



W.P.(MD).No.6199 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.6199 of 2021

and

W.M.P.(MD)Nos.23253, 23602 and 23604 of 2023

R.Saravanan

...Petitioner

Vs.

- 1.The Secretary to Government,
Department of Co-operative,
Secretariat,
Chennai-600 009.
- 2.The Registrar of Co-operative Societies,
E.Ve.Ra.Salai,
Kilpauk,
Chennai-600 010.
- 3.The Additional Registrar of Co-operative
Societies,
E.Ve.Ra.Salai,
Kilpauk,
Chennai.
- 4.The Joint Registrar of Co-operative
Societies,
District Collectorate Campus,
Kanchirangal, Sivagangai District.



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5.The Deputy Registrar of Co-operative
Societies,
District Collectorate Campus,
Kanchirangal, Sivagangai District.

6.The President,
N.N.294, Machavarayanenthall Primary
Agricultural Co-operative Bank,
Mazhavarayanenthall,
Thirupachethi Post,
Manamadurai, Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the Impugned Order dated Nil.02.2020 issued by the 6th respondent and quash the same as illegal and consequently directing the 6th respondent to reinstatement of the petitioner as per order passed in W.P. (MD)No.16278 of 2016 dated 21.11.2019.

For Petitioner	: Mr.V.Lakshmana Rajan For S.Srikanth
For R-1 to R-5	: Mr.S.Kameswaran, Government Advocate
For R-6	: Mr.P.Mahendran



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ORDER

The prayer of the writ petition is as follows:

This writ petition has been filed to call for the records in pursuant to the Impugned Order dated Nil.02.2020 issued by the 6th respondent and quash the same as illegal and consequently directing the 6th respondent to reinstate of the petitioner as per order passed in W.P.(MD)No.16278 of 2016 dated 21.11.2019.

2. The facts and circumstances which led to the filing of this writ petition is as follows:

2.1. During 2002, the petitioner was serving as a Secretary in the 6th respondent Society. For the allegation that the petitioner had committed many serious irregularities in conducting the affairs of the Society, thereby causing financial loss. Two surcharge proceedings under Section 87 of Tamil Nadu Co-operative Societies Act, 1983 came to be initiated against the petitioner based on two enquiry reports. One for the recovery of Rs.2,15,124/- (Rupees Two Lakhs Fifteen Thousand One Hundred and Twenty Four only) and another for the recovery of Rs.8,76,520/- (Rupees Eight Lakhs Seventy Six Thousand Five Hundred and Twenty only), vide order, dated 06.06.2006 along with yet



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another co-delinquent, namely, one Rajendran who served as President of the 6th respondent Society.

2.2. During the interregnum period, he was placed under suspension on 26.04.2002 and a disciplinary proceeding was also initiated as against him and the delinquencies were held to be proved, on the basis of which, he was terminated from service on 28.02.2003. Challenging the said termination order, the petitioner made an application under Section 2(A) of the Industrial Disputes Act, 1947 and the matter was compromised between the employer and the employee and on the basis of which, an agreement came to be arrived under Section 12(3) of the Industrial Disputes Act, 1947 between the petitioner and the President of the 6th respondent Society, in which, it was agreed to reinstate the petitioner into service with effect from the date of the termination, that is, from 28.02.2003, subject to the condition that he would not be entitled for back wages for the period from 28.02.2003 to 19.07.2013, that is, the date of agreement. It was also agreed by the petitioner that, he would compensate the loss incurred by the 6th respondent Society, if any, apart from the delinquency for which he has already been charged. It was also agreed by the petitioner that



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he would abide by the proceedings which could be initiated later, on the basis of the judgment in the pending criminal proceedings with respect to the Crime No.9 of 2003 and 10 of 2003 on the file of the Judicial Magistrate Court No.II, Sivagangai.

2.3. However, even after arrival of the said 12(3) agreement between the employer and employee, the petitioner was not reinstated as agreed in the said agreement. Hence, the petitioner filed a writ petition in W.P.(MD)No.16278 of 2016 seeking to reinstate the petitioner into service in the 6th respondent Society before this Court and this Court, by an order dated 21.11.2019, disposed of the same and directed the 6th respondent Society to reinstate the petitioner back into service. Even thereafter, the petitioner was not reinstated by the respondents. Pursuant to the same, the petitioner made yet another representation on 20.12.2019 seeking to reinstate him into service. Following which, an impugned order rejecting the petitioner's claim dated Nil.02.2020 came to be issued by the 6th respondent Society, for the reason that the petitioner had failed to pay an amount of Rs.8,20,919/- (Rupees Eight Lakhs Twenty Thousand Nine Hundred and Nineteen only) which he is jointly and



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severally liable to pay along with a co-delinquent, Rajendran, back to the 6th respondent Society. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner, Mr.V.Lakshmana Rajan, submitted that, the petitioner was made liable for the loss incurred by the 6th respondent Society on three counts. As far as the first count of charge is concerned, the petitioner had caused a loss along with his co-delinquent by paying a balance amount of Rs.3,25,000/- (Rupees Three Lakhs Twenty Five Thousand only) after utilizing the allotted amount for the construction of new Bank building. The second charge was with respect to the loss caused by the petitioner along with co-delinquent Rajendran to the tune of Rs.30,560/- (Rupees Thirty Thousand Five Hundred and Sixty only) by expending beyond the sanctioned amount for foundation stone function. As far as the third count of charge is concerned, the petitioner has caused a loss of Rs.3,34,513/- (Rupees Three Lakhs Thirty Four Thousand Five Hundred and Thirteen only) by sanctioning several loans beyond the sanctioned limit along with his co-delinquent. Thus, both the petitioner and the aforesaid co-delinquent,



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Rajendran, are jointly and severally liable to pay a total amount of Rs. 8,76,520/- (Rupees Eight Lakhs Seventy Six Thousand Five Hundred and Twenty only) of which, the petitioner's share would come to a tune of Rs. 3,80,200/- (Rupees Three Lakhs Eighty Thousand and Two Hundred only). Though he is jointly liable for the remaining amount to which the co-delinquent is liable to pay, the petitioner had already paid an amount of Rs.96,045/- (Rupees Ninety Six Thousand and Forty Five only) on 13.06.2013, only after which the agreement made under Section 12(3) of the Industrial Disputes Act, 1947, came to be arrived between the petitioner and the 6th respondent Society.

4. That apart, on 22.01.2024, the petitioner had paid yet another amount of Rs.3,80,200/- (Rupees Three Lakhs Eighty Thousand and Two Hundred only) to the credit of the 6th respondent Society in four installments on 26.09.2022, 26.09.2022, 06.12.2022 and 06.12.2022, for which four separate receipts were issued and an acknowledgment certificate dated 22.01.2024 has also issued by the Secretary of the 6th respondent Society in this regard. Accordingly, the learned counsel for the petitioner submitted that, as on date, he had completely paid the entire amount which he is liable to pay as alleged by



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the 6th respondent Society and in view of the same, he is entitled for reinstatement in terms of 12(3) agreement with effect from the date of his termination, that is, on 28.02.2003 and pressed for allowing the writ petition.

5. The learned counsel appearing for the 6th respondent Society submitted that, he is representing the then President of the 6th respondent Society and as of now, the same is under the administration of the Secretary to the Government functioning under the respondents 1 to 5 and hence, he is not aware of the payment of Rs.3,80,200/- (Rupees Three Lakhs Eighty Thousand and Two Hundred only) in four installments by the petitioner, for which the Secretary had given an acknowledgment on 22.01.2024.

6. The learned Government Advocate, Mr.S.Kameshwaran, relying upon the counter affidavit filed by the 5th respondent submitted that, the counter in this case was filed as early as on 29.06.2021 when this writ petition came to be filed. However, the contention of the petitioner that he had already paid the amount to which he is liable to pay, that is, an amount of Rs.3,80,200/- (Rupees Three Lakhs Eighty Thousand and Two Hundred only) is a matter which has to



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be verified with the records with the respondents 1 to 5. However, his co-delinquent Rajendran, has preferred an appeal as against the surcharge proceedings in C.M.A.No.6 of 2014, on the file of the Principal District Court, Sivagangai, and the same is pending.

7. Heard the learned counsels on either sides and carefully perused the materials available on record.

8. On careful consideration of the arguments of the rival parties, this Court is of the considered view that, the petitioner should have been reinstated in terms of the 12(3) settlement arrived at between the petitioner and the 6th respondent Society on 19.07.2013 with effect from 28.02.2003, since he had been ready to pay the entire amount from the instance of arriving at a compromise with the employer on 19.07.2013. However, without reinstating the petitioner into service, on negating his representation, the respondents have compelled him to approach this Court by filing W.P.(MD)No.16278 of 2016. Despite the fact that, this Court passed a favourable order on 21.11.2019 to consider the petitioner's case for reinstatement, the said exercise was not done



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by the respondents and the impugned order, rejecting the petitioner's claim for reinstatement dated Nil.02.2020 came to be passed by the President of the 6th respondent Society.

9. It is brought to the notice of this Court by the learned counsel for the 6th respondent Society that, now as on date, the 6th respondent Society is under the control of the respondents 1 to 5 and duly administrated by a Government employee who works in the capacity of the Secretary in the aforesaid Society. The acknowledgment receipt placed before me by the learned counsel for the petitioner as issued by the Secretary of the 6th respondent Society on 22.01.2024 would transpire that the petitioner had paid a total amount of Rs. 3,80,200/-(Rupees Three Lakhs Eighty Thousand and Two Hundred only) as far as his share is concerned in four installments. It is also brought to the notice of this Court that, his co-delinquent has already challenged the surcharge proceedings with respect to his liability before the Principal District Court by filing a Civil Miscellaneous Application and the same is also pending. The petitioner having not preferred to challenge the surcharge proceedings and had diligently complied with the agreement which he entered with the 6th



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respondent Society and had taken proper steps to repay the entire amount to which he was liable. However, his case was not considered for reinstatement endlessly.

10. Even in the criminal case with respect to his delinquency, which was culminated in the criminal case in C.C.No.180 2004 on the file of the learned Judicial Magistrate Court No.II, Sivagangai, he has been acquitted by judgment dated 30.04.2021 under Section 4(1) of the Probation Act. Accordingly, the impugned order dated Nil.02.2020 by the 6th respondent Society is hereby quashed and consequently the 6th respondent is directed to reinstate the petitioner with immediate effect in terms of the agreement entered under Section 12(3) of the Industrial Disputes Act, 1947, in the line of the order passed by this Court In W.P.(MD)No.16278 of 2016 dated 21.11.2019.

11. In view of the same, this Court is of the considered view that, in the line of the order passed by this Court on 21.11.2019 in W.P.(MD)No.16278 of 2016, the respondents ought to have considered the petitioner's case for reinstatement. As rightly pointed out by the learned Government Advocate,



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since the payment of the amount has taken place after filing of a counter affidavit in this writ petition, the same has to be obviously verified by the respondents 1 to 5 with the present Secretary who has issued the acknowledgment on 22.01.2024. In view of the same, the petitioner is hereby, forthwith directed to produce all the relevant documents which would prove that he had paid the entire amount to which he was liable to before the 4th respondent and the 4th respondent on verifying the genuinity of the same with the Secretary of the 6th respondent Society who had issued the acknowledgment receipt on 22.01.2024, if it is found genuine, is directed to reinstate the petitioner in terms of the 12(3) settlement dated 19.07.2013 arrived at between the petitioner and the 6th respondent Society with effect from 28.02.2003. However, it is observed by this Court, at this juncture that the petitioner is entitled for reinstatement for the sole reason that the respondents 1 to 6 have never challenged the compromise agreement under Section 12(3) of the Industrial Disputes Act, 1947 dated 19.07.2013.

12. The 6th respondent Society is directed to reinstate the petitioner with effect from 28.02.2003. However, it is made clear that the petitioner is not



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entitled for any back wages for the period of reinstatement from 28.02.2003 till the date of joining in service, pursuant to the order of this Court and consequentially I made it clear that he is entitled for all the other service benefits including promotion except back wages.

13. Accordingly, this writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

24.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

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Department of Co-operative,
Secretariat,
Chennai-600 009.
- 2.The Registrar of Co-operative Societies,
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L.VICTORIA GOWRI, J.

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