

W.P(MD)No.10473 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED: 22.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD). No.10473 of 2021 and
WMP(MD) Nos.8152 of 2021 & 20442 of 2022

Mr.T.Chiristurajan

... Petitioner

Vs

1.The Regional Joint Registrar of Co-operative Societies,
Kanyakumari Region,
Nagercoil, Kanyakumari District.

2.The President(In-Charge),
Y-178, Eraviputhoorkadai Primary
Agricultural Co-Operative Credit Society,
Eraviputhoorkadai,
Kattanthurai Post,
Thiruvattar Tk.,
Kanyakumari District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 16-06-2021 passed by the second respondent and quash the same and consequently direct the respondents to permit the



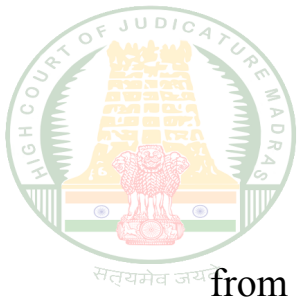
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petitioner to work continuously as Clerk in the second respondent Society with continuity of service and all other attendant benefit.

For Petitioner	: Mr.D.Shanmugaraja Sethupathi
For R1	: Mr.K.Balasubramani
	Special Government Pleader
For R2	: Mr.T.Cibichakraborty

ORDER

The petitioner was appointed as a Clerk in Y-178, Eraviputhoorkadai Primary Agricultural Co-Operative Credit Society, Eraviputhoorkadai, Thiruvattar Taluk, Kanyakumari District on 16.04.1998, as regular employee. He was absent from duty from 05.10.2020 to 31.10.2020. The petitioner has applied for leave from 05.10.2020 to 09.10.2020 on medical grounds. He has informed the Secretary of the Society in-charge that he is not in a position to attend the duty from 11.10.2020 and only on 19.10.2020, the petitioner has sent a leave letter addressed to the Secretary, requesting medical leave from 19.10.2020. He appeared for duty along with a medical certificate on 31.10.2020 that he was suffering from severe back pain and therefore he could not attend the duty

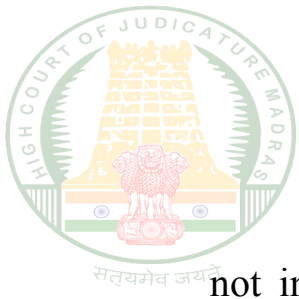


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from 05.10.2020 to 09.10.2020. Without considering the Medical Certificate issued by the Government Doctor, the second respondent has placed the petitioner under suspension. An enquiry was conducted. In the meantime, the petitioner was referred to medical Board. The petitioner appeared before the medical board on 02.12.2020. The Medical Board in its report stated that the petitioner was suffering with Sacroiliitis. However, the second respondent has proceeded with the enquiry and submitted his report on 30.01.2021. Based on the enquiry report, a further explanation was called for and the petitioner has also submitted his explanation on 19.02.2021. However, considering the materials, the respondent has imposed a major punishment of dismissal from service, by his order dated 16.06.2021 and the same is under challenge in this writ petition.

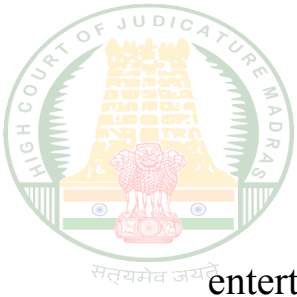
2.The learned counsel appearing for the petitioner submits that he was suffering with Sacroiliitis, which is a painful inflammation of the sacroiliac joints, which connect the spine and pelvis. It causes severe pain in the lower back and therefore he was



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not in a position to attend the duty, however, he has managed to intimate the Secretary through phone, which has not been denied. However, he could not send a leave letter due to his illness. The petitioner has reported duty with the medical certificate issued by a competent Doctor on 31.10.2020. However, the second respondent, without considering the medical certificate has ordered for an enquiry. He was referred to the medical board. The petitioner has appeared before the Medical Board on 02.12.2020 at Government Medical College Hospital, Kanyakumari. The Medical Board has ratified the leave that this petitioner was suffering with sacroiliac sacroiliitis and he is eligible for availing leave from 12.10.2020 to 30.10.2020 and further recommended that this petitioner has to take rest upto 14.11.2020. Without considering the same, the enquiry officer has submitted a report and the second respondent has also imposed the major punishment of dismissal from service. The learned counsel further submits that though this Court is not interfering with the order of dismissal in normal course, considering the peculiar facts and circumstances of this case, this Court has



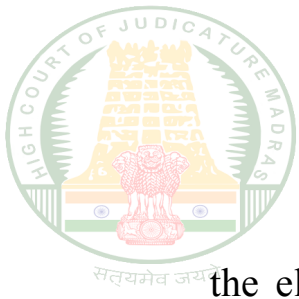
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entertained the writ petition and has also granted an order of interim stay on 25.06.2021.

3.The learned counsel for the second respondent submits that the petitioner is having an alternative remedy of appeal before the Registrar of Co-operative Societies. However, without exhausting the alternative remedy, the petitioner has approached this Court. The learned Counsel for the second respondent has relied on the principles laid down by the Larger Bench of this Court in the case of ***K.Marappan Vs.Deputy Registrar of Co-operative Societies***, reported in ***2006(4) CTC 689***, wherein, it was held that no writ petition can be entertained as against the Co-operative Societies.

4.In reply to the same, the learned Counsel for the petitioner submits that the Joint Registrar of Co-operative Societies has already issued a Circular and he has also constituted a Committee to review the disciplinary proceedings, if any, issued by



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the elected Board of Directors of the Societies. However, without referring this disciplinary proceedings to the Committee constituted by the Joint Registrar, the second respondent has conducted the enquiry and also imposed the major punishment as against this petitioner.

5.This Court considered the rival submissions made and also perused the materials placed on record.

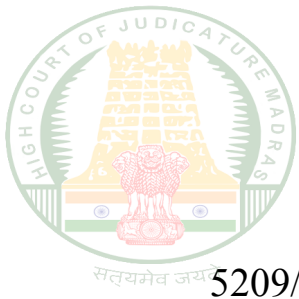
6.The petitioner, who is an employee of the second respondent Co-operative Society was imposed with a major punishment of dismissal from service for his unauthorized absent from duty for the period from 05.10.2020 to 31.10.2020. The petitioner has availed the leave on medical grounds on 05.10.2020 and informed the same to the Secretary of the Society. However, he has not submitted any leave letter, for which, the petitioner claims that that he was suffering with severe back pain and therefore he was not in a position to prepare a leave letter and send it to the second



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respondent. The petitioner has extended the leave on 11.10.2020. At that time also, he has failed to submit leave letter. On 19.10.2020, he has submitted a leave letter. The petitioner has produced a medical certificate on 31.10.2020 that he was suffering with severe back pain that has also been ratified by the Medical Board of Kanyakumari Medical College Hospital by its report, dated 02.12.2020. Though the medical report was available with the second respondent at that relevant point of time, they have proceeded with the enquiry, based on the charge memo issued on 16.11.2020. The petitioner has offered his explanation on 05.12.2020, however, not satisfied with his explanation and the medical board's report, they have appointed an enquiry officer and on completion of an enquiry, a major punishment of dismissal from service was imposed. The petitioner has relied upon the proceedings of the Joint Registrar of the Societies that if any disciplinary proceedings is initiated as against the employee of the Co-operative Societies by the elected Board, then it needs to be referred to a Committee, which has been constituted in proceedings in Na.Ka.No.



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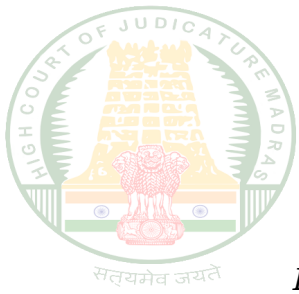
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5209/2013, Tho.Ve.Sa, dated 18.10.2016 and headed by Joint Registrar along with the members of the Central Cooperative Bank, which is as under:-

1. The Managing Director of Central Co-operative Bank
2. The Deputy Registrar of the respective Circle.
3. The President of one of the Society
4. The representative of the employees Union.

7. Admittedly, the second respondent has not referred the disciplinary proceedings initiated as against this petitioner to the Committee, which has been constituted by the Joint Registrar in its proceedings, dated 18.10.2016. The petitioner has raised specific grounds in the grounds of appeals as under:-

D] It is submitted that the Registrar of Co-operative Societies has issued Circular vide Na.Ka.17933/2013 Tho.ve.sa 1 (1) dated 09.02.2016, constituting Disciplinary Action Committee under the Chairmanship of respective Regional Joint Registrar of Cooperative Societies. The Regional Joint Registrar of Cooperative Societies, Kanyakumari District has also issued Circular vide Na.ka.5209/2013 tho. Ve. Sa dated 18.10.2016 in pursuance of the above Circular of the



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Registrar of Cooperative Societies. As per the above Circulars, there shall be prior permission and approval from the Disciplinary Action Committee for initiating and continuing the disciplinary proceeding. The 2nd respondent has not got prior approval from the Disciplinary Action Committee either for issuing charge memorandum or continuing the disciplinary proceeding. Therefore, the impugned order passed by the 2nd respondent is without jurisdiction.

E] It is submitted that on the petition filed under section 153 of the Tamil Nadu Cooperative Societies by the petitioner, the 1st respondent has already set aside the suspension order passed by the 2nd respondent and regularized the suspension period from 31.10.2020 to 03.02.2021 as duty period. It has been held in the Revisional Order that the entire proceeding of the 2nd respondent is vitiated since the disciplinary proceeding was not approved by the Disciplinary Action Committee constituted in pursuance of the Circular issued by the Registrar of Cooperative Societies vide Na.Ka. 17933/2013 Tho.ve.sa 1 (1) dated 09.02.2016 and Order of the Joint Registrar vide Na.ka.5209/2013 tho. Ve. Sa dated 18.10.2016. The petitioner has neither been paid subsistence allowance during the suspension period nor suspension period was regularized as per the order of the 1st respondent. The entire disciplinary proceeding is vitiated on the ground of non-payment of subsistence allowance also.



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8.The above grounds raised by the learned counsel for the petitioner has not been denied by the respondent and therefore, it is clear that disciplinary proceedings has not been referred to the Committee constituted by the Joint Registrar of Co-operative Societies, thereby, there was a procedural violation. It appears that the disciplinary proceedings was proceeded even after the Medical Board has ratified the leave availed by this petitioner by its report dated 02.12.2020, which is as against the circular issued by the Joint Registrar. Therefore, there is a procedural violation in conducting the disciplinary proceedings also. After conducting the enquiry, the punishment of dismissal from service has been awarded, without having any regard to the medical certificate which was issued by the Medical College Hospital, Kanyakumari on 02.12.2020.

9.In view of the above and considering the nature of punishment for the delinquency and the charges levelled as against this petitioner, this Court is inclined to allow this writ petition. The order impugned in this writ petition, dated 16.06.2021 is hereby set



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aside. The issue is remanded to the second respondent for fresh consideration, by considering the report of the Medical board of Kanyakumari Medical College Hospital.

10. Accordingly, this writ petition is allowed. No costs.

Consequently, connected Miscellaneous Petitions are closed.

22.01.2025

NCC:Yes/No

Index:Yes

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