



W.P.(MD)No.17841 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.(MD)No.17841 of 2016

and WMP (MD) Nos.12870 and 12871 of 2016

L.Balasubramanian

: Petitioner

Vs.

1.The Joint Registrar Co-Operative Societies,
Kajamalai, Tiruchirappalli.

2.The Deputy Registrar Co-Operative Societies,
Musiri Range, Musiri, Tiruchirappalli.

3.The Special Officer,
Y125, Manapparai Primary Co-Operative
and Agricultural Rural Development Bank,
Manappararai, Tiruchirappalli.

4.The President,
Y125, Manapparai Primary Co-Operative
and Agricultural Rural Development Bank,
Manappararai, Tiruchirappalli.

: Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in connection with the impugned order of removal from service passed by him in his Proceedings in No. Nil dated 02.11.2012 and consequential impugned rejection order passed by the 4th respondent vide his Proceedings No.



W.P.(MD)No.17841 of 2016

Nil dated 27.05.2014 and the consequential impugned order passed by the 1st respondent vide his proceedings in Na.Ka.No. 5139/2014/Sapa dated 22.07.2015 in confirming the impugned orders of respondents 3 and 4 and quash the all and consequently, direct the respondents to reinstate the petitioner with all service and monetary benefits.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.M.Senthil Ayyanar

Government Advocate

ORDER

This writ petition has been filed challenging the proceedings of the first respondent in Na.Ka.No.5139/2014/Sapa, dated 22.07.2015, confirming the proceedings of the third respondent dated 02.11.2012 and the fourth respondent dated 27.05.2014 and for a consequential direction to the respondents to reinstate the petitioner with all service and monetary benefits.

2. The case of the petitioner is that for the alleged misappropriation in Musiri Co-operative Bank, the petitioner was relieved from Musiri Co-operative Bank by the Special Officer and he was placed under suspension by the third respondent vide his proceedings dated 16.09.2011. The suspension order was renewed



W.P.(MD)No.17841 of 2016

periodically and he was placed under suspension till the final order was passed. It is from the Audit enquiry made by the second respondent on 15.09.2011, the petitioner was ordered to be placed under suspension under Sec.81 enquiry vide his proceedings dated 28.09.2011. It is the further case of the petitioner that though he has not involved in any misappropriation, he was forced to admit the guilt because he was in-charge at that point of time and having no other remedy as they threatened with police action, he was compelled to pay the entire amount of Rs 5,30,000/- before the commencement of the enquiry and the third respondent has also assured the petitioner that charges will be dropped.

3. The petitioner borrowed huge loan from various quarters to deposit the said amount on various dates viz., 16.09.2011, 20.09.2011, 20.09.2011, 21.09.2011 and 21.09.2011 before the issuance of the proceedings of the second respondent dated 28.09.2011. Thereafter, based on the direction, a Charge Memo was issued to the petitioner by the third respondent dated 02.04.2012 and sought for his explanation. However, the third respondent was not considered the explanation and instituted enquiry against the petitioner in which no independent witness was cited or examined and the Society was well represented by an



W.P.(MD)No.17841 of 2016

Advocate and the petitioner was left alone to defend himself and proven Enquiry Report was drawn against the petitioner on 03.10.2012 and the third respondent called for further explanation vide his proceedings dated 08.10.2012. The petitioner immediately submitted the explanation on 22.10.2012, however, the same was not considered and the third respondent passed the dismissal order vide his impugned order dated 2.11.2012 without any authority. Aggrieved over the same, the petitioner filed a civil suit in O.S. No. 53 of 2013, before the learned District Munsif Judge, Manapparai. However the injunction filed in I.A. No. 89/13 came to be dismissed on 23.01.2014 and the suit is pending.

4. Thereafter, a criminal case was registered against the petitioner in two different First Information Reports, which were taken on file in C.C. Nos. 45 of 2012 and 46 of 2012 on the file of learned Judicial Magistrate Judge, Musiri, by invoking the provisions of Probation of Offenders Act, 1958. The case of the petitioner is that it was categorically mentioned in the judgment that neither his service nor his employment be affected vide his order dated 18.03.2014.



W.P.(MD)No.17841 of 2016

WEB COPY

5. Based on the judgment of the Criminal Court, the petitioner made requisition to the third respondent to reinstate him in service on 02.05.2014. The third respondent vide his impugned rejection order dated 27.05.2014 rejected the request of the petitioner on the ground that the petitioner had admitted to the guilt and the proceedings in the Criminal Court and departmental proceedings are entirely different and there is specific embargo under Rule 149 (4) of the Tamil Nadu Co-operative Society Rules. Aggrieved over the same, the petitioner has come forward before this Court by way of filing this writ petition.

6. The learned counsel for the petitioner submitted that earlier, the petitioner has filed W.P.(MD) No. 11386 of 2014 before this Court. The said writ petition was withdrawn with a liberty to file a revision before the first respondent herein on 11.07.2014. However, the first respondent without considering the revision application of the petitioner has confirmed the order of the third and fourth respondents by his impugned order in his proceedings in Na.Ka.No. 5139/2014/Sapa dated 22.08.2015.



W.P.(MD)No.17841 of 2016

7. Section 81 (4) prescribes the mandatory time limit for completion of an enquiry instituted under Section 81. In the case of the petitioner, the direction to initiate enquiry was issued on 28.09.2011 by the second respondent and charge was issued only on 02.04.2012 and the final order came to be issued only on 02.11.2012. The entire exercise of initiation and completion has not been done within the time frame of six months as contemplated in the above said section. Therefore, the impugned order has to be quashed and there is no convincing explanation for delay in completion.

8. The learned counsel for the petitioner submitted that the learned Judicial Magistrate has invoked the Probation of Offenders Act in favour of the petitioner only to protect his service, the fourth respondent cannot bypass the direction by giving different reasons and by relying Rule 149 (4) of the Tamil Nadu Co-operative Societies Rules. The said Rule is applicable only for new appointee and not in the case of the petitioner and therefore, punishing him once again is highly unjust and arbitrary.



W.P.(MD)No.17841 of 2016

WEB COPY

9. The main contention of the petitioner is that he was forced to admit the guilt since he was in charge of the post at that relevant point of time and he has not committed any loss to the Society. The dismissal from service was the extreme punishment imposed on him and due to this, his entire family undergone mental agony and facing hardship for their livelihood and the marriage proposals of his daughter and son had not taken place due to the stigma. He further submitted that though the learned Judicial Magistrate, Musiri, in his order dated 18.03.2012, specifically mentioned that the service of the petitioner should not be affected, he was not reinstated to service which is against the provisions under Section 77 (4) of the Tamil Nadu Cooperative Societies Act.

10. The learned counsel for the petitioner would further submit that the petitioner has served for 37 years and he also made good of the amount and the criminal court has also released the petitioner under Section 4(1) of the Probation of Offenders Act, 1958 on 21.04.2014 and it is categorically mentioned in the judgment that neither his service nor his employment be affected by his order dated 18.03.2014.



W.P.(MD)No.17841 of 2016

WEB COPY

11. A counter-affidavit has been filed by the fourth respondent on 09.08.2023, wherein it is stated as follows:-

“Furthermore in the Disciplinary Action taken against the Petitioner a Charge Memo was issued on 02.04.2012 to the effect that he has misappropriated an amount of Rs.4.50 Lakhs, which amount was withdrawn from the Central Co-operative Bank and not accounted in the Musiri Primary Agricultural and Rural Development Bank Ltd. Furthermore in this occurrence a Domestic Enquiry was ordered and Report was given on 24.09.2012. The Enquiry Officer has reported that all the charges as framed against the Petitioner has been found proved. Hence the then Special Officer of the YK-125 Manapparai Primary Agricultural and Rural Development Bank Ltd. caused Show Cause Notice to the Petitioner on 08.10.2012 forwarding a copy of the Domestic Enquiry Report and calling upon his explanation on the proven charges. The same was also submitted by the Petitioner on 22.10.2012. Furthermore a Direct Enquiry was



WEB COPY



W.P.(MD)No.17841 of 2016

conducted in this occurrence on 30.10.2012. Finally the then Special Officer of Manapparai Bank through impugned Proceedings dt. 02.11.2012 dismissed the Petitioner from the services of the YK-125 Manapparai Primary Agricultural and Rural Development Bank Ltd.

C. In the meantime, in the Criminal Case Initiated as against the Petitioner in C.C. No. 45/2012 before the Hon'ble Judicial Magistrate Court, Musiri, the Petitioner was released U/s. 4(1) of the Probation of Offenders Act, 1958 on 21.04.2014 and was directed to be under the supervision of Probationary Officer. After the same the Petitioner herein requested the President of YK-125 Manapparal Primary Agricultural and Rural Development Bank Ltd. namely the 4th Respondent herein to reinstate him in to the services of the Bank. However the 4th Respondent herein by impugned letter dt. 27.05.2014 rejected the request of the Petitioner on the basis of Rule 149 (4) of Tamil Nadu Co-operative Societies Rules, 1988.

10. It is submitted that the claim and contention of the Petitioner in Para 8 of the Affidavit are all hypothetical one. The Rule



WEB COPY



W.P.(MD)No.17841 of 2016

149(4) of Tamil Nadu Co-operative Societies Rules, 1988 is reproduced below for better appreciation of facts of the case.

(4) "No person shall be appointed to the service of any Society, if he has been found guilty of any offence involving moral turpitude. An Employee shall cease to be as such in a Society, If he is found guilty of any such offence".

As already reiterated the Petitioner has not been acquitted from the Criminal Case initiated as against him. Per contra he has only been released under Sec.4(1) of Probation of Offenders Act, 1958. Furthermore the factum regarding the pendency of the Civil Suit as put forth by the Petitioner in this Para is misleading one. As already stated the Petitioner himself has withdrawn the Suit."

12. The learned counsel appearing for the respondents submitted that during his tenure in the said Musiri Bank, the Petitioner has committed various irregularities and misappropriation for which he was suspended from the services by the proceedings dated 16.09.2011 by the third respondent. Further, it is the admitted fact that the petitioner



W.P.(MD)No.17841 of 2016

has not been acquitted from the criminal case initiated against him. He has only released under Section 4(1) of the Probation of Offenders Act, 1958 on 21.04.2014 and was directed to be under the supervision of Probationary Officer.

13. The learned counsel appearing for the respondents further submitted that it is the proven fact that the petitioner has committed the irregularity and misappropriation of a sum of Rs.4,50,000/- which was withdrawn from the Central Cooperative Bank and not accounted in the Musiri Primary Agricultural and Rural Development Bank Limited.

14. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents and perused the material available on record.

15. The learned counsel for the petitioner relied upon a decision of this Court in *P.Subramanian vs. Joint Registrar of Co-operative Societies*, reported in *2000 (4) CTC 409*, stating that the said judgment squarely applies to the case of the petitioner and he is entitled



W.P.(MD)No.17841 of 2016

to the same relief. The relevant paragraphs of the judgment are extracted hereunder:-

“15. In the light of the legal position, learned counsel for the petitioner would submit that the impugned order of the first respondent dated 13.3.98 removing the petitioner from the services of the Bank cannot be sustained. It is seen that initially the petitioner was charge-sheeted for offences under Sections 409 and 477-A of the Indian Penal Code and the learned Judicial Magistrate-No. 1 Tiruchirapalli convicted him till the rising of the court and also directed him to pay fine of Rs.750 in two cases. On the basis of the conviction, his services had been terminated by the then Special Officer of the 2nd respondent Bank on 3.1.92. As against the conviction and sentence, the petitioner preferred criminal appeal in Cri.Appeal Nos. 236 and 244 of 1990 because he was tried in two criminal cases. In the appeals, the learned sessions Judge, passed an order confirming the conviction and directed to refund the fine amount and also ordered to release him under Section 3 of the Probation of Offenders Act. Thereafter, he made a representation based on the judgment



WEB COPY



W.P.(MD)No.17841 of 2016

of the learned Sessions Judge. Though he was reinstated even on 15.12.97 based on the opinion of the Government Pleader, after attending duty, the Deputy Registrar of Co-operative Societies issued a direction to the Bank on 29.12.97 for his removal. Though Mr. C. Selvaraju learned counsel for the petitioner has elaborately argued with reference to the power of the Deputy Registrar of Co-operative Societies for issuing such direction and contended that as per Section 77 (1) of the co-operative Societies Act, the Registrar alone has power to direct the Society or a Bank to remove a person from the office and not the other officers in view of the fact that against the proceedings of the Deputy Registrar of Co-operative societies, the very same petitioner has filed a writ petition before this Court in W. P.No. 1531 of 1998 and obtained stay and the same is also pending as on date, I am of the view that it is unnecessary to consider this aspect in this writ petition. Though Section 12 of the Probation of Offenders Act does not preclude the department from taking action against his misconduct leading to the offence or his conviction thereon as per law and as observed by Their Lordships in Divisional



W.P.(MD)No.17841 of 2016

Personnel Officer v. T. R.Challappan, , the conviction of a delinquent employee simpliciter without anything more will not result in his automatic dismissal or removal from service. Added to this, the learned Sessions Judge in order to protect his services, released him under Section 3 of the Probation of Offenders Act. In the light of the above factual and legal position referred to above, the impugned proceedings of the first respondent dated 13.3.98 is quashed and the respondents are directed to reinstate the petitioner in service with all service benefits and without salary and other monetary benefits for the period in which he was not in service, within a period of four. (4) weeks from the date of receipt of a copy of this order. Writ Petition is allowed. No costs. Consequently, W.M.P.No.18000 of 2000 is closed.”

16. The contention of the petitioner is that he was forced to admit the guilt as he was in charge of the post at that relevant point of time and he has not committed any loss to the Society and if the extreme punishment of dismissal from service is imposed on the petitioner, his



W.P.(MD)No.17841 of 2016

entire family will be put to great hardship.

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17. Taking into consideration the facts and circumstances of the case, I am of the considered view that the punishment of dismissal from service is liable to be modified on the following grounds:-

(1) The petitioner has repaid the entire amount of Rs.5,30,000 (Rupees Five Lakhs Thirty Thousand only) which was misappropriated by him before the commencement of the enquiry;

(2) The petitioner has served for 37 years in the respondents Bank;

(3) The criminal court has also released the petitioner under Section 4(1) of the Probation of Offenders Act, 1958 on 21.04.2014 and it is categorically mentioned in the judgment that neither his service nor his employment be affected by his order dated 18.03.2014;

(4) The punishment of "dismissal from



WEB COPY



W.P.(MD)No.17841 of 2016

service' is too harsh and disproportionate for the reason he has paid the misappropriated fund of a sum of Rs.5,30,000 (Rupees Five Lakhs Thirty Thousand only) before the commencement of the enquiry whereas, even according to the respondent, it is only a sum of Rs.4,50,000/- (Rupees Four Lakhs Fifty Thousand only).

18. Accordingly, the punishment of “dismissal from service” imposed on the petitioner is to be modified to that of “compulsory retirement” and he is entitled to get all the consequential benefits as per the rules and regulations of the respondent bank in vogue on date.

19. In the result, the writ petition stands disposed of with the above observations. Consequently, the connected miscellaneous petitions are closed. No costs.

29.10.2024

Index : Yes / No

Internet : Yes / No

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WEB COPY



W.P.(MD)No.17841 of 2016



W.P.(MD)No.17841 of 2016

WEB COPY

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- 2.The Deputy Registrar Co-Operative Societies,
Musiri Range, Musiri, Tiruchirappalli.



WEB COPY



W.P.(MD)No.17841 of 2016

J.SATHYA NARAYANA PRASAD, J.

PKN

W.P.(MD)No.17841 of 2016

29.10.2024