



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.24552 of 2024
and W.M.P.No.26865 of 2024

S.M.Syed Nazeer

... Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies /
Chaiman, Common Cadre Committee,
Krishnagiri Region, Krishnagiri.

2.K.K.96, Mottur Primary Agricultural Co-operative Credit Society Limited,
Rep. by its Administrator,
Mottur, Kaveripattinam,
Krishnagiri District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the charge memo in Na.Ka.No.559/2020/po.pa.ne.thi dated 21.09.2020 quash the same and direct the respondents allow to retire from service with effect from 31.05.2022 and pay all service benefits with statutory interest at the rate of 10% for delayed payments.



For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.M.Murali
Government Advocate for R1

Mr.K.Tamilvendan
Government Advocate for R2

ORDER

This writ petition has been filed to call for the records of the charge memo in Na.Ka.No.559/2020/po.pa.ne.thi dated 21.09.2020 quash the same and direct the respondents allow to retire from service with effect from 31.05.2022 and pay all service benefits with statutory interest at the rate of 10% for delayed payments.

2.When the matter came up for hearing on 23.08.2024, this Court passed the following order:

This writ petition has been filed challenging the charge memo dated 21.09.2020 issued by the 1st respondent and for a direction to the respondents to allow the petitioner to retire from service with effect from 31.05.2022 and to pay all the service benefits with interest.



2. On going through the materials, it is seen that the same writ petitioner had approached this Court and filed W.P.No.21826 of 2021, wherein, the petitioner had challenged the enquiry notice issued by the 1st respondent and had also sought for a direction to the respondents to furnish the copies of the documents and to pay the subsistence allowance to the petitioner from February 2021. This writ petition was disposed of by an order dated 31.07.2023 and the respondents were directed to furnish the copies of the documents and also to pay subsistence allowance to the petitioner from February 2021 onwards, within a period of four weeks.

3. The petitioner has now challenged the charge memo in the present writ petition.

4. In the considered view of this Court, the petitioner had an opportunity to challenge the charge memo even when the earlier writ petition was filed in W.P.No.21826 of 2021. The principle of constructive res judicata applies even in a proceeding under Article 226 of the Constitution of India. Useful reference can be made to the judgment of the Apex Court in **Shankara Cooperative Housing Society Limited vs. M.Prabhakar and Others** reported in **2011 5 SCC 607**. The Apex Court has held that where a party to the proceedings could have taken a ground in the earlier ground of



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litigation, fails to do so and takes such a plea in the subsequent proceedings, such challenge will be barred by applying the principle of constructive res judicata. The Apex Court held that this principle will apply even in a writ petition filed under Article 226 of the Constitution of India.

5.In the light of the above, this Court was not inclined to entertain this writ petition. However the learned counsel for the petitioner seeks for some time to take instructions from his client.

6.Post this case at the end of the motion list on 29.08.2024.

3.When the matter was taken up for hearing today, the learned counsel for the petitioner submitted that there is a subsequent development in this case and the subsequent notice dated 28.08.2024 has been issued against the petitioner which according to the learned counsel for the petitioner is unsustainable in the light of the judgment of the Full Bench in ***S.Andiyannan vs. The Join Registrar, Co-operative Societies, Madurai Region, Madurai*** and others reported in ***2015 3 LW 513***. The learned counsel therefore submitted that the petitioner will workout his remedy by filing a fresh writ petition against the proceedings dated 28.08.2024.



4. In the light of the order passed on 23.08.2024 and the submissions made by the learned counsel for the petitioner, this writ petition is closed. If the petitioner is entitled to question the proceedings dated 28.08.2024 on the ground of jurisdiction, it is left open to the petitioner to do the same in accordance with law. No Costs. Consequently, connected miscellaneous petition is closed.

02.09.2024

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
ssr

Note: Issue Order Copy on 04.09.2024

To

1. The Joint Registrar of Co-operative Societies /
Chairman, Common Cadre Committee,
Krishnagiri Region,
Krishnagiri.

2. K.K.96, Mottur Primary Agricultural Co-operative Credit Society Limited,
Rep. by its Administrator,
Mottur, Kaveripattinam,
Krishnagiri District.



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N. ANAND VENKATESH, J.

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