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W.P.No.25505 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.25505 of 2009

K.Murugan

... Petitioner

Versus

- 1.The Registrar,
The Tamil Nadu Co-operative Societies,
The Office of Registrar,
Chennai – 10.
- 2.The Joint Registrar,
The Office of Tamil Nadu Co-operative Societies,
Villupuram.
- 3.The Deputy Registrar,
The Office of Tamil Nadu Co-operative Societies,
Tirukovilur.
- 4.The President,
Senkurchi Agricultural Co-operative Bank,
Sennkurchi post, Ullunthurpettai,
Villupuram District.
- 5.The Special Officer,
Senkurchi Agricultural Co-operative Bank,
Sennkurchi post, Ullunthurpettai,
Villupuram District.

... Respondents



PRAYER: Writ 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 first respondent in Na.Ka.No.84394/09 P.R.P.2, dated 12.09.2009, which confirms of the order of the fourth respondent in Na.Ka.No.Nil, dated 20.05.1999 and quash the same and consequently direct the respondent to reinstate the petitioner as a grocer.

For Petitioner : Mr.T.Deeraj,
for Mr.R.Karthikeyan

For Respondents : Ms.E. Renganayaki, (for R1 to R3)
Additional Govt. Pleader.

: No Appearance (for R4 & R5)

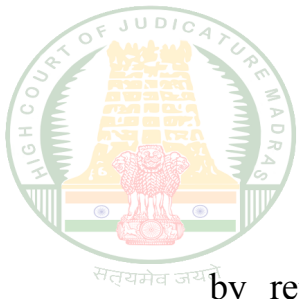
ORDER

The petitioner was a temporary employee of the fifth respondent cooperative bank. While so, on 20.05.1999, the following order was passed:-

“தாங்கள் செங்குறிச்சி தொடக்க
வேளாண்மை கூட்டுறவு வங்கியின் தலைவர்
ஆணைக்கு கட்டுப்படாமலும் மற்றும் தாங்கள்
பணியாற்றிய அங்காடிகளின் இருப்பு குறைவுக்
காரணமாக மேற்படி தொகை செலுத்துமாறு
கேட்டும் இதுநாள் வரை செலுத்தாமல்
உள்ளதாலும் தாங்களை 20.05.1999 முதல்
பணிநீக்கம் செய்து உத்தரவு இடப்படுகிறது.

ஏ.ஜெ. தளபதி (ஒப்பம்)
தலைவர்

ஐ.ஐ. 588. செங்குறிச்சி தொடக்க
வேளாண்மை கூட்டுறவு வங்கி,
செங்குறிச்சி. ”



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2. Aggrieved by which, the petitioner approached the first respondent by representation dated 07.09.2008. No action whatsoever was taken, therefore, he filed a Writ Petition in W.P.No.13837 of 2009 before this Court. By an order dated 22.07.2009, the following order was passed:-

“3. Considering the limited prayer and without going into the merits of the petitioner's representation dated 7.9.2008 this Court is constrained to direct the first respondent to consider the representation of the petitioner dated 7.9.2008 and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. It is also open to the petitioner to furnish a copy of the representation dated 7.9.2008 within a period of ten days from the date of receipt of a copy of this order.

4. With the above direction, the writ petition is disposed of. No costs.”

3. Pursuant thereto, the first respondent considered the said representation and by the order impugned in this Writ Petition dated 12.09.2009 and thereby rejected the said representation.

4. Even though notices were served to the respondents 4 & 5, there is no appearance. A counter is filed on behalf of the second respondent essentially contending that the petitioner had indulged in serious



malpractices. But, however, considering the fact, that he is only a temporary employee, he was terminated from the service straight away.

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5. Heard *Mr. T. Deeraj*, learned counsel for the petitioner and *Ms. E. Renganayaki*, learned Additional Government Pleader appearing for the respondents 1 to 3.

6. According to the learned counsel for the petitioner, even though he may be a temporary employee, and a perusal of the impugned order which is extracted above clearly indicates that he was terminated from the service for misconduct and it causes stigma. Therefore, even in respect of a temporary employee if the order causes stigma and if it is not a termination *simpliciter*, then the respondents 4 & 5 were duty bound to conduct an enquiry in the manner known to law by providing an opportunity to the petitioner to refute the allegations against him. Therefore, according to him, the original order of termination and the order impugned in this Writ Petition passed by the Registrar, confirming the same, are not sustainable.



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7.Per contra, the learned Additional Government Pleader appearing for the first to third respondents would submit that though it is for the concerned of the co-operative society to explain about the original order of termination, but would submit that as against the order of termination, the petitioner did not avail the statutory remedy viz., filing of revision under Section 153 of the Tamil Nadu Cooperative Societies Act, within the prescribed time limit and it is only a belated representation which is now being rejected by the first respondent. Therefore, she would submit that there is nothing to interfere in this Writ Petition.

8.I have considered the rival submissions made on behalf of both sides and perused the material records of the case.

9.Even though the petitioner did not file a revision within the time limit, however by an order dated 22.07.2009 of this Court in the earlier Writ Petition in W.P.No.13837 of 2009 extracted above, this Court directed to consider the representation thereof on merits and even extending the time by 10 days to resubmit the representation. Therefore, the plea of non-filing of revision within the time limit, now raised by the learned Additional



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Government Pleader cannot be countenanced in this Writ Petition and as the same was not raised when the orders were passed by directing them to consider the same on merits in the earlier Writ Petition.

10.I find merits in the contention of the learned counsel for the petitioner that it was not a case of termination *simpliciter*, but allegations are mentioned so as to cause stigma on the petitioner. Therefore, even though the employee may be a temporary employee the respondents were duty bound to follow the procedure mandated by law, i.e., framing of charge, giving an opportunity to the petitioner, conducting disciplinary enquiry and thereafter, for deciding the issue.

11. There are two other factors that are to be noted. First, the petitioner has almost reached the age of superannuation as it is mentioned in the affidavit filed in support of the Writ Petition that he was 45 years at the time of filing this writ petition. Secondly, after the termination in the year 1999, he invoked revisional jurisdiction only in the year 2008 by his representation.



W.P.No.25505 of 2022

12. In view of the above, I am inclined to dispose of the Writ Petition

on the following terms:-

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(i) The impugned order in the Writ Petition dated 12.09.2009 passed by the first respondent and the impugned order dated 20.05.1999 passed by the fifth respondent are hereby set aside;

(ii) The fifth respondent is entitled to proceed from the stage of issuing a charge memo and conduct the enquiry afresh and take a decision in accordance with law in the matter, either by permitting the petitioner to rejoin duty or by placing him under suspension. In view of the efflux of time, such an exercise to be carried on within a period of three months from the date of receipt of the copy of the order ;

(iii) In view of the nature of allegations in the present case, the petitioner is not awarded any backwages at this stage and the same will be decided only after the outcome of the ultimate enquiry to be conducted by the fifth respondent;

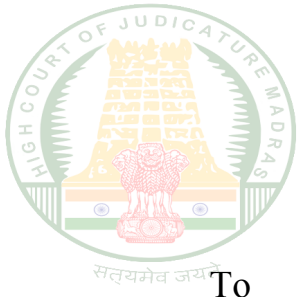
(iv) There shall be no order as to costs.

22.04.2022

Index : Yes/No

Speaking/Non-Speaking Order : Yes/No

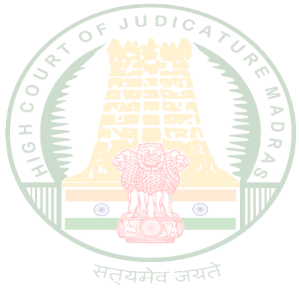
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W.P.No.25505 of 2009

D.BHARATHA CHAKRAVARTHY. J.,

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