



W.P.No.27490 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

CORAM
THE HONOURABLE MRS. **JUSTICE R.KALAIMATHI**

W.P.No.27490 of 2014
and M.P.No.1 of 2014

R.Nagarajan

... Petitioner

vs.

1.The Joint Registrar of Co-operative
Societies, Dharmapuri Region,
Dharmapuri.

2.The Special Officer,
K.K.348, Dharmapuri District Consumer,
Co-operative Whole Sale Stores,
Dharmapuri.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.No.5026/2009 Sa.Pa.dated 13.07.2009 and consequential order in Na.Ka.5128/2010 Sa.Pa dated 27.09.2013 quash the same and direct the 1st respondent to take up the revision petition on the file and decide the same on merits .

For Petitioner : M/s.S.P.Yuaraj

For R1 : Ms.P.Vijaya Devi (Co-op.)



W.P.No.27490 of 2014

For R2 : Mr.R.Bala Ramesh

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ORDER

Challenge is made to the impugned orders dated 13.07.2009 and 27.09.2013 passed by the first respondent.

2. The petitioner was appointed as salesman in the second respondent/Co-operative Stores on 29.03.1985. He was suspended from service on 10.06.1993 by the erstwhile Board of the second respondent /Co-operative Stores. The order of dismissal was passed by the second respondent on 17.01.1997 with effect from 10.06.1993. Disciplinary proceedings were initiated against the petitioner. Besides that two criminal cases were filed in C.C.Nos.203 & 204 of 1998 before the Judicial Magistrate No.I, Dharmapuri. The learned Judicial Magistrate No.1 by Judgment dated 13.11.2008 convicted the petitioner and benefits of Section 4(1) of the Probation Offenders Act,1958 was extended to him.

3. The petitioner further submits that after receipt of the dismissal order from the second respondent, the petitioner filed the revision petition before the first respondent within the period of limitation. The said petition was dismissed on 13.07.2009. Aggrieved by the said order of dismissal, the



W.P.No.27490 of 2014

petitioner filed review petition before the first respondent under Section 154 of the Tamil Nadu Co-operative Societies Act, 1983. The said Review Petition was dismissed on 27.09.2013. Being aggrieved by the orders dated 13.07.2009 and 27.09.2013 passed by the respondents, this writ petition is filed.

4. Ms.P.Vijaya Devi (Co-op.) learned counsel for the first respondent would submit that the petitioner has misappropriated the amount to the tune of Rs.15,275.75. The second respondent issued charge memo to the petitioner on 16.02.1994. The petitioner submitted his explanation to the charge memo. Since the explanation was found to be not satisfactory, enquiry was ordered to be conducted. The second respondent appointed Mr.K.A.Natarajan as Enquiry Officer. The petitioner participated in the enquiry. After completion of the enquiry, the Enquiry Officer submitted his report to the second respondent on 28.02.1995 with the findings that the said charges levelled against the petitioner were proved. Thereafter, the second respondent issued second show cause notice to the petitioner dated 02.05.1995, 18.08.1995 and on 17.12.1996 respectively. But the petitioner refused to receive the same and then the same was served on the petitioner on 01.02.1996. But the petitioner failed to give explanation for the second



W.P.No.27490 of 2014

show cause notice. The second respondent had given another chance to the petitioner and finally sent a notice to the petitioner and the same was served to the petitioner on 20.12.1996. The petitioner did not give any reply to the show cause notice. Thereafter, the second respondent dismissed the petitioner from service on 17.01.1997. After receipt of the dismissal order, the petitioner did not file any revision petition within a period of 90 days as prescribed under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. He had chosen to file the revision petition only after completion of the criminal case in C.C.Nos.203 & 204 of 1998 before the Judicial Magistrate No.I, Dharmapuri. Since the petitioner was convicted by the learned Judicial Magistrate No.I, Dharmapuri, he cannot seek for reinstatement merely on the ground that the petitioner had been given the benefit of probation under the Probation of Offenders Act, 1958. Therefore, he sought for the dismissal of the writ petition.

5. Heard Mr.S.P.Yuvaraj, learned counsel appearing for the petitioner and Ms.P.Vijaya Devi (Co-op. Societies), learned counsel appearing for the first respondent and Mr.R.Bala Ramesh, learned counsel appearing for the second respondent.



W.P.No.27490 of 2014

6. Relevant portion of the impugned order dated 13.07.2009, reads as mentioned hereunder:-

“1983-ம் வருட தமிழ்நாடு கூட்டுறவு சங்கங்களின் சட்டப்பிரிவு 153ன் கீழ் தாக்கல் செய்த தங்களின் மனு கீழ்க்கண்ட காரணங்களுக்காக அனுமதி நிலையிலேயே தள்ளுபடி செய்யப்படுகிறது.

அ) மனுவை சட்டப்பிரிவு 153 (1)ன் படியான காலவரையறைக்குள் தாக்கல் செய்யப்படவில்லை.

ஆ) 17-1-1997-ன் நிரந்தரப் பணி நீக்க ஆணை ஏதும் இணைத்துப்பெறப் படவில்லை.”

7. The learned counsel appearing for the petitioner drew attention of the Court that the said order passed on 13.07.2009 was not taken into consideration at all and it was concluded that as the criminal court has held that the petitioner was found guilty under Sections 408, 467 & 201 of I.P.C and the benefits of Section 4(1) of the Probation of Offenders Act, 1958 was extended to him. There is no difficulty to collect the money from him and it was also observed that the petitioner has not remitted the embezzled amount sofar and the petition was dismissed. This order is also under challenge.

8. It is relevant to note that two criminal cases were instituted against the petitioner in C.C.Nos.203 & 204 of 1998 on the file of Judicial Magistrate No.I, Dharmapuri and in both the cases the petitioner was convicted under



W.P.No.27490 of 2014

Sections 408 & 467 of IPC and benefits of Section 4(1) of Probation of Offenders Act, 1958 on 13.11.2008 was extended to him.

9. On perusal of the impugned order dated 13.07.2009, it appears that the reasons for the delay were not considered at all and order is passed to the effect that as the petition was not filed within the period of limitation. Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 stipulates that the application may be preferred within 90 days from the date of order .

10. The petitioner filed revision under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. As per Section 153(1) of Tamil Nadu Co-operative Societies Act, 1983, the Authority is expected to look into the reasons for delay if it is not filed in time, the reasons for the delay has looked into and the Authority has to give finding that the reasons given are acceptable or not. But, no such finding is found in the order dated 13.07.2009. Therefore, the said order is liable to be set aside.

11. Based on the said order dated 13.07.2009, a revision petition under Section 154 of the Tamil Nadu Co-operative Societies Act, 1983 was



W.P.No.27490 of 2014

filed by the petitioner and the said provision is extracted hereunder for easy understanding:-

154. Review.

- (1) The appellant or the applicant for revision or the respondent may apply for the review of any order passed under section 152 or section 153 on the basis of the discovery of new and important facts which, after the exercise of due diligence, were not then within his knowledge or could not be produced by him when the order was made or on the basis of some mistake or error apparent on the face of the record or for any other sufficient reason: Provided that no application for review shall be preferred more than once in respect of the same order.
- (2) Every application for review shall be preferred within such time and in such manner as may be prescribed.
- (3) The decision or order passed on the application in review shall be final.
- (4) The authority competent to pass orders on an application for review may pass such interlocutory orders pending the decision on the application for review as that authority may deem fit.
- (5) The authority referred to in sub-section (4) may award costs in any proceedings for review to be paid either out of the funds of the registered society or by such party to the application for review as it may deem fit.

12. When the Order dated 13.07.2009 is held to be set aside, as mentioned supra, Against the order dated 13.07.2009, revision was preferred



W.P.No.27490 of 2014

under Section 154 of the Tamil Nadu Co-operative Societies Act, 1983.

Hence, the subsequent order passed in Revision Petition in ந.க.5128 of 2010, ஈபு dated 27.09.2013 is also liable to be set aside.

13. Based on the aforesaid discussions, both the impugned orders dated 13.07.2009 and 27.09.2013 passed by the first respondent stand are set aside with a direction to the first respondent to consider the petition and to pass orders on merits, preferably, within a period of eight weeks from the date of receipt of a copy of this order.

14. With these observations, this writ petition is ordered. No costs. Consequently, connected miscellaneous petition is closed.

22.04.2024

Index : Yes/No
Internet : Yes/No
Neutral citation : Yes/No
kkd

To

1.The Joint Registrar of Co-operative Societies, Dharmapuri Region, Dharmapuri.

2.The Special Officer,



W.P.No.27490 of 2014

K.K.348, Dharmapuri District Consumer,
Co-operative Whole Sale Stores,
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R.KALAIMATHI,J.,

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W.P. No.27490 of 2014



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W.P.No.27490 of 2014

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