in the writ petition. Since there was a stay in the writ petition, the respondents have allowed the petitioner to retire from service. However, the terminal benefits were not disbursed.

8. Heard Mr.C.Jeganathan, for for M/s. Veera Associates the Learned Counsel appearing for the petitioner, Mr.R.Ragavendran, the Learned Government Advocate appearing for the respondents 1 to 3 and perused the records.

9. The contention of the petitioner is that when the first respondent



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has specifically issued a circular to all the Cooperative Societies to take prior permission from the Disciplinary Action Review Committee, the 4th respondent is bound to follow the circular of the 1st respondent. In fact, the 3rd respondent has filed a counter affidavit wherein it is categorically stated that the disciplinary proceeding was initiated without obtaining prior permission from the said Committee. It also states that the disciplinary proceeding is against the said circular and totally against the existing law.

10. At the time of admission, this Court has granted an interim order of stay. Therefore, the respondents have not implemented the order of dismissal. Pending writ petition, the petitioner had attained superannuation and the respondents have allowed the petitioner to retire from service. Even though the allegation is misappropriation, this Court is inclined to allow the writ petition, since the action was initiated



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without obtaining prior permission. Therefore, the impugned order is quashed. It is submitted that the respondents have not disbursed the terminal benefits, therefore the 4th respondent is directed to disburse the terminal benefits within a period of four weeks from the date of receipt of the copy of the order.

11. With the above said direction and observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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

05.06.2023

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S.SRIMATHY, J

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