



W.P.(MD) No.10862 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD) No.10862 of 2021

and

W.M.P.(MD) No.8484 of 2021

P.Albert Nikelson

... Petitioner

-vs-

1.The Deputy Registrar of
Cooperative Societies
Thuckalay Circle, Thuckalay
Kanyakumari District

2.3566 Pacode Primary Agricultural
Cooperative Credit Society Ltd.
Pacode Post-629 168, Kanyakumari District
rep.by its President

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records related to the proceedings of the 2nd respondent dated 10.05.2021 and quash the same and consequently directed the second respondent to reinstate the petitioner in service with all attendant and a consequential benefits since 01.06.2020.



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For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.A.Baskaran
Additional Government Pleader for R1
Ms.Mamtha
for Mr.P.Subbaraj for R2

ORDER

This writ petition has been filed challenging the impugned order dated 10.05.2021, passed by the second respondent, removing the petitioner from service in the second respondent – Society.

2. The petitioner was employed as Office Assistant in the second respondent – Society. Due to his unauthorized absence from duty from 01.06.2020, he has been removed from service under the impugned order dated 10.05.2021, pursuant to the show cause notice dated 03.02.2021 issued to the petitioner by the second respondent – Society. The petitioner claims that, on account of his illness, he was unable to go for duty. He also claims that he had produced a medical certificate along with his reply to the show cause notice on 20.02.2021, which confirms that only on account of acute / severe back pain, he was not in a position to go for duty. Since the



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respondents had a doubt with regard to the veracity of the medical certificate produced by the petitioner, the respondents had also referred the petitioner for medical examination by the Medical Board of Aasaripallam Kanyakumari Government Medical College Hospital. According to the petitioner, he also got medically examined by the aforesaid Medical Board and the said Medical Board of Aasaripallam Kanyakumari Government Medical College Hospital, through its report dated 17.03.2021, has also certified that the petitioner was eligible for medical leave from 01.06.2020 to 30.11.2021 due to the petitioner's acute / severe back pain. However, according to the petitioner, without considering the Medical Board's report dated 17.03.2021, referred to supra, the second respondent, under the impugned order dated 10.05.2021, has removed the petitioner from service, on the ground of unauthorized absence from duty from 01.06.2020 onwards. The petitioner has challenged the impugned order, on the ground of violation of the principles of natural justice and also on the ground that the impugned order is a non-speaking order with regard to the Medical Board's report dated 17.03.2021, which, according to the petitioner, confirms that the petitioner is eligible for medical leave from 01.06.2020 to 30.11.2021, on account of his acute / severe back pain.



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3. Learned counsel for the petitioner also submits that even though appeal remedy is available to the petitioner under the Tamil Nadu Cooperative Societies Act, 1983, he was constrained to file this writ petition only on the ground of violation of the principles of natural justice and on the ground that the impugned order is a non-speaking order with regard to the Medical Board's report dated 17.03.2021, which confirms that the petitioner is eligible for medical leave from 01.06.2020 to 30.11.2021 on account of the petitioner suffering from acute / severe back pain during the said period.

4. Counter affidavits have been filed by the respective respondents on the similar lines. In the counter affidavits, they have reiterated the contents of the impugned order.

5. However, as seen from the counter affidavits filed before this Court, there is no whisper about the Medical Board's report dated 17.03.2021 submitted by the Medical Board of Aasaripallam Kanyakumari Government Medical College Hospital, which has certified that the petitioner is eligible for medical leave from 01.06.2020 to 30.11.2021 due to his acute / severe back pain. Only at the instance of the second respondent – Society, the petitioner was referred to the aforesaid Medical Board. Based on the second



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respondent's instructions, the petitioner has also underwent medical examination by the aforesaid Medical Board and only pursuant to the same, the Medical Board's report dated 17.03.2021 was submitted to the second respondent – Society, which reveals that the petitioner is eligible for medical leave from 01.06.2020 to 30.11.2021. The petitioner has absented himself from duty only from 01.06.2020. Judicial notice can also be taken that the period from 01.06.2020 to 30.11.2021 was also Covid period. Only due to the fact that the respondents had a doubt with regard to the genuineness of the medical certificate produced by the petitioner along with his reply to the show cause notice, the second respondent had referred the petitioner to the Medical Board to get an independent opinion about his medical condition during the relevant period. When the Medical Board's report dated 17.03.2021 confirms that the petitioner is eligible for medical leave from 01.06.2020 to 30.11.2021 and a copy of the same was also given to the respondents, necessarily, the respondents ought to have considered the same before passing the impugned order. However, as seen from the impugned order, the Medical Board's report dated 17.03.2021, referred to supra, has not been considered. Only on the said ground, the petitioner has approached this Court, without filing an appeal as per the Tamil Nadu Cooperative Societies Act, 1983.



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6. It is clear that the impugned order removing the petitioner from service is a non-speaking order with regard to the Medical Board's report dated 17.03.2021, which supports the case of the petitioner that only due to his illness, he was unable to go for duty during the relevant period. The petitioner was also not granted any opportunity of hearing before passing the impugned order, excepting for the fact that a show cause notice was issued by the respondents to him, for which a reply was sent by him along with a medical certificate to establish his case that only on account of his illness, he was unable to go for duty. The post occupied by the petitioner is an Office Assistant post, a ministerial job. The respondents ought to have considered this aspect as well, that too when the petitioner has not committed any act of serious indiscipline, excepting for the fact that, according to the respondents, the petitioner has unauthorizedly absented himself from duty for a long period of time. Since the petitioner has produced evidence before this Court, which on a *prima facie* consideration, establishes that only on account of his illness, he was unable to go for duty, this Court after giving due consideration to the fact that the impugned order has not given due consideration to the Medical Board's report dated 17.03.2021 and in view of the same, being a non-speaking order, and an order passed in violation of the principles of natural justice due to the reasons stated supra, the impugned order has to be



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quashed and the matter has to be remanded back to the very same respondent, namely, second respondent, for fresh consideration of the petitioner's case on merits and in accordance with law, within a time frame to be fixed by this Court.

7. Learned counsel for the petitioner, on instructions, would submit that the petitioner shall not claim any monetary benefits and the same shall be subject to the outcome of the proceedings pursuant to the order of remand passed by this Court. He would also submit that in case of remand and in the final orders, if the petitioner has been reinstated into service, the petitioner gives an unconditional undertaking before this Court that he shall not claim any monetary benefits or arrears of salary for his past services in the second respondent – Society.

8. For the foregoing reasons, the impugned order dated 10.05.2021, passed by the second respondent is hereby quashed and this writ petition is disposed of by remanding the matter back to the second respondent for fresh consideration of the petitioner's case on merits and in accordance with law, after adhering to the principles of natural justice by granting an opportunity of hearing to the petitioner and the second respondent shall pass



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final orders, after giving due consideration to the Medical Board's report dated 17.03.2021, issued by the Medical Board of Aasaripallam Kanyakumari Government Medical College Hospital, within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that the petitioner shall not make any monetary claim against the respondents, which includes arrears of salary till final orders are passed by the second respondent and in case in the final orders the petitioner has been reinstated into service, the petitioner, based on the undertaking given before this Court, shall not claim any monetary benefits, which includes arrears of salary for his past services. No costs. Consequently, connected miscellaneous petition is closed.

04.11.2025

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

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To:

1.The Deputy Registrar of
Cooperative Societies,
Thuckalay Circle,
Thuckalay,
Kanyakumari District.



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ABDUL QUDDHOSE, J.

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