



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2014
& W.P.No.6055 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.06.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.26054 of 2012, W.P.No.4014 of 2014
& W.P.No.6055 of 2018
and WMP.Nos.7467 & 7468 of 2018

G.Devadhas

Under Secretary to Government (Under Suspension)

Handloom Handicrafts Textiles and Khadi Department

Fort St.George, Chennai - 600 009.

... Petitioner in all WPs

Vs

1.The Secretary to Government

Personnel and Administrative Reforms Department

Fort St.George, Chennai - 600 009.

.... 1st Respondent in W.P.No.26054 of 2012

.... Sole Respondent in W.P.No.4014 of 2014

.... 1st Respondent in W.P.No.6055 of 2018

2.The Secretary to Government

Handloom Handicrafts Textiles and Khadi Department

Fort St.George, Chennai - 600 009.

.... 2nd Respondent in W.P.No.26054 of 2012

.... 2nd Respondent in W.P.No.6055 of 2018

Prayer in W.P.No.26054 of 2012 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records (i) relating to the impugned Letter No.29054/Q/2008-



W.P.No.26054 of 2012, W.P.No.4014 of 2014
& W.P.No.6055 of 2018

25 P&AR Department, dated 27.06.2012 issued by the first respondent and quash the same as null and void and consequently quash the order issued by the first respondent in G.O.3(D) No.5 P&AR dt. 30.06.2012 and to direct the second respondent to grant pension and other service benefits including promotions within a reasonable time.

Prayer in W.P.No.4014 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent herein in proceedings in Lr.No.8220/A1/2013-1, Handlooms, Handicrafts, Textiles and Khadi Department (A1) dated 07.01.2014, and quash the same as null and void and consequently direct the respondent to declare the petitioner deemed to have been retired from service on superannuation on or after 30.06.2012 afternoon with monetary and service benefits with interest within a reasonable time.

Prayer in W.P.No.6055 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned letter issued by the first respondent in Letter No.29054/Q/2008-70, P&AR Department dated 05.02.2018 and quash the same and consequently direct the second respondent to permit the petitioner to retire from service as on 30.06.2012 and thereby to settle all the service benefits to the petitioner, within a reasonable period as may be fixed by this Court.

For Petitioner : Mr.S.Ayyathurai



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2014
& W.P.No.6055 of 2018

(in all WPs)

For Respondent(s) : Mr.Ramanlal
(in all WPs) Additional Advocate General
Assisted by Mr.Goutham Raj
Government Advocate
for sole respondent in W.P.No.4014 of 2014
& for R1 & R2 in W.P.No.26054 of 2012 &
W.P.No.6055 of 2018

COMMON ORDER

The facts of the above writ petitions are one and the same and arises from and out of a charge memo dated 30.06.2012, therefore, a common order is pronounced.

2. (a) W.P.No.26054 of 2012 has been filed seeking the following relief :

"To issue a Writ of Certiorarified Mandamus calling for the records (i) relating to the impugned Letter No.29054/Q/2008-25 P&AR Department, dated 27.06.2012 issued by the first respondent and quash the same as null and void and consequently quash the order issued by the first respondent in G.O.3(D) No.5 P&AR dt. 30.06.2012 and to direct the second respondent to grant pension and other service benefits including promotions within a reasonable time."

(b) W.P.No.4014 of 2014 has been filed for the following relief :

"To issue a Writ of Certiorarified Mandamus to call for the



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

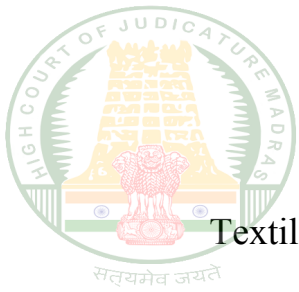
records of the respondent herein in proceedings in Lr.No.8220/A1/2013-1, Handlooms, Handicrafts, Textiles and Khadi Department (A1) dated 07.01.2014, and quash the same as null and void and consequently direct the respondent to declare the petitioner deemed to have been retired from service on superannuation on or after 30.06.2012 afternoon with monetary and service benefits with interest within a reasonable time."

(c) W.P.No.6055 of 2018 has been filed seeking the following relief :

"To issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned letter issued by the first respondent in Letter No.29054/Q/2008-70, P&AR Department dated 05.02.2018 and quash the same and consequently direct the second respondent to permit the petitioner to retire from service as on 30.06.2012 and thereby to settle all the service benefits to the petitioner, within a reasonable period as may be fixed by this Court."

Facts of the case :

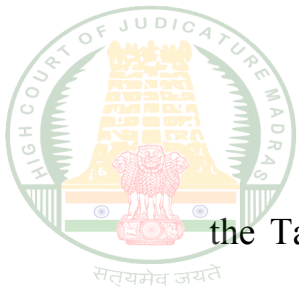
3. The petitioner had joined the services of the Government as Junior Assistant on 13.09.1977 having been selected through the Tamil Nadu Public Services Commission. The petitioner rose in ranks to the post of Under Secretary and on the date of the issue of the charge memo dated 27.06.2008, which is the genesis for these writ petitions, he was functioning as the Under Secretary to the Government in the Department of Handlooms, Handicrafts,



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

Textiles and Khadi. The appointing authority / disciplinary authority of the petitioner was the Secretary of his Department.

4. The Tamil Nadu Secretariat Staff Co-operative Housing Society was registered under Section 10 of the Tamil Nadu Co-operative Societies Act 1983 on 26.07.1999, and was allotted Registration No.MDS/HSG/179. The Society was framed with the primary object of providing affordable house sites to the members and help them to build residential houses. The members consists of persons who have attained the age of majority and are members of the Tamil Nadu Secretariat Association residing within the area of operation of the Society and having a vacant house site not residing within the area of operation and not having a vacant house sites within the area of operation. The bye-laws also provide for admitting other persons as members who are residing within the area of operation of the society without house sites and who are intending to acquire a site through the society/ The bye-laws contemplates four other categories of persons / institutions who may be inducted as members. The Management of the Board at the time of its registration vested with the Board constituted in accordance with the Act, Rules and byeplaws and was to consist of nine members. The President of

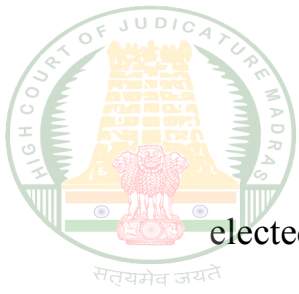


W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

WEB COPY

the Tamil Nadu Secretariat Association was the ex-officio President of the Society as per bye-law 25(1). The office bearers as per bye-law 33(1) are the President and Vice President who were to be elected from amongst the members of the Board. The President of the Tamil Nadu Secretariat Association was the ex-officio President of the Society. Bye-law 25(1) and 33(1) underwent an amendment on 27.06.2002 inasmuch as the President of the Tamil Nadu Secretariat Association was no longer the ex-officio President of the Society. The weaning off of the Society from the control of the Tamil Nadu Secretariat Association became the harbinger of the various complaints and litigations. The Society operates under the framework of the Tamil Nadu Co-operative Societies Act and the Registrar of Co-operative Societies exercises overall control of the Society

5. It is the case of the petitioner that he was elected as the Director of the Tamil Nadu Secretariat Department Staff Co-operative Union in the election to the Board of Directors of the above Society held on 23.09.1999. Besides the petitioner, eight others were elected as Directors to the Board. The petitioner was thereafter elected as the Vice President and one R.Padmanaban was elected as the President. The other Directors who were



W.P.No.26054 of 2012, W.P.No.4014 of 2017
& W.P.No.6055 of 2018

WEB COPY
elected were P.Devaraj, M.S.Illanchezhian, S.Ilamathi, R.Gopal, M.Gnaneswari, T.Soundararajan and S.Vijayalakshmi. The said Society was a registered Society and was governed by its Bye-Laws and the provision of the Tamil Nadu Co-operative Societies Act, hereinafter called the Act and its Rule.

6. As per the terms of the Bye-Laws, the Chief Executive of the Society is the President who is responsible for the affairs of the Society. All transactions of the Society was carried on by the President of the Society with the approval of the General Body, which is the ultimate authority as per the Bye-Laws of the Society and thereafter the approval of the Registrar of the Co-operative Societies.

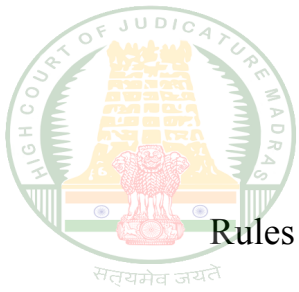
7. In furtherance of the objects of the Society, lands were acquired near Okiam-Thoraipakkam and a layout of house sites was formed. The costs of the lands was also paid to the Government. After obtaining the requisite approval, the plots were allotted to the members by draw of lots and on payment of advance amount, the allotments were made strictly in conformity with the Bye-Laws of the Society.



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

WEB COPY

8. While so, on the allegation of irregularities in allotment of plots made against the Board of Directors by a rival Association, the Tamil Nadu Secretariat Association, the Housing Urban Development had directed the Registrar of Societies to conduct an enquiry. Consequently, a Sec.81 enquiry was conducted and simultaneously complaints were also reported to the Director of Vigilance and Anti Corruption. The very initiation of proceedings by the Director of Vigilance and Anti Corruption was without jurisdiction. The Director of Vigilance and Anti Corruption had no jurisdiction over the functioning of a Primary Co-operative Agricultural Society. The Sec.80 Statutory Audit as prescribed by the Tamil Nadu Co-operative Societies Act was held every year and no irregularity or malpractice was found by the Section 82 inspectors and the Registrars. In the Sec.81 enquiry, the Deputy Registrar of Societies did not find any irregularity in the allotment of house sites. Hence, no further action was taken by the Registrar under Sections 87, 90 or 164 of the Act. However, the petitioner and two others R.Gopal and S.Vijayalakshmi were placed under suspension by an order dated 27.06.2008 and on the very day, charge memos were issued to them under 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal)



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

Rules by the first respondent. However, no action was taken against the President of the Society who is the Chief Executive of Society and other Board of Directors of the Society.

9. The petitioner and the said Vijayalakshmi had requested for copies of the documents which formed the basis for the charges framed against them. However, the same was not furnished to them. This constrained them to file W.P.Nos.14361 of 2009 and W.P.No.14377 of 2009 for a mandamus seeking a direction to the respondents to furnish the copies of the documents. By an order dated 07.07.2009, this Court had directed the respondents to furnish the documents. However, despite the orders of this Court, the documents were not furnished to them. This would prove the malafides in the action of the respondents.

10. The petitioner along with S.Vijayalakshmi and R.Gopal had also challenged the orders of suspension and the charge memo dated 27.06.2008 by filing writ petitions. However, the writ petitions were dismissed by an order dated 30.07.2012 and the suspension continued, without being revoked or reviewed for the last 17 years. It is needless to state that a prolonged



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

suspension is bad in law.

WEB COPY

11. The petitioner on the date of issue of charge memo dated 27.06.2008, had completed 32 years of unblemished service and he was to retire on 30.06.2012. However, the first respondent issued the second charge memo on 27.06.2012, just three days prior to the petitioner's retirement. The second charge memo has been issued though the same is not permissible in respect of the very same alleged delinquencies. Once again no charge was framed as against the President and other Board members.

12. On receiving the show cause notice, the petitioner had filed W.P.No.26054 of 2012 challenging the said letter. A mere perusal of the charge memo would indicate that there was no allegation of misappropriation or wrongful gain but the only allegation is irregularities in allotment of plots.

13. Meanwhile the first respondent had issued a letter dated 07.01.2014 bearing Letter No.8220/A1/2013-1 rejecting the petitioner's request to permit him to retire from service on his reaching the age of superannuation on 30.06.2012. This letter was the subject matter of challenge in W.P.No.4014



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

of 2014. The main ground of challenge was that no order under FR.56(1)(c) have been invoked for retaining the petitioner's service after the completion of the period of superannuation.

14. Meanwhile, FIR No.4/2009 was registered for offences under Sections 120B, 409, 420, 467, 468, 471 IPC & Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act against the following persons :

- 1) R.Padmanaban
- 2) G.Devadhas, the petitioner herein
- 3) R.Gopal, Director
- 4) B.Devaraj
- 5) M.Elanchezhian
- 6) S.Vijayalakshmi
- 7) E.Anandam
- 8) S.Elamathi
- 9) S.Ilamathi

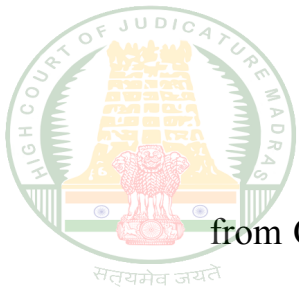
Ilamathi had expired in the meanwhile. This case was taken on file in C.C.No.3 of 2013 on the file of Special Court for cases under the Prevention of Corruption Act. Though the FIR was also registered by the first respondent against Padmanaban, Devadhas and Ilanchezhian, they were allowed to retire and they had also received the retirement benefits. The petitioner would submit that after an elaborate trial spread over 78 prosecution witnesses and 193 documents, the learned trial Judge acquitted



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

WEB COPY

the accused A1 to A7, by its judgment dated 24.10.2016. Though the judgment would contain the words "beyond all reasonable doubts", the acquittal was clearly on merits. Immediately on receiving the judgment, the petitioner had forwarded the copies of the same to the first respondent and requested them to close the disciplinary proceedings. In fact, the petitioner was not even aware about the stage of the enquiry against him and he was kept in the dark. Therefore, he was awaiting a favourable response from the first respondent. However, the petitioner was in for a shock when he received a letter dated 05.02.2018 from the first respondent enclosing a copy of the report of the enquiry officer dated 17.08.2017. Though the report would indicate that the enquiry officer had held that the charges No.1 to 10 were not proved. However, in the letter dated 05.02.2018, the first respondent decided to ignore the report of the enquiry officer and proceeded to hold all the charges as having proved. The letter further directed the petitioner to make a further representation on the findings of the charges referred to in paragraph No.2 above. It was further stated that if the further representation is not received, action would follow. The said letter contained an annexure giving reasons as to why the first respondent differed with the findings of the enquiry officer with regard to each of the charges starting



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

from Charge Nos. 1 to 10. A mere reading of this would clearly indicate the malafides and vindictiveness. Along with this letter, the first respondent has chosen to enclose only the report but the proceedings of the enquiry officer was not appended. Challenging this order dated 05.02.2018, W.P.No.6055 of 2018 has been filed.

15.1 The petitioner herein who has filed the above three writ petitions, has filed common written arguments and the same are herein below encapsulated briefly :

- a) The petitioner after setting out the facts would submit that he and the said Vijayalakshmi had filed W.P.No.14361/2009 and W.P.No.14377/2009 seeking to furnish the documents based on which the charges were framed against them, and despite the orders of this Court dated 07.07.1999 in the said writ petitions directing the respondents therein to furnish the documents, the same were not furnished to them. Therefore, they were deprived of the opportunity to defend the charges framed against them after perusing these documents.
- b) The petitioner would further submit that for the last 17 years till the



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

date of filing the writ petitions, his suspension has not been revoked or reviewed. On the date of issuing charge memo i.e., on 26.07.2008, the petitioner had completed 32 years of unblemished services and was to retire on 30.06.2012. Just three days before his superannuation i.e., on 27.06.2012, he has been issued with a second charge memo for the very same delinquencies.

- c) The petitioner's contention is that all the transactions of the Society are carried on by the President of the Society with the approval of the General Body. However, the President R.Padmanaban was not issued with any charges especially when the charges are primarily that there is a favouritism in the allotment of plots.
- d) The petitioner would submit that the lands were acquired and layouts were formed after obtaining necessary permission. The cost of the lands were also paid by the members of the Society.
- e) The petitioner would further submit that in the first charge memo, allegations of misappropriation and offences under the Indian Penal Code and Prevention of Corruption Act, were made. These allegations were given a go by in the second charge memo, where, only the allegation of irregularities in allotment of plots were set



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

out.

WEB COPY

f) The petitioner would submit that in the meanwhile, an FIR No.4/2009 was registered for offences under Sec.120B, 409, 420, 467, 468, 471 IPC as well as Sec.13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, against the eight Directors including the President Padmanaban. However, after the case was taken up on file as C.C.No.3/2013 by the Special Court for the cases under Prevention of Corruption Act, no action was taken by the first respondent against the President R.Padmanabhan, R.Devaraj and Illanchezhiyan and also as against the other Board of Directors of Tamil Nadu Secretariat Staff Cooperative Housing Society and they were allowed to retire. They had also received their entire retirement benefits. In the criminal cases, nearly 78 witnesses were examined by prosecution and 193 documents were marked. The petitioner had examined himself as witness along with one Elanchezhiyan and had marked 10 documents on his side. After going through the documentary evidence and oral evidence produced before it, the learned Judge observed that the prosecution had failed to prove the guilt of the accused A1 to A7 beyond all



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2017
& W.P.No.6055 of 2018

reasonable doubts and acquitted them from offences. As soon as the judgment was pronounced in C.C.No.3/2013, the petitioner had sent a copy of the said judgment to the first respondent requesting him to close the disciplinary proceedings.

- g) The petitioner thereafter received an order dated 05.02.2018 enclosing the report of the Enquiry Officer dated 17.08.2017, wherein the Enquiry Officer had held that the charges have not been proved against the petitioner. However, the first respondent chose to ignore the report of the Enquiry Officer and proceeded to hold that the charges framed against the petitioner was proved and the petitioner was show caused as to why he should not be held for the charges proved. This clearly demonstrates malafides.
- h) The petitioner would seek to challenge the aforesaid orders of the respondent by contending that the charges which have been levelled against him are in respect of the alleged misconduct attributed by him in his capacity as Vice President of the Tamil Nadu Secretariat Staff Cooperative Housing Society. The petitioner would contend that this role of the petitioner has nothing to do with his position as a Government servant. Therefore, the very initiation of



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

disciplinary proceedings and the proceedings initiated under the Prevention of Corruption Act and Indian Penal Code (as it then stood) was totally misconceived.

- i) The petitioner would contend that the Society comes under the control of the Registrar of Cooperative Societies Act, and it is governed by the provisions of the Tamil Nadu Cooperative Societies Act. He would submit that under Section 164 of the Societies Act, the Registrar of Co-operative Societies is empowered to prosecute in respect of any malpractices or revenue loss caused to the Society.
- j) The petitioner would further question the proceedings pursuant to the second charge memo. In the said charge memo, one U.Anbu, Joint Secretary to Government Health and Family Welfare Department, who was appointed by the first respondent, had held an enquiry into the charges levelled against the petitioner, one R.Gopal and S.Vijayalakshmi. It is the contention of the petitioner that the first respondent is neither an Appointing Authority nor the Disciplinary Authority as per the Rules in force, and therefore, the proceedings initiated by them, are clearly without jurisdiction, as



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

the alleged charges do not relate to the official duties of the petitioner or the functioning of the Cooperative Housing Society.

- k) Though the first respondent had received the Vigilance report dated 14.05.2008 against all the members of the Board of Directors, he issued the charge memo dated 27.06.2008 only against the petitioner, R.Gopal and Vijayalakshmi, and suspended them from service by an order dated 27.06.2008, however, the respondent has also allowed one member namely Ilanchezhiyan to retire on 31.05.2008 and had not initiated proceedings against the President Padmanabhan.
- l) The petitioner would also contend that the enquiry with respect to second charge memo was conducted exparte and the Enquiry Officer held that the charges against the petitioner were not proved. The petitioner has also sent his representations refuting the charges.
- m) The genesis of the proceedings is a public interest litigation in W.P.No.4649 of 2007 initiated by a certain members of Tamil Nadu Secretariat Association, who had filed a PIL, which was disposed of by the orders of the First Bench dated 11.03.2015, directing the Registrar of the Co-operative Societies to take action according to



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

law, after issuing notices to all parties. After the writ petition was disposed of, none of the petitioners in the above writ petition had initiated any proceedings on the alleged irregularities in the allotment of house sites. On the other hand, the Secretariat Staff Cooperative Housing Society represented by its Special Officer, have initiated proceedings under Section 90 and Rule 107 of the Tamil Nadu Cooperative Societies Act in I.D.No.1/2025 against the allottees and the orders were passed by the Deputy Registrar of Cooperative Societies on 03.02.2016, cancelling the allotments made. Challenging the same, the aggrieved parties have filed Civil Miscellaneous Appeals before the Court of Small Causes, Chennai in CMA.Nos.57/2018, 58 to 85 of 2018.

- n) The Cooperative Tribunal Court had framed two issues : (i) as to whether the order of the Deputy Registrar in I.D.No.1/2015 dated 03.02.2016 is liable to be set aside; and (ii) as to whether the appeal deserves to be allowed. After hearing the parties, the learned Judge had set aside the order of the Deputy Registrar of Cooperative Societies by holding that the order cancelling the allotment was arbitrary and violative of the principles of natural justice. These



W.P.No.26054 of 2012, W.P.No.4014 of 2017
& W.P.No.6055 of 2018

orders have not been challenged further.

WEB COPY

15.2 Without prejudice to these contentions, the petitioner would submit that the initiation of the disciplinary proceedings is contrary to the provisions of Section 9A of the Tamil Nadu Civil Services (Discipline and Appeals) Rules, which clearly enjoins that a joint enquiry has to be conducted where several persons are implicated in the commission of misconduct. In the instant case, the joint enquiry was not conducted and therefore, deviated findings were rendered by the first respondent.

15.3 The two charge memos in respect of the very same issue is arbitrary, malafide, unreasonable and unfair. The first respondent by order dated 16.05.2023 had withdrawn the first charge memo, where criminal acts and corruption charges were alleged against the petitioner. This amounted to withdrawing the criminal appeal pending before this Court in CrI.A.No.405 of 2017. The issuance of second charge memo, in and by which, ordering and conducting an enquiry and passing orders under Section 56(1), and retaining the petitioner in service even after the date of retirement, is without jurisdiction, authority of law, and is discriminatory and amounts to



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

harassment. The action of the first respondent suffers from bias inasmuch as some of the persons who have been charge sheeted, were permitted to retire and their retirement benefits were settled. The non-implication of the President and other Board of Directors is a clear case of victimization and discrimination.

15.4 The cancellation of the first charge memo dated 27.06.2008, on 16.05.2023, i.e., fifteen years after its issuance, and after refusing to permit the petitioner to retire is a further case of victimization. The respondents have harassed the petitioner for over 16 years and 5 months from the date of initiation of the writ proceedings.

16. The respondents have filed their written submissions, in which they would contend as below :

- i. The Government of Tamil Nadu has introduced a beneficial housing policy in G.O.Ms.No.121, Revenue Department dated 09.03.1999, in and by which, the residential plots were to be given to the deserving Government employees of the Tamil Nadu Secretariat. The G.O. clearly stipulates that only the members of the Tamil



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

Nadu Secretariat Association (TANSA) are eligible to form the Tamil Nadu Cooperative Housing Society and the lands allotted were to be used exclusively for the benefit of eligible Government servants.

- ii. Though the lands were intended to be allotted to only eligible Government servants, the petitioner had facilitated the sale of the housing plots to his close relatives at the rates lower than the guideline value. The respondent would submit that the alleged sales have been effected without obtaining requisite approvals. The petitioner had facilitated the enrollment of ineligible individuals as associate members of the Society, only with an intention to enable the sales of housing plots. This amounts to serious misuse of public property entrusted for the welfare of the eligible Government servants.
- iii. It was based on the report of the Directorate of Vigilance and Anti Corruption (DVAC), the Personnel and Administrative Reforms (P&AR) Department, the first respondent herein, proposed to initiate disciplinary action under first proviso to Rule 9-A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (in short



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

'TNCS(D&A) Rules'. Accordingly, the petitioner and two others who were functioning as Directors in the said Society, on account of gross irregularities and malpractices committed by them, were placed under suspension by the order of the first respondent 27.06.2008.

- iv. The TNCS(D&A) Rules provide that "an Under Secretary to Government" under Category-2 in the Tamil Nadu General Service Class-XII, was to be appointed from the panel approved by the Government and for the post of "Section Officer" it is from the panel approved by the Secretary to Government, (P&AR) Department.
- v. That apart, subsequent to the report submitted by DVAC, the second charge memo was issued to the petitioner on 27.06.2012. Thereafter, the disciplinary authority, the P&AR Department, the first respondent herein by his proceedings dated 05.02.2018, had informed the petitioner that all the charges levied against the petitioner are held to be proved. Since the first respondent had differed from the findings of the Enquiry Officer, on the ground that the report lacked adequate reasoning and details, the petitioner



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

was asked to submit his explanation. The petitioner had immediately rushed to the Court to file the writ petition. The findings of the Enquiry Officer by no stretch of imagination can be a fetter upon the disciplinary authority from arriving at a different conclusion.

- vi. Despite sufficient opportunities being granted to the petitioner to participate in the enquiry, the petitioner refrained from participating in the enquiry and only submitted his representations refuting the charges.
- vii. The retirement of Elanchezhian was on account of the fact that he had voluntarily retired on 31.10.2007. Therefore, the initiation of proceedings against him, was barred under Section 9(2)(b) of the Tamil Nadu Pension Rules, which clearly prohibits departmental action after four years of his retirement. Hence, the allegation of the petitioner that the said Elanchezhian was selectively spared from departmental proceedings is factually incorrect.
- viii. Insofar as the statement of the petitioner that he had discharged his duties as a member of the Board of Directors of a Housing Society, which has nothing to do with his official capacity, the respondent



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

would submit that the allegations involving abuse of official position and misuse of public property, are intrinsically connected in discharging his official duties, as the petitioner holds a public office.

- ix. The respondent would contend that the second charge memo is a comprehensive one which has been issued in accordance with the DVAC's final report and the withdrawal of the first charge memo would have no bearing on the validity of the second charge memo.
- x. Rule 9(A) of the said Rules mandates that the P&AR Department is a committed authority to initiate and conduct disciplinary proceedings, which exercise has been done. The respondent would further submit that the appointment to the post of Section Officers are made from the panel approved by the Secretary to Government, P&AR Department and consequently, the Secretary to Government, P&AR Department would be a competent authority. Therefore, the contention of the petitioner that since he is serving in Handlooms Department, it is only the Handlooms Department that should have initiated proceedings the disciplinary proceedings and not the first respondent, is untenable. To reiterate, for the post of Under



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

Secretaries, the cadre-controlling and disciplinary authority remains with the P&AR Department.

- xi. The respondent would contend that when the petitioner was holding a post in an institution established for the welfare of public servants, it was well within the right of the Government to hold such person accountable under the Service Conduct Rules. As per Section 2(C)(viii) of the Prevention of Corruption Act, any person who holds an office, by virtue of which they are authorised to perform any public duty that falls within the definition of public servant.
- xii. The acquittal in the criminal proceedings will not be a bar for initiation of disciplinary proceedings.
- xiii. Further, the loans were allotted by the State Government and this amounts to Governmental aid and therefore the petitioner would fall within the ambit of Government servant for the purpose of Prevention and Corruption Act.

Therefore, the respondents would submit that the writ petition deserves to be dismissed.

Discussion :

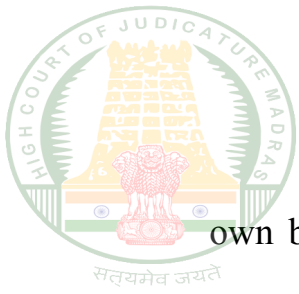


WEB COPY

17. From a perusal of the records, pleadings and arguments, the following are the issues which requires consideration:

- (1) Whether a public servant discharging the duties unconnected with their official duty, can be prosecuted as a public servant, for the act done in his capacity, outside his role as a public servant?
- (2) Whether the Secretary, Personnel and Administrative Reforms Department, is the competent authority to initiate disciplinary proceedings against the petitioner?
- (3) Whether the action initiated against the petitioner is a biased one and amounts to victimization and harassment of the petitioner?

18.1 The petitioner at the time of initiation of disciplinary proceedings against him, was holding the post of Under Secretary to Government, Handloom, Handicrafts and Textile Department, which was his official posting. He held charges as a Vice President in the Tamil Nadu Secretariat Staff Housing Society, which had nothing to do with his official capacity inasmuch as the post of Vice President was not on account of his holding the post of Under Secretary to Government. The Society was registered under Section 10 of the Cooperative Societies Act, 1983. The said Society had its



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

own bye-laws and came within the control of Management of Registrar of Co-operative Societies. This Society has been formed for providing affordable house-sites to the members and also to help them to built house-sites, besides other objects. The membership of this association were persons who have attained the age of majority and were the members of the Tamil Nadu Secretariat Association. The bye-laws also permitted the Society to induct others residing within the area of operation of the Society, who did not own house-sites and who were intending to secure a house-site through the Society as members of the Society. In fact, the bye-laws contemplated four different categories of members other than the aforesaid two. The Management of this Society vested with Board of Directors who consisted of nine members. Initially by default, the President of the Tamil Nadu Secretariat Association was the ex-officio President of the Society as per the bye-law 25(1), and the office bearers consisting of President and Vice President, are to be elected by the other members of the Board. In 2002, the bye-laws underwent an amendment, in and by which Clauses 25(1) and 33(1) were amended by prescribing that the President of the Society would also be elected, and the President of the Tamil Nadu Secretariat Association can no longer be an ex-officio President.



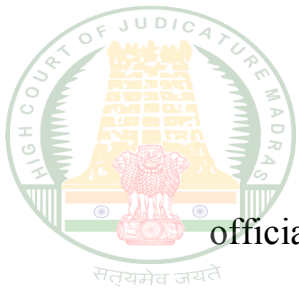
W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

WEB COPY

18.2 The records would further indicate that the lands had been acquired in Okkiam-Thoraipakkam for providing house-sites and the costs of the lands have also been fully paid by the Society. Therefore, the lands vested with the Society. The Government did not own the lands and neither was it given free of costs to the Society.

18.3 The allegations on which the proceedings have been initiated, which to date has spanned nearly over two decades, was that, there were irregularities in the allotment of plots. Section 81 enquiry under the Co-operative Societies Act did not detect any such irregularities and no surcharge proceedings were initiated against the petitioner.

18.4 Further, the proceedings under the Prevention of Corruption Act and the provisions of Indian Penal Code has been held not proved. In fact, the Special Court for cases under the Prevention of Corruption Act, Chennai in C.C.No.3/2013, in which the petitioner has been arrayed as second accused, had observed that P.W.78, the Investigating Officer had clearly admitted that none of the alleged accused had misused the powers of their



W.P.No.26054 of 2012, W.P.No.4014 of 2017
& W.P.No.6055 of 2018

WEB COPY

official capacity. The learned Judge has ultimately held that a sanction for prosecution should have been obtained from the Cooperative Registrar and that the Secretary, P&AR Department, was not the competent authority from whom the sanction was obtained. The learned Judge has observed that the accused therein which included the petitioner herein were not public servants as defined under Section 2(c) of the Prevention of Corruption Act and that the prosecution has failed to establish that the accused had obtained any pecuniary benefits by way of irregular allotments of public purpose plots. Therefore, there is a clear finding that the petitioner was not a public servant. This order has not been taken up by way of an appeal/revision, and has therefore become final.

18.5 From the records, it is also seen that the petitioner herein had addressed a letter to the Public Information Officer, Revenue Department, Secretariat on 28.06.2017 wherein one of the queries that was sought for was, "whether the Tamil Nadu Secretariat Staff Cooperative Housing Society has paid the land costs and other dues thereon fully to the Government, if so, kindly furnish the details of pending dues from the said Society or if so, mention the details specifically" besides three other queries. This query has



been answered by a letter dated 31.07.2017 by the Public Information Officer that the land costs have been fully paid to the Government. Therefore, it is the property of the Society.

18.6 Further, the Enquiry Officer has clearly come to the conclusion that the charges against the petitioner have not been proved, despite which, the proceedings have been initiated by the first respondent. A public servant has been defined under Section 2(c) of the Prevention of Corruption Act, as follows :

"public servant" means, -

- i. any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;*
- ii. any person in the service or pay of a local authority;*
- iii. any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);*
- iv. any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;*
- v. any person authorised by a court of justice to perform any duty,*



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

- in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;*
- vi. any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;*
 - vii. any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;*
 - viii. any person who holds an office by virtue of which he is authorised or required to perform any public duty;*
 - ix. any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any Corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);*
 - x. any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;*
 - xi. any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee by whatever designation called, of any University*



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

xii. any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government or local or other public authority."

Explanation 1 : Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2 : Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

A reading of this section clearly indicates that a person has to be a public servant when he is remunerated by the Government for the services rendered and a public duty is performed by him in his capacity as a public servant.

18.7 In the Tamil Nadu Civil Services (Discipline and Appeal Rules), a Government servant is one who is appointed to civil services or in a post connected with the affairs of the State. A mere perusal of this definition would clearly prove that in the discharge of his functions as Vice President of



W.P.No.26054 of 2012, W.P.No.4014 of 2017
& W.P.No.6055 of 2018

WEB COPY

a Society, the petitioner has not discharged any duty as a public servant or in his capacity as Under Secretary. This is also the finding of the Special Court for cases under the Prevention of Corruption Act. Both the Enquiry Officer as well the Criminal Court, on the documents before them, have come to the conclusion that there has been no irregularity in the allotment of plots.

18.8 This Court drawn reference to the judgment of the Gujarat High Court in *State of Gujarat Vs Manshankar Prabhashankar Dwivedi* reported in (1972) 2 SCC 392. This was a case where the respondent was a Senior Lecturer in a Government College, who was deputed as an examiner for a physics practical held by the Gujarat University. He was accused for having accepted gratification from one of the candidates. Proceedings under the Prevention of Corruption Act was initiated against him and he was also sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/-. An appeal was filed to the High Court and he was acquitted by the High Court , against which the State has gone to the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the first question to be resolved is whether the petitioner therein would be a public servant as contemplated in the Ninth clause of Section 21 of the Penal Code, 1860



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

WEB COPY

keeping in mind the capacity in which he was performing his duties as an examiner of the University. Ultimately, the Hon'ble Supreme Court held that the respondent therein was not a public servant when he was acting as an examiner. The learned Judge relied upon Clause (d) of Section 5(1) as it stood at the material point of the Prevention of Corruption Act, to come to this conclusion. The Section 5(1)(d) would read as follows :

"5. Criminal misconduct in discharge of official duty :

(1) A public servant is said to commit the offence of criminal misconduct in the discharge of his public duty :-

(a)....

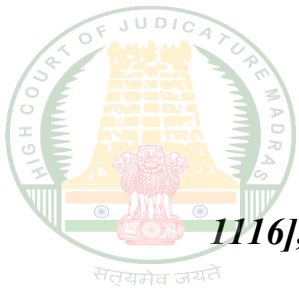
(b)....

(c)....

(d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.

The words '*in the discharge of his duty*' has been omitted by Central Act 40 of 1964.

18.9 They also relied upon the earlier judgment of the Supreme Court in ***M.Narayanan Nambiar Vs State of Kerala*** reported in ***[AIR 1963 SC***



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

1116], where it was observed that it has to be proved that a public servant has abused his position as a public servant to achieve a corrupt or illegal end.

18.10 In the case on hand, the Investigating Officer has clearly deposed before the Special Court that the petitioner and the other accused have not misused their positions. Therefore, it is clear that the petitioner had only been discharging his role as a Vice President and member of the Board of Directors while allotments were made. Yet another factor is that all the orders/correspondence of the Society, went under the pen of the President of the Society with the approval of the members. However, the President has not been implicated in the instant case.

18.11 Therefore, we have to analyse as to what is the official duty. This has been dealt with in detail by the Hon'ble Supreme Court in ***State of Orissa through Kumar Raghvendra Singh and others Vs Ganesh Chandra Jew*** reported in (2004) 8 SCC 40. It is relevant to extract paragraph No.10 of the said judgment, which reads as below :

"10. Such being the nature of the provision the question is, how should the expression, "any offence alleged to have been committed by him while acting or purporting to act in the



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

discharge of his official duty", be understood? What does it mean? "Official", according to the dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity In B.Saha v. M.S.Kochar [(1979) 4 SCC 177, it was held:

"17. The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision."

(emphasis in original)

Use of the expression "official duty" implies that the act



WEB COPY

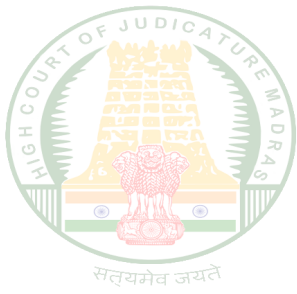


W.P.No.26054 of 2012, W.P.No.4014 of 2017
& W.P.No.6055 of 2018

or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty."

18.12 In a judgment of this Court in ***K.Subramanian Vs State through the Inspector of Police and another*** reported in ***2021 SCC OnLine Mad 1721***, the Full Bench was answering a reference as to whether the Secretary of a Cooperative Society is a public servant as defined under Section 2(c)(ix) and he performs his duties as per Section 2(b) of the Prevention of Corruption Act. The Full Bench after discussing the entire gamut of judgments and the march of law, answers as follows :

"37. For a person to be regarded as a public servant within the meaning of Section 2(c)(ix) of the Act, 1988, three conditions have to be fulfilled: the first is the status of the person in the registered co-operative society; the second is the nature of the business that the relevant registered co-operative society is engaged in; and the third is as to whether the society receives or had received during the relevant period any financial aid from the Central Government or a State



WEB COPY

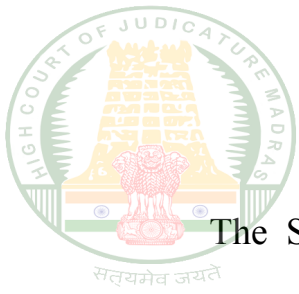


W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

Government or from any Corporation established by or under a Central, Provincial or State Act, or authority or body owned or controlled or aided by Government or a Government company as defined in Section 617 of the Companies Act, 1956. All three limbs have to be satisfied for the person to be reckoned as a public servant within the meaning of Section 2(c)(ix) of the said Act.

38. As of the status of the relevant person, he must be the President or Secretary or other office-bearer of a registered cooperative society. As to the nature of business that the co-operative society must be engaged in, the relevant areas would be agriculture, industry, trade or banking. The third aspect is of such registered co-operative society, in which the person hold the office of President or Secretary or office-bearer and which registered co-operative society is engaged in the business of agriculture, industry, trade or banking, also receiving financial aid from the Government bodies specified or had received financial aid from the specified Government bodies at the relevant point of time."

18.13 Admittedly, there was no governmental control over the Society and even the lands which have been plotted into house-sites are the lands owned exclusively by the Society, after paying the necessary consideration, which is evident from the answer to the RTI query raised by the petitioner.



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

The Society in question is a Housing Society which is governed by the Societies Act, Rules and Bye-laws. Therefore, it is crystal clear that the petitioner was not performing any public duty in his role as a Vice President of the Society. Therefore, the very initiation of the proceedings under the Prevention of Corruption Act and the disciplinary proceedings initiated against the petitioner, are totally misconceived. Therefore, the first issue has to be answered in favour of the petitioner.

19. The next issue to be answered is, whether the disciplinary proceedings has been initiated by the competent authority. The General Service Rules would indicate that the method of appointment of Under Secretaries to all Government Department (under Category-2) other than Law and Finance is by promotion from Category 3 in any Department other than Law and Finance (or) if the Government so directs, by recruitment by transfer from any other service which the Government may specify. Category-3 consists of (a) Section Officers in any Department other than Law and Finance Departments; (b) Section Officers in the Law Department and (c) Section Officers in the Finance Department. The appointment to the category of Under Secretaries shall be made from the panel approved by the



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

WEB COPY

Government from the category of Section Officers approved by the Secretary to Government (Incharge) of Personnel and Administrative Reforms Department. Therefore, it is clear that the appointment of Under Secretaries is from the panel which is approved by the Government. The procedure for drawing up the panel of Section Officers for appointment as Under Secretaries to Government in Departments other than Law as specified in the table of the Tamil Nadu General Service Rules would clearly state that each of the Secretary's to Government in Departments other than Law and Finance, were sent to the Secretary to Government Incharge of Personnel and Administrative Reforms Department, the names of all eligible Section Officers in the Department with their personal files and its recommendations as to their suitability for appointment as Under Secretary. Therefore, the Secretary to Government Incharge of Personnel and Administrative Department scrutinises these files and forwards its recommendations to the Tamil Nadu Public Service Commission. The recommendations made by the Secretary to Government Incharge of Personnel and Administrative Reforms Department shall be made on the grounds of merits and ability, and seniority to be considered only where merit and ability are approximately equal. The Tamil Nadu Public Service Commission shall forward a list and arrange in



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

the order of merit, the Section Officers whom it considered appropriate for Under Secretary and that list approved by the State Government shall be the panel of Section Officers eligible for Under Secretaries. Therefore, the contention of the respondent that it is the Secretary to Government, Personnel and Administrative Reforms Department who is the Appointing Authority may not be correct as the original panel is prepared by the Secretary of the particular Department and this list is forwarded to the Secretary for Personnel and Administrative Reforms Department, who thereafter forwards the list with his recommendations to Tamil Nadu Public Service Commission. Therefore, the initiation of the disciplinary proceedings by the first respondent is not maintainable. Therefore, the second issue is also answered in favour of the petitioner.

20. The third issue which engages the consideration of this Court is, whether the action initiated against the petitioner stems from bias and amounts to victimization and harassment. As narrated earlier, the Enquiry Officer has clearly found that the petitioner and others are not guilty of the allegations made against them and has found each charge has not proved. Despite such categoric finding, the first respondent proceeded to initiate



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

WEB COPY

disciplinary proceedings. The Criminal Court on the evidence of the prosecution witnesses, has clearly held that the witnesses themselves have stated that the petitioner has not misused his official position. After the first charge had been withdrawn, a second charge has been framed in which the allegation is that there has been irregularities in the allotment of plots, inasmuch as it has been allotted to non-members who are not the members of the Tamil Nadu Secretariat Association. A mere perusal of the bye-laws would show that there are five categories of members and it is only one such category who are the members of Tamil Nadu Cooperative Association. The bye-laws also makes provisions to induct persons who own a vacant site nearer to the property which the Society seeks to develop, which implies, that even non-members can be made parties. Be that as it may, the Enquiry Officer as well as the Special Court has clearly held that the petitioner has not misused his position in the allotment. Further, the President who is the signing authority has not been visited with these proceedings which only goes to show that the action is vindictive and an attempt to harass and probate the petitioner. Issue 3 is also answered in favour of the petitioner.

21. Therefore, in the above circumstances, all the writ petitions deserve

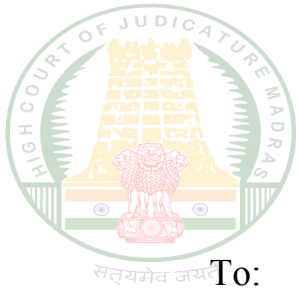


W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

to be allowed. The act of respondents in over turning the enquiry report, ignoring the order of the criminal court and keeping the petitioner under suspension all this while, requires to be deprecated. No costs. Consequently, connected miscellaneous petitions are closed.

09.06.2025

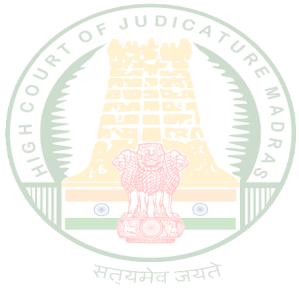
Index : Yes / No
Neutral Citation : Yes / No
ds



W.P.No.26054 of 2012, W.P.No.4014 of 2011
& W.P.No.6055 of 2018

To:

- 1.The Secretary to Government
Personnel and Administrative Reforms Department
Fort St.George, Chennai - 600 009.
- 2.The Secretary to Government
Handloom Handicrafts Textiles and Khadi Department
Fort St.George, Chennai - 600 009.



WEB COPY



W.P.No.26054 of 2012, W.P.No.4014 of 2014
& W.P.No.6055 of 2018

P.T. ASHA, J.

ds

W.P.No.26054 of 2012, W.P.No.4014 of 2014
& W.P.No.6055 of 2018

09.06.2025