



W.P.No.18229 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.18229 of 2021
and W.M.P.No.19463 of 2021

G.Kaliyamurthy

... Petitioner

Vs.

- 1.The Secretary,
Co-operative Society Department,
Secretariat, Pondicherry.
- 2.The Registrar,
Co-operative Societies,
VVP Nagar, Thattanchavadi,
Pondicherry.
- 3.The Deputy Registrar,
Office of Deputy Registrar of Co-operative Societies,
Perun Thalaivar Kamarajar Administrative Complex,
Madagadi, Karaikal 609 102.
- 4.The Administrator,
Karai-kovilpathu Primary Agricultural,
Co-operative Credit Society Limited,
No.P.139, Thalateru,
Karaikal 609 605.

5.D.Maariyappan

... Respondents



W.P.No.18229 of 2021

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 1 to 4 to suspend the 5th respondent immediately and to conduct the domestic enquiry including initiating criminal action against the 5th respondent as per the petitioner's representation dated 19.07.2021.

For Petitioner : Mr.M.Thamizhavel

For Respondents : Mr.M.Nirmal Kumar,
Govt. Advocate (Pondicherry) for R1 to R3
No appearance for R4 & R5

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Mandamus, to direct the respondents 1 to 4 to suspend the 5th respondent immediately and to conduct the domestic enquiry including initiating criminal action against the 5th respondent as per the petitioner's representation dated 19.07.2021.

2. Heard Mr.M.Thamizhavel, learned counsel for the petitioner and Mr.M.Nirmal Kumar, learned Government Advocate (Pondicherry) for the respondents 1 to 3.



W.P.No.18229 of 2021

3. The petitioner is said to be a member of the fourth respondent Society. The fifth respondent was a salesman in the fourth respondent Society and he was suspended on 27.10.2020 for misappropriating the funds of the Society. It is submitted that many complaints have been pending against the fifth respondent. As per the information obtained through Right to Information Act, the petitioner learnt that the fifth respondent has been reinstated in service on 16.07.2021 and no disciplinary proceedings have been initiated against him. Hence the petitioner has filed this Writ Petition seeking the above direction.

4. The learned counsel for the petitioner submitted that the petitioner has sent a representation on 19.07.2021. But his representation has not been considered so far.

5. The learned Government Advocate for the respondents 1 to 3 submitted that this Writ Petition is not maintainable and the petitioner's remedy does not lie before the Writ jurisdiction. It is further submitted that the disciplinary action will be taken against the fifth respondent, if



W.P.No.18229 of 2021

the enquiry initiated on the allegation against the fifth respondent is proved to be true. The order of reinstatement is the policy decision taken by the Society and in which the petitioner cannot have any grievance.

6. It might be true that the fifth respondent might had been involved in certain misappropriation and about which, his employer has to take action. Even as per the submission of the learned Government Advocate, the fifth respondent has been kept under suspension for a long period and as per the rules of suspension, he was given with 75% of pay without any work. Revoking the suspension is the discretion of the employer. If the employer chooses to revoke the suspension by not opting to pay 75% of pay as subsistence allowance without extracting any work from his employee, it is upto the employer to revoke suspension and reinstate the employee into service.

7. In the instant case, it is submitted that the disciplinary proceedings initiated against the fifth respondent is not yet been closed. Whatever may be the case, it is the fourth respondent who has to take



W.P.No.18229 of 2021

decision. If at all the petitioner is aggrieved due to any alleged criminal intention or action on the part of the fifth respondent, it is upto him to initiate any civil or criminal action in accordance with the cause of action as against this petitioner. Since the petitioner's legal right in not initiating any disciplinary action against the employee by its own employer is not affected. The petitioner cannot maintain this Writ Petition fundamentally and is liable to be dismissed.

8. In view of the above stated reasons, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.01.2024

Index : Yes / No
Internet : Yes / No
Speaking / Non-Speaking
Neutral Citation : Yes / No
gsk



WEB COPY



W.P.No.18229 of 2021

R.N.MANJULA, J.

gsk

To

1.The Secretary,
Co-operative Society Department,
Secretariat, Pondicherry.

2.The Registrar,
Co-operative Societies,
VVP Nagar, Thattanchavadi,
Pondicherry.

**W.P.No.18229 of 2021
and W.M.P.No.19463 of 2021**

3.The Deputy Registrar,
Office of Deputy Registrar of Co-operative Societies,
Perun Thalaivar Kamarajar Administrative Complex,
Madagadi, Karaikal 609 102.

4.The Administrator,
Karai-kovilpathu Primary Agricultural,
Co-operative Credit Society Limited,
No.P.139, Thalateru,
Karaikal 609 605.

22.01.2024