



W.P.No.5517 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2024

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.5517 of 2020
and W.M.P.No.19531 of 2023

E.M.Sekar

...

Petitioner

/vs/

1. The Additional Registrar of Co-operative Society
(Sales, Planning and Development)
Office of the Registrar of Cooperative Society,
EVR Salai, Kilpauk,
Chennai – 600 010.

2. The Joint Registrar of Cooperative Societies / Chairman
of the Common Cadre Authority,
Dharmapuri Region,
Dharmapuri.

3. The President,
K.K.162 N.S.Reddiur Primary Agriculture
Cooperative Society,
N.S.Reddiur Post,
Dharmapuri District – 636 804.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to
issue a writ of certiorarified mandamus to call for concerned records from



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the first respondent, quash the order of the first respondent dated 30.08.2019 bearing Na.Ka.No.48651/2011/Sa.Pa.1 as illegal, arbitrary and contrary to law and consequently direct the third respondent to reinstate the petitioner with continuity of service, full back wages and all other attendant benefits.

For Petitioner ... Mr.Balan Haridas

For Respondents ... Mr.M.Rajendran
Additional Govt. Pleader for R1 & R2

Mr.P.K.Shivakumar
for Mr.S.Palanisamy for R3

ORDER

This Writ Petition has been filed challenging the order of the first respondent dated 30.08.2019 bearing Na.Ka.No.48651/2011/Sa.Pa.1 as illegal, arbitrary and contrary to law and consequently direct the third respondent to reinstate the petitioner with continuity of service, full back wages and all other attendant benefits.

2. The petitioner who was given with charges vide charge memo dated 30.11.2017 was subjected to disciplinary proceedings by holding an



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enquiry. However the enquiry was conducted on 27.05.2009 and an *ex parte* enquiry report dated 27.05.2009 has been filed by the Enquiry Officer by holding the petitioner 'guilty' for the charges. A second show cause notice was issued to the petitioner on 16.06.2009 and on receipt of the same, the petitioner has given a reply on 24.06.2009 and thereafter the petitioner was imposed with the punishment of dismissal on 28.07.2009. The petitioner challenged the same by way of preferring a revision and the Revisional Authority has given a direction to conduct the enquiry afresh vide his order dated 14.12.2011. In the fresh enquiry, the petitioner was found 'not guilty' and the order of the Enquiry Officer in this regard is given on 13.03.2012.

2.1 The third respondent filed a writ petition in W.P.No.27539 of 2013 challenging the order of the first respondent / Revisional Authority issued for a fresh enquiry and that was allowed on 25.04.2018 by remanding the matter to the first respondent. The petitioner filed an appeal against the above order in W.A.No.485 of 2019 but the same was dismissed. The Revisional Authority took up the matter afresh and passed an order dated 30.08.2019 upholding the order of dismissal which was



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imposed on the petitioner by the third respondent vide order dated 28.07.2009. Now the petitioner has filed the present writ petition challenging the order of dismissal on the ground that the order dated 28.07.2009 is an *ex parte* order.

3. Mr.Balan Haridas, the learned counsel for the petitioner submitted, that the petitioner was not paid with subsistence allowance from 04.07.2005 till the order of dismissal, during which period the petitioner was kept suspension; the petitioner could have made an effective participation in the enquiry and obviously he remained *ex parte* and the same order cannot be taken in consideration; the petitioner has been given with the charge of approving the Jewel loan to two borrowers who alleged to have pledged the spurious jewels; the borrowers have already paid the loan availed by them and they redeemed the jewels and there is no loss to the respondent society; the enquiry was conducted *ex parte* without considering the merits on the side of the petitioner and hence the order of the Revisional Authority should be set aside.

4. Mr.M.Rajendran, the learned Additional Government Pleader,



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submitted that the petitioner did not hand over the documents pertaining to certain loans on which waiver proceedings need to be taken; the charges against the petitioner were that he had sanctioned gold loan to the tune of Rs.25,700/- by getting spurious jewels and he had also failed to hand over the document to the concerned and derelicted his duty.

5. It is not denied by the respondents that the petitioner was kept under suspension in view of the charges raised against him. However the petitioner was not paid with any subsistence allowance during the period of suspension. It is submitted by the petitioner that he was not paid with any subsistence allowance and hence he could not participate in the enquiry proceedings and defend himself effectively. In fact, the Revisional Authority had also passed an order to conduct an enquiry afresh but the said order has been subsequently set aside by virtue of the order passed in W.P.No.27953 of 2013.

6. The petitioner was not able to get the benefit of second enquiry report in view of the order of remand passed by the Revisional Authority



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was set aside. However, now the impugned order has been passed only in pursuant to the *ex parte* order passed against the petitioner at the outcome of the enquiry in which the petitioner did not participate. It is also brought to the light that the gold loans which have been given by receiving the spurious jewels have been repaid and there is no loss on this account.

7. So far as the other charge is concerned, it is alleged that the petitioner did not cooperate for enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act and he did not hand over the documents and the locker key and all other official articles or documents were kept in his hand and that had resulted in chaos. It is alleged that the borrowers were not able to get back their jewels as the locker key was held by the petitioner himself and this has collapsed the essential functions of the first respondent bank.

8. Since serious allegations have been made against the petitioner, it would have been fair if the petitioner was paid with subsistence allowance and he was allowed to participate in the enquiry. Even though the petitioner was given with an opportunity to participate in the enquiry, in the absence



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of any subsistence allowance, he cannot be expected to engage any qualified person or advocate to defend himself in the enquiry proceedings.

9. The Revisional Authority has chosen to pass an order of dismissal only basing upon the *ex parte* enquiry report submitted by the first Enquiry Officer. Under such circumstances, I feel it is appropriate to set aside the *ex parte* enquiry report passed by the Enquiry Officer dated 27.05.2009 and allow the petitioner to participate in the enquiry proceedings which should be considered afresh by taking into consideration of all the papers and by giving the petitioner a fair opportunity of hearing.

10. Accordingly, the *ex parte* enquiry report dated 27.05.2009 is hereby quashed and the respondents are directed to conduct a fresh enquiry by taking into consideration of all the papers and by giving the petitioner a fair opportunity of hearing, within a period of three months from the date of receipt of a copy of this order. However, it is made clear that in view of the above direction, the order of dismissal will not get disturbed. The third respondent is directed to pay subsistence allowance to the petitioner from



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the date of suspension till the date of dismissal.

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11. With the above direction, this Writ Petition is disposed. No costs.

Connected miscellaneous petition is closed.

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Index: Yes / No

Speaking order / Non-speaking order

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To:

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R.N.MANJULA ,J.

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