



W.P.No.15080 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.15080 of 2020

and

W.M.P.No.18800 of 2020

K.Perumal

...Petitioner

-Vs-

1.The Joint Registrar of Co-Operative Societies,
Villupuram Zone,
Villupuram.

2.The Management,
CL.Spl.99-Ongur Primary Agriculture
Co-Operative Credit Society
Rep.by its President
Ongur Village and Post,
Tindivanam Taluk,
Villupuram District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, calling for the concerned records from the 2nd respondent, quash the order of the 2nd respondent dated 31.08.2020, direct the 2nd respondent to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.



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For Petitioner : Mr.Balan Haridas

For Respondents : Mr.V.Manoharan
Government Advocate

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus, calling for the concerned records from the 2nd respondent, quash the order of the 2nd respondent dated 31.08.2020, direct the 2nd respondent to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

2. The case of the petitioner is that he was working as an Attender in 2nd respondent Society and the Charge Memo dated 23.12.2015 was issued to the petitioner. The petitioner denied the charges and the respondents without giving semblance of opportunity to defend the charges, in a farce manner conducted a domestic enquiry and imposed punishment of suspension by order dated 25.03.2015. The petitioner preferred revision petition to the 1st respondent and in that an order has been passed on 11.05.2018 cancelling the order of dismissal and directed the 2nd respondent to place the petitioner in the same place where he was working and thereafter conduct enquiry in accordance with law. However, the 2nd respondent has not implemented the



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order and also not paid the subsistence allowance to the petitioner. Hence, he has come forward with the present writ petition.

3. The learned counsel for the petitioner would submit that this Court by order dated 20.12.2018 in W.P.No.33038 of 2018 filed by the petitioner, passed the following order:

"3. Again the case is listed today, i.e., on 20.12.2018, the learned counsel appearing for the petitioner submitted that the subsistence allowance was not paid. Already the petitioner has submitted representations dated 06.07.2018, 24.07.2018 and 27.08.2018, claiming a sum of Rs.2,52,195/-, i.e., allowance for the period from 01.10.2016 to 31.08.2018. Despite the representations submitted and orders being passed by this Court, the subsistence allowance is not paid.

4. As the final opportunity, the respondents shall pay the subsistence allowance payable to the petitioner on or before 31.01.2019, failing which, the respondents would lose the right to proceed with the enquiry."



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4. Despite the above said order, the subsistence allowance was not paid to the petitioner. Hence, the respondents would lose the opportunity to initiate the disciplinary proceedings against the petitioner and they cannot proceed with the enquiry.

5. The petitioner gave his representation dated 02.12.2019, requesting the President of the 2nd respondent Society to pay the subsistence allowance but the same was not paid to the petitioner.

6. The learned counsel for the petitioner would further submit that the Enquiry Officer sent communication dated 31.12.2019 to the petitioner mentioning several irrelevant references, which by itself will show that the Enquiry Officer was biased even before the commencement of Enquiry. In the said communication, it was stated that the enquiry will be held on 21.01.2020 and the petitioner should be present in the enquiry and give his statement and thereafter the subsistence allowance will be given. On 20.01.2020, the petitioner gave a detailed written submission and once again requested to pay the subsistence allowance from September 2018 to April 2020 and petitioner also requested to furnish the documents and to conduct



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enquiry after paying subsistence allowance and he further gave his representation to pay subsistence allowance through his request dated 06.04.2020.

7. The learned counsel for the petitioner would further submit that the petitioner was only an attender in the 2nd respondent Society and the Charges framed against the petitioner are as follows:

Charge No.1 : That short term crop loan applications were obtained from landlords with their signature and the loan was sanctioned by the loan proceeds were appropriated by the Secretary and petitioner.

Charge No.2: That in the short term crop loan application signature of landlords was forged and loan was sanctioned and the loan proceeds were appropriated by the Secretary and the petitioner.

Charge No.3: That the loan application were obtained from the members for crop loan and the loan amount was sanctioned but only part of the loan was given to member and the rest of the amount was appropriated by the Secretary and petitioner.

Charge No.4: That the outstanding in the Joint liability group was paid and when they applied for the fresh loan, the signature was obtained in



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the loan application and the loan was sanctioned for a higher amount without the knowledge of the member and the excess loan amount was appropriated by the Secretary and petitioner.

Charge No.5: That the Joint liability group closed the loan and submitted the application of fresh loan and the loan was sanctioned and that the loan proceeds were appropriated.

Charge No.6: That the Secretary and petitioner appropriated the medium-term loan amount.

Charge No.7: That the loan sanctioned for self help group had been appropriated by the Secretary and the petitioner.

Charge No.8: That the repayment made by the self help group towards the loan had been misappropriated and that the amount paid by the member in their savings bank has been appropriated by the petitioner.

Charge No.9: That the petitioner and the Secretary had misappropriated the money paid by the members in the savings bank account.

Charge No.10: That the petitioner and the Secretary had obtained signature of the member in the short term crop loan application, sanctioned the loan application and appropriated the money.



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Charge No.11: That the petitioner and the secretary obtained signature from the members, sanctioned the loan but only gave part of the loan amount to the member and misappropriated the rest of the amount.

Charge No.12: That there had been stock deficit of fertilizers and shortage in the amount collected for selling the fertilizers and the same had been misappropriated by the petitioner.

Charge No.13: That in respect of account holder P.Dhanapal, amount had been permitted to be withdrawn from the account more than what he actually had in his account.

Charge No.14: That 21 accounts have become NPA as on 31.03.2015 and that had resulting the loss to the Society to the tune of Rs.5,19,185/-.

8. The learned counsel for the petitioner would further submit that the Charges levelled against the petitioner are false and he was only an attender and has no power to process or sanction the loan. While so, the allegation is that the petitioner has misappropriated money after sanctioning the loan are all false. Though 14 charges were levelled against the petitioner, the 2nd respondent Society did not furnish any report in respect of the charges levelled against the petitioner. The 2nd respondent conducted a farce of an



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enquiry. In the enquiry, no witness was examined by the 2nd respondent Society and no document was produced and marked. In a hurry and haste manner, enquiry was conducted and based on the enquiry, Enquiry Officer has submitted his report dated 07.04.2016 and the same was forwarded to the petitioner on 30.07.2016 and the enquiry report was based on surmises and conjectures and based on the said report, the petitioner was dismissed by the 2nd respondent Society vide order dated 01.10.2016. Thereafter the petitioner filed revision petition dated 05.10.2017 before the 1st respondent. The 1st respondent rejected the revision petition by impugned order dated 25.10.2017 on the ground that the revision was not preferred in time. Thereafter, the petitioner approached this Court by filing W.P.No.4641 of 2018 challenging the order of the 1st respondent returning the revision petition. The writ petition was allowed and the 1st respondent was directed to decide the revision petition on merits. The 1st respondent deciding the revision petition, passed an order dated 11.05.2018, setting aside the order of dismissal dated 01.10.2016 and the matter was remitted back to the 2nd respondent to place him in the same position and to conduct disciplinary proceedings in accordance with law of the Society and complete the same within a period of two months.



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9. The learned counsel for the petitioner would further submit that the petitioner was placed under suspension on 25.03.2015 and Charge Memo dated 23.12.2015 was issued to the petitioner and the petitioner was dismissed by order dated 01.10.2016. In view of the order passed by the 1st respondent, when the order of dismissal is set aside, the petitioner should be placed in the same position in which he was before the dismissal, he was only under suspension from 01.10.2016. Consequently, the 2nd respondent has to pay subsistence allowance between 01.10.2016 to till the disciplinary proceedings were initiated. Therefore, the petitioner sent representations dated 06.07.2018, 24.08.2018, and 27.08.2018 to the 2nd respondent to pay subsistence allowance.

10. Even after the direction of this Court, by order dated 14.11.2019, chose to pay subsistence allowance only upto 31.08.2018. When the petitioner is placed under suspension, it is the duty of the 2nd respondent to pay subsistence allowance. Without paying subsistence allowance, the 2nd respondent has issued notice to the petitioner asking to appear for domestic enquiry and in such circumstances, the petitioner submitted his representation dated 02.12.2019, to the 2nd respondent and requested to pay



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subsistence allowance from September 2018 to 31.10.2019 and thereafter conduct enquiry. The subsistence allowance payable was Rs.1,60,180/- and later he has also requested to furnish the documents which he had already asked in his letter dated 24.08.2016.

11. The 2nd respondent, without paying subsistence allowance and without furnishing documents proceeded to conduct exparte enquiry and based on that appears to have got enquiry report holding that all the charges are proved. The petitioner gave his objection on 03.07.2020, in the said objection, conducted the enquiry without paying subsistence allowance and without furnishing documents is illegal and report dated 29.02.2020 cannot be relied upon for any purpose and charges levelled against him are foisted.

12. The 2nd respondent Society, ignoring the objection of the petitioner and without paying subsistence allowance has dismissed the petitioner from service by order dated 31.08.2020.

13. He would further submit that the charges levelled against the petitioner were not proved in any manner and conducted the enquiry without affording any opportunity to the petitioner to defend the charges.



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WEB COPY 14. The 2nd respondent even after the order passed by this Court has not mended its action and it had failed to disobey the order of this Court by not paying subsistence allowance. Subsistence Allowance given till August 2018, was deliberately delayed for more than a year after the direction issued by this Court, from August 2018 till the punishment being imposed and subsistence allowance has not been paid even till filing of the writ petition (i.e.,) on 07.10.2020. The attitude of the 2nd respondent will make clear that it has got scant respect for rule of law, only in that process, the petitioner had been thrown out of out of employment without conducting enquiry in a fair and proper manner. The petitioner without employment right from the date of suspension and was not gainfully employed anywhere.

15. In spite of the directions to the Joint Registrar, while setting aside the earlier dismissal order, the 2nd respondent has not cared to comply the direction, even the direction to pay subsistence allowance issued by this Court, had not been complied with fully and as per the directions of this Court, the subsistence allowance is not paid, the 2nd respondent will lose its right to proceed with the enquiry. **As no subsistence allowance has been**



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paid to the petitioner from September 2018 to till date of dismissal, the 2nd respondent has lost its right to proceed with an enquiry and enquiry conducted by the 2nd respondent are illegal and contrary to the direction issued by this Court, by order dated 20.12.2018 in W.P.No.33038 of 2018.

16. The counter affidavit has also filed by the respondents in October 2024.

17. The learned Additional Government Pleader appearing for the respondents would submit that the petitioner did not exhaust his alternative remedy available under Section 153 of the Tamil Nadu Co-Operative Societies Act, 1978, and thus as per the decisions rendered by Five Judge Bench of this Court in *K.Marappan v. The Deputy Registrar of Co-Operative Societies, Namakkal and another* reported in *2006-4-LW-495*. As per the above decision, the Society is not coming with the definition of 'State'. The petitioner has not made out a *prima-facie* case to entertain the writ petition.



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18. He would further submit that the petitioner caused loss to the society to a sum of Rs.19,49,635/- along with Secretary Mr.P.Elumalai and thereby Section 81 enquiry was ordered and on perusal of the records, the Enquiry Officer submitted his reports, namely, Criminal Prosecution Charge under Section 87 and for disciplinary proceedings which are separated with each other and all the simultaneous proceedings could go on. Based on these three reports, a Criminal Case No.1 of 2016 was registered under Sections, 408, 468, 477(A) r/w. Section 109 IPC for the misappropriation of public fund and so on and Charge Sheet was filed and the same is pending for trial. Likewise surcharge proceedings was initiated under Section 87 of the Tamil Nadu Co-Operative Societies Act by the Deputy Registrar of Co-Operative Societies in which the petitioner submitted his written explanation that all the opportunities were given and he is not intended to peruse the records in respect of 5 counts/claims and as against the misappropriation and loss, the petitioner herein repaid a sum of Rs.2,37,983/- but no document submitted to prove the same and the another employee/Secretary Mr.Elumalai paid a sum of Rs.2,43,500/-. Hence, the Deputy Registrar of Co-Operative Societies, Tindivanam was pleased to pass an order Under Section 87 of the Tamil Nadu Co-Operative Societies Act vide proceedings RC.402/2016/Ku.Na.



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Dated 25.07.2016 which had not been remitted by the petitioner as on this date challenging the same an appeal was filed by the petitioner under Section 152 of the Act, which is pending. Similarly, the disciplinary proceedings was initiated and 14 charges were framed under a charge memo dated 23.12.2015 and duly served on the petitioner, for which, the petitioner did not submit his explanations and after enquiry, the President of this respondent passed an order dated 01.10.2016 which was set aside by the 1st respondent under Section 153 of the Act, vide Na.Ka.991/2018/Sa.Pa dated 11.02.2018 and is remanded back for further proceedings.

19. The learned Additional Government Pleader would further submit that in pursuance of the same, fresh enquiry was initiated and an Enquiry Officer was appointed vide proceedings of the President dated 12.11.2019 and the enquiry officer submitted his report dated 29.02.2020 after affording all the opportunities to the petitioner, holding that the charges were proved and on proven charges, the petitioner was served with a show cause notice dated 06.03.2020, for which the petitioner submitted his explanations on 20.04.2020 and thereby, dissatisfied with the explanation, the President issued second show cause notice dated 12.06.2020 for which the petitioner



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instead of submitting his explanation he sent a letter dated 03.07.2020 that to pay subsistence allowance and thereby a personal enquiry notice was ordered on 14.08.2020 for which the petitioner gave a letter on 14.08.2020 and hence the Board decided to terminate the petitioner from his service vide impugned proceedings dated 31.08.2020 which is under challenge by the writ petitioner without filing revision under Section 153 of the Tamil Nadu Co-Operative Societies Act, before the 1st respondent.

20. The learned Additional Government Pleader would further submit that the domestic enquiry reveals that the petitioner had misappropriated KCC loans, RFCC loans etc., which were in collusion with the Secretary, admitted by the petitioner that some of the amounts were utilised for his personal gain and purposely failed to remit the same into bank accounts, and also failed to account the said money into the loan repayment register without availing loan to the beneficiaries, they created false documents as if KCC agricultural loans were granted to the farmers and thereby not only caused loss to the society but also misappropriated the said amounts with the said Elumalai, the Secretary. Likewise, the sale proceeds of fertilizers was not brought into the accounts and misappropriated the said amounts and also



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committed serious irregularities in the savings bank accounts of the members which are all done by the petitioner with an intention to cheat the public money for their illegal enrichment. The petitioner also liable for loss of time barred debts and thereby he had committed dereliction in duty.

21. He would further submit that the petitioner not denied the domestic enquiry report as to the misappropriation of public money to the tune of Rs.7,50,000/- and that a portion of the amount was remitted by the petitioner which itself is an evidence but no document to substantiate that the petitioner had committed serious illegality and thereby further show cause notice dated 12.06.2020 was duly served on the petitioner for which the petitioner submitted his explanation dated 29.02.2020 to reinstate him into service on wrong footing. The petitioner did not submit his further explanation as against the proven charges and the enquiry reports properly. He also did not want for cross examination of management witnesses and also not willing for furnishing of evidence on his side and complaining before the Court that he did not cross examine the management witness and in fact he refused to do so and hence, he is estopped from questioning these respondents and in fact he did not deny specifically the allegations made therein and thereby



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following all the procedures, the impugned order is passed which is not required to be interfered with.

22. The petitioner was served with the domestic enquiry report, Section 81 Enquiry Report, show cause notice and further 2nd show cause notice along with enquiry report and the allegations that the enquiry report and the documents were not furnished are unsustainable either in law or on facts. The petitioner received the domestic enquiry report dated 10.08.2016, which he had not been challenged at any point of time. Following the enquiry report, show cause notice was issued to the petitioner, for which the petitioner did not submit his reply and thereby the enquiry had been concluded and the order of termination was issued on 01.10.2016 and the same had been served to the petitioner on 07.10.2016, against which, the petitioner preferred a revision before the Joint Registrar of Co-Operative Societies on 05.10.2017.

23. The 2nd respondent on 12.06.2020, rejected the request of the petitioner for payment of subsistence allowance on the ground that he has not produced non-employment certificate for every month by invoking under



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Section 3(2) of the Payment of Subsistence Allowance Act, and without challenging the said order of rejection for payment of subsistence allowance, the petitioner made a request for discharge him from the charges by a letter dated 03.07.2020 and even thereafter, the petitioner was advised to participate in the enquiry for personal hearing by a proceedings dated 31.07.2020, for which, the petitioner did not appear in person and he sent a representation dated 12.08.2020. The petitioner has stated that he was not employed anywhere for the period from 25.03.2015 to 12.08.2020 and thereafter he replied for the show cause notice on 14.08.2020 and after considering all the relevant materials and this respondent passed a reasoned order of dismissal of the petitioner from service for the proven charges levelled against the petitioner.

24. Heard both sides and perused the materials available on record.

25. The petitioner was working as Attender and he was placed under suspension by order dated 25.03.2015. The 2nd respondent Society issued Charge Memo and 14 charges were levelled against the petitioner and the same are as follows:



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Charge No.1 : That short term crop loan applications were obtained from landlords with their signature and the loan was sanctioned by the loan proceeds were appropriated by the Secretary and petitioner.

Charge No.2: That in the short term crop loan application signature of landlords was forged and loan was sanctioned and the loan proceeds were appropriated by the Secretary and the petitioner.

Charge No.3: That the loan application were obtained from the members for crop loan and the loan amount was sanctioned but only part of the loan was given to member and the rest of the amount was appropriated by the Secretary and petitioner.

Charge No.4: That the outstanding in the Joint liability group was paid and when they applied for the fresh loan, the signature was obtained in the loan application and the loan was sanctioned for a higher amount without the knowledge of the member and the excess loan amount was appropriated by the Secretary and petitioner.

Charge No.5: That the Joint liability group closed the loan and submitted the application of fresh loan and the loan was sanctioned and that the loan proceeds were appropriated.



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Charge No.6: That the Secretary and petitioner appropriated the medium-term loan amount.

Charge No.7: That the loan sanctioned for self help group had been appropriated by the Secretary and the petitioner.

Charge No.8: That the repayment made by the self help group towards the loan had been misappropriated and that the amount paid by the member in their savings bank has been appropriated by the petitioner.

Charge No.9: That the petitioner and the Secretary had misappropriated the money paid by the members in the savings bank account.

Charge No.10: That the petitioner and the Secretary had obtained signature of the member in the short term crop loan application, sanctioned the loan application and appropriated the money.

Charge No.11: That the petitioner and the secretary obtained signature from the members, sanctioned the loan but only gave part of the loan amount to the member and misappropriated the rest of the amount.

Charge No.12: That there had been stock deficit of fertilizers and shortage in the amount collected for selling the fertilizers and the same had been misappropriated by the petitioner.



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Charge No.13: That in respect of account holder P.Dhanapal, amount had been permitted to be withdrawn from the account more than what he actually had in his account.

Charge No.14: That 21 accounts have become NPA as on 31.03.2015 and that had resulting the loss to the Society to the tune of Rs.5,19,185/-.

26. The main contention of the learned counsel appearing for the petitioner is that in view of the order passed by this Court in W.P.No.33038 of 2018 dated 20.12.2018, the respondents would lose the opportunity to initiate the disciplinary proceedings against the petitioner. The relevant portion of the order is extracted as follows:

"3. Again the case is listed today, i.e., on 20.12.2018, the learned counsel appearing for the petitioner submitted that the subsistence allowance was not paid. Already the petitioner has submitted representations dated 06.07.2018, 24.07.2018 and 27.08.2018, claiming a sum of Rs.2,52,195/-, i.e., allowance for the period from 01.10.2016 to 31.08.2018. Despite the representations submitted and orders being passed by this Court, the subsistence allowance is not paid.



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4. As the final opportunity, the respondents shall pay the subsistence allowance payable to the petitioner on or before 31.01.2019, failing which, the respondents would lose the right to proceed with the enquiry."

27. As stated above, the 2nd respondent lost the opportunity of initiating enquiry and they cannot proceed with the enquiry since the subsistence allowance was not paid, the order passed by this Court made it very clear that if the subsistence allowance has to be paid on or before 31.01.2019, failing which the respondent will lose to proceed with the enquiry. **In this case, it is admitted fact that the petitioner was paid the subsistence allowance only on 14.11.2019 i.e., after 10 months of the last date stipulated by this Court in the above order dated 20.12.2018. The subsistence allowance is paid for the period till August 2018 and the subsistence allowance for the remaining period is not paid to the petitioner till the date of filing of the writ petition.**

28. The petitioner sent various representations dated 02.12.2019 to the 2nd respondent Society, to pay subsistence allowance, as directed by this Court. Despite this, the respondents have not come forward to pay the



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subistence allowance to the petitioner. **The 2nd respondent has not only complied the order passed by this Court dated 20.12.2018, it amounts not only dis-obeying the order and he does not have any respect to the order passed by this Court.**

29. The petitioner is only an attender and the Charge Nos.1 to 5 levelled against the petitioner are pertaining to sanctioning of crop loan, short term crop loan. The loan was sanctioned for a higher amount, without the knowledge of the member, joint liability group was closed the loan, for which, the petitioner is only an attender and not a sanctioning authority to sanction the said loans and only President and Secretary of the Co-Operative Society are the authorities to sanction the loan to the members of the Society.

30. In regard to Charge Nos.6 to 11, that the petitioner and the Secretary has misappropriated the amounts, for which, no proper enquiry was conducted and no witnesses were examined and no documents were produced and marked by the 2nd Respondent Society.



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31. With regard to Charge No.12, Fertilizer shortage, nowhere it is mentioned that the petitioner is in-charge of the godown where the fertilizers are stocked or kept and the petitioner is in-charge of the same.

32. In regard to Charge No.13, in respect of the account holder, P.Dhanapal was permitted to withdraw the amount more than what he had in his account it is only the Secretary or the President of the Society can permit to withdraw, but, not the petitioner, who is working only as an attender.

33. In regard to Charge No.14 that 21 accounts were NPA as on 31.03.2015 and resulted in loss of due to the Society to the tune of Rs.5,19,185/-, for which, the President and Secretary of the 2nd respondent Society alone responsible and not the petitioner who was an attender in the Society.

34. Hence, in regard to Charges 1 to 14, the petitioner is not responsible and it is only the President and the Secretary of the Society alone are responsible and liable.



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35. In regard to Charge Nos.1 to 14, for which no documents were marked, no witnesses were examined and no proper enquiry was conducted. Hence in regard to Charge 1 to 14, the petitioner is not responsible for the reasons stated supra.

36. The impugned order is liable to be quashed on these two grounds.

1) The non-compliance of the order passed by this Court in W.P.No.33038 of 2018 dated 20.12.2018, the respondents would lose the right to proceed with the enquiry.

2) In the Domestic enquiry no documents were marked, no list of witnesses, no witness examined, hence the enquiry was not conducted in a fair and proper manner and the same is in violation of principles of natural justice.



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37. In view of the above factual matrix of the case, the order passed by the 2nd respondent, dated 31.08.2020 is liable to be quashed and accordingly, the same is hereby quashed.

38. The 2nd respondent is directed to reinstate the petitioner with full back wages, continuity of service and other attendant benefits within a period of twelve weeks (3 months) from the date of receipt of a copy of this order.

39. With the above observations and directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

22.11.2024

Index : Yes / No

Internet: Yes

Speaking / Non Speaking order

Neutral Citation Case: Yes / No

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To

1.The Joint Registrar of Co-Operative Societies,
Villupuram Zone,
Villupuram.

2.The President,
CL.Spl.99-Ongur Primary Agriculture
Co-Operative Credit Society
Ongur Village and Post,
Tindivanam Taluk,
Villupuram District.



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