



W.P.No.953 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-04-2025

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THE HONOURABLE MRS JUSTICE N. MALA

**WP No. 953 of 2021
and WMP.No.1039 of 2021**

T.Muthamilvendhan

..Petitioner

Vs

1.Deputy Registrar of
Co- Operative Societies,
Thandapani Nagar,
Semmandalam, Cuddalore.

2.President, Tamil Nadu Electricity Board,
Employees Co-operative Thrift and
Credit Society, E- 1582,
No.1, Pudupalayam Main Road,
Pudupalayam, Cuddalore- 1

3.V.Sivakumar,
Secretary-in-Charge, Tamil Nadu Electricity Board,
Employees Co-operative Thrift and
Credit Society, E-1582,
No.1, Pudupalayam Main Road,
Pudupalayam Cuddalore- 1.

..Respondents

Writ Petition is filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, to call for the records pertaining to the issue of order dated 01.12.2020 in proceedings No.Na.Ka.20/Oo.Na. and further order dated 01.12.2020 by the President, Tamil Nadu Electricity Board Employees Thrift and Credit Society E.1582, the 2nd Respondent herein and quash the same.

For Petitioner : Mr.Ashokkumar D.



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For Respondents: Mr.S.Ravikumar, Spl.G.P.
for R1
M/s. L.P. Shanmugasundaram
for R2
R-3- No Appearance

ORDER

This Writ Petition filed to quash the order dated 01.12.2020 of the 2nd respondent in proceedings no. NA.KA.20/00. NA.

2.The petitioner was appointed as an Assistant in Tamil Nadu Electricity Board Co-operatvie Thrift and Credit Society, on 22.09.1990. In 2007, as the post of Accountant was vacant, the petitioner as the senior most person was appointed as Secretary-in-charge, of the society by the special officer. The said post was only an honorary post, as the petitioner continued to draw the salary of an Assistant. Although there was no monetary benefit in the Secretary's post, the petitioner continued to work in the said post from 2007 to 2012. Whiles, considering the petitioner's long service, he was appointed as regular Secretary from 01.06.2012. Meanwhile, in 2013, a regular inspection under Section 82 of Tamil Nadu Cooperative Societies Act, 1983 was carried out and an undated report was submitted to the first respondent. In the said report it was stated that as the society had a turn over of Rs.15 Crores to 20 Crores, it was eligible for total cadre strength of 5 employees, consisting of one Secretary, one Accountant and



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three Assistants. The Inspection Officer in his report directed the first respondent, to initiate the Disciplinary Proceedings against the Special Officer, for appointing the petitioner as Secretary, eventhough he was eligible for Accountant Post only. On the basis of the report of the Co-operative Inspection Officer, addressed to the Deputy Registrar, the President of the said Society, on the basis of the resolution passed by him on 23.08.2014, issued a communication on 25.08.2014, demoting the petitioner to the post of Assistant. As against the said order, the petitioner preferred a Writ Petition in W.P.No.23386 of 2014, and this Court on 01.09.2014, set aside the demotion order, with liberty to the third respondent, to initiate action in accordance with law. In pursuance of the above said order of the Court, the petitioner was inducted into the service as Secretary and continued to discharge his services as Secretary. After a lapse of nearly one year, the second respondent issued the impugned orders dated 01.12.2020, demoting the petitioner to the post of Assistant and further appointing one V.Sivakumar, as Secretary-in-Charge, in the petitioner's place. Aggrieved by the aforesaid impugned orders, the petitioner filed the above writ petition for the aforesaid relief.

3.The respondent's filed a detailed counter stating *inter alia*, that the demotion order dated 25.08.2014, was passed by the 2nd respondent, on the directions of the first respondent, which direction was issued in pursuance of the inspection report filed under Section 82 of the Co-operative Society's Act 1983.



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The petitioner filed the writ petition in W.P.No.23386 of 2014, challenging the demotion order and the same was allowed by this Court on 01.09.2014, with liberty to the third respondent to initiate action in accordance with law. Thereafter, the second respondent issued a charge memo, containing four charges to the petitioner on 08.09.2015, for which the petitioner submitted his explanation on 18.09.2015. Pursuant thereto, a Domestic Enquiry was conducted on 26.11.2015. An Enquiry Report dated 20.04.2016 was filed, wherein it was held that the charges 1 and 2 were not proved, charge Nos.3 was proved and charge No.4 was partially proved. Whiles, based on the report and recommendation of the Inspection Officer, the first respondent initiated Surcharge Proceedings under Section 87 of the Act, 1983, against the petitioner for causing loss to the Society, of a sum of Rs.1,46,019/-. After due enquiry, an award was passed on 31.12.2015, against the petitioner holding him guilty of misappropriating the society's funds of Rs.1,46,019/-. The said award was challenged in Civil Miscellaneous Appeal, before the Principal District Judge, Cuddalore. The said CMA was allowed on 20.12.2017. According to the respondents, the Domestic Enquiry Report was communicated to the petitioner on 20.04.2016, and eventhough, the petitioner was given ample opportunity to submit his explanation, he failed to avail the same. The respondents stated that the matter was discussed in detail in the meeting of the Board of Directors and a resolution No.11 dated



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30.11.2020, was passed, to remove the petitioner from the post of Secretary, and to demote him to the post Assistant. Simultaneously, the Society decided to appoint the third respondent as Secretary-in-Charge of the Society. The respondents further stated that the writ petition was not maintainable in view of the law laid down by this Court in the case of ***K.Marappan Vs. Deputy Registrar of Cooperative Societies*** reported in ***2006(4) CTC 689***. The respondents also stated that the writ petition was not maintainable as an alternative remedy was available to the petitioner under Co-operative Society Act, 1983. The respondents therefore prayed that there were no merits in the writ petition and the same be dismissed.

4.The learned counsel for the petitioner submitted that although in the impugned order, it was stated that the petitioner was issued a show cause notice calling for his explanation along with enquiry report, no such notice was in fact issued to the petitioner. The learned counsel for the petitioner submitted that the date referred to in the impugned order pertained to the Enquiry Report and not to any show cause notice. The learned counsel further submitted that before passing the impugned punishment order, no notice was issued to the petitioner, calling for his explanation to the proposed punishment. The learned counsel therefore submitted that the impugned order deserved to be set aside for violation of the principles of natural justice and for procedural lapses in conducting the Domestic



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5.The learned Additional Government Pleader on the other hand reiterated the submissions made in the counter affidavit.

6.I have heard both the learned counsels and I have perused the materials placed on record.

Gist of facts:

7.It is seen that the petitioner was appointed as an Assistant, in the respondent Society in 2007, and was later appointed as Secretary-in-Charge of the Society. The petitioner worked as Secretary-in-Charge, between 2007 and 2012, on salary drawn in the Assistant's post. Whiles, the then Special Officer considering the petitioner's long Service as Secretary-in-Charge, proposed his name for regular appointment as Secretary of the Society to the first respondent, with effect from 01.06.2012. On the basis of the order passed by the 1st respondent, the then Special Officer appointed the petitioner as Secretary. In the year 2013, on the basis of the report furnished by the Co-operative Inspection Officer, the President of the said Society on the basis of a resolution dated 23.08.2014, passed an order on 25.08.2014, demoting the petitioner to the post of Assistant. As against the said order, the petitioner preferred a writ petition in



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W.P.No.23386 of 2014. This Court vide its order dated 01.09.2014, set aside the impugned demotion order with liberty to the third respondent, to initiate action in accordance with law. Thereafter, the second respondent issued a charge memo dated 08.09.2015, framing four charges, for which the petitioner submitted his explanation on 18.09.2015. Thereafter a Domestic Enquiry was conducted on 26.11.2015. The Enquiry Officer submitted his Report on 20.04.2016, holding that the charges 1 and 2 were not proved, that charge Nos.3 was proved and charge No.4 was partially proved. On the basis of the Enquiry Officer's Report, the impugned orders were passed.

8. The petitioner's counsel submits that no show cause notice calling for his explanation to the enquiry report, along with a copy of the same, was served on him. Consequently, the impugned order is liable to be set aside for violation of the principles of natural justice. On the contrary, the respondents contend that the show cause notice / communication was issued on 24.05.2016, calling for the petitioner's explanation to the enquiry report by annexing the same. However, the petitioner has specifically denied the receipt of the show cause notice / communication dated 24.05.2016. In such circumstances, the burden was on the respondent's to establish that the said show cause notice / communication was in fact sent to the petitioner. The respondents have neither filed a copy of the show cause notice / communication dated 24.05.2016, nor produced any acceptable



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proof of service. Accordingly, an adverse inference is liable to be drawn against them. Though the impugned order refers to the communication dated 24.05.2016, no document evidencing its issuance or service is placed before this court. On the materials available on record, I am constrained to accept the petitioner's contention that no show cause notice was served on him seeking his explanation to the enquiry report.

9. Further, the impugned order of punishment does not indicate that any show cause notice was issued calling for the petitioner's explanation to the proposed punishment. The impugned order merely records that the petitioner, despite receiving the enquiry report, did not submit his explanation to the enquiry report. Even assuming, without admitting, that the petitioner failed to submit his explanation to the enquiry report, it was incumbent on the respondents to issue a show cause notice specifically calling for his explanation before imposing the punishment. Indisputably, this was not done. Therefore, the impugned punishment order stands vitiated for breach of principles of natural justice.

10. In view of the foregoing discussions, the impugned order dated 01.12.2020, is set aside. The matter is remanded to the first respondent for fresh consideration. The first respondent is directed to issue a show cause notice to the petitioner calling for his explanation to the Enquiry report dated 20.04.2016, within a period of two weeks from the date of receipt of a copy of this order.



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Upon receipt of such show cause notice, the petitioner shall submit his explanation within two weeks. Thereafter the first respondent shall pass appropriate orders on merit and in accordance with law, within four weeks from the date of receipt of such explanation.

Accordingly, this writ petition is allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

15-04-2025

ah/dsn

Index:Yes/No

Speaking/Non-speaking order

Neutral Citation:Yes/No

N. MALA, J.

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To
1.Deputy Registrar of Co- Operative Societies,
Thandapani Nagar,



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Semmandalam, Cuddalore.

2. President Tamil Nadu Electricity Board,
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