



W.P.(MD)No.17722 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 29.10.2024

Delivered On : **27.01.2025**

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.17722 of 2021

and

W.M.P.(MD)Nos.14625 and 14626 of 2021

J.Sam Christudhas

... Petitioner

Vs.

- 1.The Chief Executive Officer,
Khadi and Village Industries Board,
Kuralagam,
Chennai - 208.
- 2.The Regional Assistant Director,
Khadi and Village Industry,
Madurai - 16.
- 3.The Assistant Director,
Khadi and Village Industries Board,
Nagercoil.
- 4.The Sub Committee,
Marthandam Bee Keepers Co-operative Society Ltd.,
No.2050, Vettumani Junction,
Marthandam (P.O.),
Kanyakumari District – 629 165.
- 5.The Board of Directors,
Marthandam Bee Keepers Co-operative Society Ltd.,
No.2050, Vettumani Junction,
Marthandam (P.O.),
Kanyakumari District – 629 165.



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6.The President,
Marthandam Bee Keepers Co-operative Society Ltd.,
No.2050, Vettumani Junction,
Marthandam (P.O.),
Kanyakumari District – 629 165.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to removal from service orders passed by the 5th respondent dated 29.07.2021, which is confirmed by the 6th respondent dated 31.08.2021 and quash the same and consequently, reinstate the petitioner into service with pay all the back wages together with 18% interest per annum.

For Petitioner	: Mr.D.Selvanayagam
For Respondents 1 to 3	: Mr.Raguvaran Gopalan Standing Counsel
For 6 th Respondent	: Mr.S.C.Herold Singh Standing Counsel
For Respondents 4 & 5	: No Appearance

ORDER

This Writ Petition is filed, seeking to quash removal of petitioner from service passed by the 5th respondent dated 29.07.2021, which is further confirmed by the 6th respondent on 31.08.2021 and consequently reinstate him into service with all back wages.

2.The petitioner was selected and appointed to the post of Attender on 12.02.1987 on compassionate ground in the 6th respondent office. He was further promoted to the post of Junior Assistant in the year 1996 and he served in the said post till 24.07.2019. The 6th respondent Society is formed



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to purchase raw honey and other bee products from its members and convert them into finished products and resale the same to his members.

The processing unit of the Society is available within the premises of the Society and the finished goods were ordinarily kept at Door No.24/39A, 24/39B and 24/39B1 of Kulithurai Municipality. The raw honey and bee products used were normally stored in drums, canes and bottles and were preserved in the said premises. All the products including the buildings and godowns of the Society is insured with the United India Insurance Company Limited. On 04.05.2014, in a Sunday evening, due to heavy rainfall, the adjacent YMCA building wall collapsed and fell over the godown of the 6th respondent Society where the honey was stocked in drums and canes at Door No.24/39B, new No.24/209 of Kulithurai Municipality. The building of the godown was totally collapsed and the honey stored in 22 drums were completely damaged. Each drum had a quantity of 630 kilograms of honey, as such a total quantity of 13,680 kg of honey was completely damaged. The same was informed to the Board of Directors and the Board of Directors in turn informed to the Assistant Director of Kadhi Village Industries, Nagercoil, and the insurance company, namely, United India Insurance Company Limited, with which the Society has insured the building and by-products, for compensation. Following which, the Insurance Surveyor and Loss Assessor of the said insurance company visited the spot and assessed the damaged and further sold the damaged goods in public auction on 12.05.2014, after causing public notice for a sum of Rs.2,10,420/-. The



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damaged drums were sold for a sum of Rs.4,620/-. The insurance official sold 1 kilogram of honey for a sum of Rs.83.50/-, when the cost was at Rs. 130/- per kilogram. Further on 05.05.2014, the third respondent wrote a letter to the first respondent recommending the case as one of nil loss as caused by the Board of Directors and the same happened only as a result of natural calamity. By yet another letter dated 10.11.2014, the third respondent made a recommendation in similar lines to the first respondent. Even after payment made by the insurance company, the Society sustained a loss of Rs.21,48,342/-, for which the Society filed a suit in O.S.No.104 of 2014 on the file of learned District Judge, Nagercoil, Kanyakumari, as against the insurance company.

3.While so, proceedings under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983, were initiated against the Board of Directors on the basis of certain complaints given by certain members of the Society. Section 81 enquiry was commenced as against 16 members of the Society. An enquiry officer was appointed in this regard and the enquiry officer after conducting an enquiry held that the board members have caused a loss of Rs.42,270/- to the Society and recommended that the Board should be dissolved under Section 80 of the Tamil Nadu Cooperative Societies Act, 1983. In the meanwhile, election notification for the sixth respondent Society was notified for the election to be held on 07.05.2018. In the interregnum, few members moved a Writ Petition before this Court in



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W.P.(MD)No.10617 of 2018 and managed to get an interim order in their favour, as a result of which, the counting of votes and results of election was stalled. The Writ Petition was transferred to the Special Committee for election disputes of Cooperative Societies (south zone) headed by Retired Justice Thiru.R.S.Ramanathan and the Writ Petition was heard and was reserved for orders on 16.02.2019. Under such circumstances, the ballot box of the election which was held on 07.05.2018, which was kept under the custody of the sixth respondent office from 07.05.2018 to 30.07.2019 were damaged by certain miscreants, as a result of which the ballot box was put to fire and was taken away and the same was also captured by the CCTVs installed in the Society. In connection to the said incident, a First Information Report in Crime No.277 of 2019 was registered by the Inspector of Police, Marthandam, against unknown persons on 21.07.2019, for offences under Sections 342, 380, 435, 451 of IPC and Section 3(1) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992. Till 24.07.2019, no named person was implicated in the said crime. While so, on 24.07.2019, the petitioner was arrested and remanded to judicial custody. The petitioner moved a bail petition in Crl.O.P.(MD)No.11134 of 2019 before this Court and was enlarged on bail, on the basis of the order passed by this Court on 06.08.2019.

4.In the meanwhile, the fifth respondent passed an order of suspension, suspending the petitioner from the service of the sixth respondent Society on 27.07.2019, with effect from 27.07.2019. The



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petitioner made a representation to the respondents on 10.08.2019, seeking revocation of his suspension order dated 27.07.2019. The sixth respondent in responding to the petitioner's representation stated that, only after filing of charge sheet in Crime No.277 of 2019 in the file of Marthandam Police Station, the petitioner's request could be considered. Since the petitioner's representation was kept unconsidered for a prolonged period of time, he made another representation to the respondents on 10.09.2019, seeking revocation of his suspension. Even after a lapse of 5 months, since the petitioner's representations were not considered, he filed a Writ Petition before this Court in W.P.(MD)No.26466 of 2019, seeking to direct the third respondent to revoke his suspension order dated 27.07.2019, on the basis of his representation dated 10.09.2019. This Court was pleased to dispose of the same in the admission stage itself on 13.12.2019, directing the respondents to consider the petitioner's representation and pass appropriate orders within a period of 6 weeks from the date of receipt of aforesaid order. Even after a lapse of 7 months after the order passed by this Court, the sixth respondent neither revoked the petitioner's suspension order nor reviewed the same, though they have paid subsistence allowance to a tune of 50% of his salary. Hence, the petitioner caused a contempt notice to the third respondent on 30.01.2020. On receipt of the same, the third respondent passed a rejection order, rejecting the petitioner's representation, seeking revocation of his suspension in a hurry - burry manner.



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5.As far as the Crime No.277 of 2019 is concerned, charge sheet was not filed by the jurisdictional police, even after a period of 1 year. Hence, challenging the rejection order passed by the third respondent to consider the petitioner's representation and revoke his suspension, the petitioner filed a Writ Petition before this Court in W.P.(MD)No.4585 of 2020 and the same is pending. The petitioner further made a representation to the sixth respondent on 17.12.2020, to revoke his suspension and the same remains pending without consideration. Hence, the petitioner filed yet another Writ Petition in W.P.(MD)No.6514 of 2020, seeking to direct the respondents to revoke his suspension. During the pendency of the same, a domestic enquiry was initiated by the sixth respondent Society against the petitioner in which one Advocate Thiru.Surendra Kumar was appointed as enquiry officer and after an elaborate enquiry, he submitted his report dated 12.12.2017, concluding that the charges framed as against the petitioner could not be proved. Despite a favourable enquiry report by the enquiry officer, the administrator further sought for explanation to the petitioner on 17.06.2019, without furnishing copy of the said enquiry report. Hence, the petitioner filed a Writ Petition in W.P.(MD)No.4454 of 2021 before this Court, requiring to direct the respondents to furnish him with a copy of the enquiry report and the said Writ Petition was disposed on 02.03.2021 in favour of the petitioner. Pursuant to the same, the administrator furnished a copy of the enquiry report to the petitioner and sought for further explanation on



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05.05.2021. The petitioner thereafter, made an elaborate explanation on 10.05.2021, following which an oral enquiry was conducted on 07.07.2021 and he also gave a written reply on 07.07.2021. In the meanwhile, the newly elected body came to the came to power in the sixth respondent Society. The new Board of Directors passed a resolution and resolution No.1/21-22 dated 28.07.2021, removing the petitioner from service followed by the order of the sixth respondent dated 29.07.2021. As against the said order, the petitioner preferred a statutory appeal to the fifth respondent, by Appeal No.1 of 2021 and the same came to be rejected on 31.08.2021. Challenging the order of removal of the petitioner from the sixth respondent Society, by order dated 29.07.2021 and the order passed by the fifth respondent in the statutory appeal rejecting the petitioner's claim, dated 31.08.2021, this Writ Petition is filed.

6.It is pertinent to record at this point that in the meanwhile, the Crime No.277 of 2019 on the file of Marthandam Police culminated in filing of charge sheet in P.R.C.No.28 of 2021 on the file of the learned Judicial Magistrate No.1, Kulithurai. The same was challenged by filing CrI.O.P. (MD)Nos.19678 of 2021 and 4460 of 2022 before this Court and this Court by order dated 19.12.2024, was pleased to quash the said case observing that the continuation of the proceedings against the petitioners therein would result in abuse of process of law and the same necessarily require the interference of this Court.



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7.The plight of the petitioner is that despite the enquiry officer after an elaborate enquiry submitting an enquiry report holding that the charges framed as against the petitioner could not be proved, the Administrator of the respondent Society has proceeded with the domestic disciplinary proceeding as against the petitioner negating the enquiry report seeking further explanation from the petitioner, which culminated in the dismissal of petitioner from service.

8.A careful perusal of the materials available on record would reveal that an ongoing tussle prevails among the members of the sixth respondent Society, which had culminated in an election dispute between the erstwhile Board of Directors and the current Board of Directors of the sixth respondent Society. From the details of the enquiry report, it can be understood that the petitioner has been made a scapegoat in the tussle among the members of the sixth respondent Society. If an enquiry is conducted in a disciplinary proceeding and the enquiry officer concludes the report pursuant to the enquiry in the disciplinary proceeding in favour of the delinquent, and even thereafter the employer decides to proceed as against the delinquent the employer ought to have necessarily passed an elaborate order by recording the reasons for deviating from the report of the enquiry officer recording the diligent reasons and thereafter take steps to remove the delinquent from service. However, in the instant case, the impugned order of



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removal from service passed by the sixth respondent is a non speaking order without going into the details of the enquiry report submitted by the enquiry officer. Five charges were framed as against the petitioner, all of which were with respect to the damage caused to the building of the godown of the six respondent Society and the finished products of honey which were stored in the said godown.

9.The enquiry officer one Advocate Thiru.R.Surendra Kumar perused as many as 40 documents and examined as many as five witnesses including the delinquents and also gave opportunity of hearing to the delinquent and thereafter, concluded that the charges framed as against the petitioner were baseless. In the meanwhile, the petitioner was also implicated in the criminal case, which was registered in an incident with respect to the capture of ballot box in the conduct of election for Board of Directors of the sixth respondent Society. However, after filing charge sheet, the same came to be quashed by this Court. However, without recording the reasons for deviating from the conclusions of the enquiry officer in his enquiry report, the fifth respondent passed an impugned order dated 29.07.2021, removing the petitioner from service and even in the statutory appeal preferred by the petitioner, the same was confirmed by the impugned order passed by the sixth respondent dated 31.08.2021.



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10.I am of the considered view that all the charges framed as against the petitioner has been disproved in terms of the enquiry report submitted before the sixth respondent Society by the enquiry officer who was appointed by the society itself for the purpose of conducting disciplinary enquiry as against the petitioner. That apart, even the criminal case, which was registered as against him, which culminated in filing of charge sheet in P.R.C.No.28 of 2021 on the file of Judicial Magistrate Court No.1, Kulithurai, was also quashed by the order of this Court in CrI.O.P.(MD)Nos. 19678 of 2021 and 4460 of 2022 on 19.12.2024. I also find it necessary to observe that the enquiry officer has concluded the enquiry report in favor of the petitioner only after diligently conducting an enquiry perusing all the necessary documents and examining all the necessary witnesses and giving an opportunity of cross examination of the witnesses by the delinquent. Further the accident which led to the collapse of the godown resulting in damage of the honey stored in the drums in the aforesaid godown could not be attributed to anyone other than concluding the same as an act of god. In the facts and circumstances of this case, the petitioner has been held responsible for the losses despite a favorable enquiry report in the departmental proceedings initiated as against him. It is true that the jurisdiction of this Court in judicial review of a disciplinary decision taken and disciplinary proceeding is limited. Disciplinary proceedings being quasi criminal in nature, the same should be supported with some sort of evidence to prove the charges.



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11. Although the charges in a departmental proceeding, are not required to be proved like a criminal trial beyond all reasonable doubt, normally the enquiry officers arrive at a conclusion on preponderance of probability to prove the charges, on the basis of the available materials on record and on the basis of the statements of the various witnesses. No doubt, the enquiry officer performs a quasi judicial function and in the instant case, the enquiry officer himself being an Advocate Thiru.R.Surendra Kumar had diligently conducted the enquiry in the manner known to law. When the enquiry officer has concluded the report in favour of the delinquent even thereafter if the administrator/employer decides to proceed as against the delinquent then strong reason should be recorded in the manner known to law for the purpose of further proceeding as against the delinquent and the finding should be recorded with proper reasoning. In the instant case, I find it necessary to hold that the impugned orders are nothing but non-speaking cryptic orders. Accordingly, the same are quashed, since the impugned orders will not stand the scrutiny of law. Consequently, the sixth respondent is directed to reinstate the petitioner into service with all back wages. However, it is made clear that the petitioner will not be entitled to any interest on the back wages.



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12. Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.01.2025

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

To

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L.VICTORIA GOWRI, J.

Mrn

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