

(2002) 04 MAD CK 0139

In the Madras High Court

Case No : Writ Petition No. 25955 and W.P.M.P. No. 38412 of 2001

S. Krishnamoorthy

APPELLANT

Vs

Special Officer, Thanjavur, Deputy Registrar, Co-operative Societies, Thanjavur, Joint Registrar, Co-operative Societies, Thanjavur, The Registrar, Co-operative Societies, Chennai and S. Ramalingaswamy

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 04 MAD CK 0139

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : A.S. Thambusamy, for the Appellant; R. Ramesh, for the Respondent

Final Decision : Allowed

Judgement

K.P. Sivasubramaniam, J.—The petitioner prays for the issue of a writ of certiorari to quash the order of the first respondent in RC. No. Nil dated 14.12.2001 appointing the fifth respondent as the Secretary of the Primary Agricultural Co-operative Bank, Pulavankadu.

2. The petitioner is now working as the Secretary of the aforementioned Bank. The fifth respondent is the former Secretary. As he acted against the interest of the Bank, proceedings were initiated against him u/s 87 of the Act. The surcharge proceedings against him ended on 26.9.1997 holding that the fifth respondent was liable to pay a sum of Rs.4,78,764.34. The fifth respondent had not filed any appeal against the said award. By reason of the questionable conduct of the fifth respondent, criminal proceedings were initiated against him in Crime No.7 of 1997 on the file of the Judicial Magistrate, Orathanadu and several witnesses have been examined. The then President of the Bank also framed charges on several actions of misappropriations and other charges. A charge memo was issued to him on 20.1.1990 and after a domestic enquiry, the

Enquiry Officer submitted a report finding the fifth respondent guilty. The President of the Bank issued notice in the Disciplinary proceedings on the basis of the Domestic Enquiry and after enquiry by order dated 28.12.1998, the fifth respondent was dismissed from service. The petitioner was appointed as Secretary in charge of the Bank and he has been working as the Secretary from 21.08.1995. He has also earned subsequent increments and has also been confirmed in the post. He would further state that he has been made a permanent Secretary of the Bank as per Resolution No.7, dated 29.6.2000. The petitioner states that it is understood that the fifth respondent had filed a representation to the Board on 13.2.1999 and the impugned orders reinstating the fifth respondent had been passed, according to the petitioner is an arbitrary and illegal manner. The petitioner further states that the fifth respondent had acted adverse to the interest of the Bank and the criminal case is pending against him in which several witnesses have been examined. Neither the Board nor the first respondent has any power to review the order of dismissal and hence the writ petition.

3. In the counter filed by the first respondent/Special Officer, it is contended that the surcharge proceedings were initiated not only against the 5th respondent but also other paid servants of the Society. But it is admitted that the fifth respondent had not filed any appeal against the said order and also that the proceedings before the Judicial Magistrate, Orathanadu, was pending against the fifth respondent. But the order of the dismissal was passed by the President who has no power to pass an order of dismissal against the Secretary. An appeal was filed by the fifth respondent before the then existing Board and as a result of the Special Officer having taken over the functions of the Board under Sections 88 and 89 of the Tamil Nadu Co-operative Societies Act, he had considered the appeal of the fifth respondent. Resolution No.1 dated 14.12.2001 was passed by him in the capacity of the Special Officer to reinstate the fifth respondent as Secretary and to place the petitioner as Assistant Secretary in his original post as per the cadre strength of the Society. The Appeal was allowed with the result setting aside the order of dismissal passed by the President. The order was passed in exercise of the power conferred u/s 88(3) of the Act after duly considering the interest of the Society and the appeal submitted by the fifth respondent. The petitioner was relieved from the post of Secretary on 14.12.2001 and the fifth respondent has joined the post as Secretary on the same date.

4. In the counter filed by the fifth respondent, it is contended that the petitioner himself is one of the parties to the surcharge proceedings as against the order of dismissal which was passed by the President without any jurisdiction he preferred an appeal on 13.2.1999 to the Board. He has admitted that the criminal proceedings are pending and he has also not disputed that he did not file any appeal against the surcharge proceedings. Considering that the period of the Board had expired, the Special Officer had powers to consider the appeal of the fifth respondent. The order reinstating in service was duly passed by the first

respondent in accordance with the powers vested on him. There is no illegality in the order of reinstatement.

5. Learned counsel for the petitioner contends that the fifth respondent having been found guilty of very serious charges of misappropriation of funds of the Bank amounting to more than Rs.5 or Rs.6 lakhs, has now been rewarded with an order of reinstatement without any justification. He would contend that the impugned order setting aside the order of the President of the Board is not on the merits of the findings against the fifth respondent, but only on the ground that the President was not competent to pass an order of dismissal against the Secretary. He would further state that the attitude on the part of the fifth respondent to prejudice the Court by stating that the petitioner was also a party to the surcharge proceedings, cannot have any relevance to the legality of the impugned order in which the Special Officer had shown unusual favours to a person, (fifth respondent) who has been charge-sheeted and found guilty of very serious charges. The fifth respondent had been reinstated in service without any re-enquiry against the fifth respondent. Except for finding that the President had no power to pass the order of dismissal, the findings rendered against the fifth respondent are not set aside on merits. The action of the Special Officer is therefore, arbitrary. As regards the specific contention of the petitioner that his service as Secretary had been regularised and he has been made permanent, no proper answer is forthcoming in the counter-affidavit of the respondents.

6. Mr. A.S. Thambusamy, appearing for the first respondent sought to justify the action of the Special Officer, first respondent by referring to the bylaws of the Society in which the designated authority to impose penalty of dismissal as against the Secretary were only Sub Committee and not the President. As such the order of the President dismissing the fifth respondent from service was not sustainable and hence the Special Officer as the Competent Authority, had allowed the appeal and directed reinstatement of the fifth respondent. Therefore, there was nothing wrong in the impugned order passed by the first respondent reinstating the fifth respondent in service. Considering that there was only one post of Secretary, the petitioner had to be relieved and reverted as Assistant Secretary. Learned counsel also states that the petitioner not having questioned the order setting aside the order of dismissal of the fifth respondent, is not entitled to question the posting order issued against the petitioner posting him as the Secretary.

7. Mr. R. Ramesh, learned counsel for the fifth respondent also reiterated the submissions of learned counsel for the first respondent and also state that the petitioner himself was one of the persons who was proceeded against in the surcharge proceedings and therefore, as such he had no right to make any allegation against the fifth respondent.

8. I have considered the submissions of all the counsel. The facts of this particular case indicate the undesirable depths to which public service is descending to. A public servant who is found guilty of very serious charges of

misappropriation and mishandling the funds of the Society, being faced with serious criminal charges and also concluded surcharge proceedings against him, is again reinstated in service in a blatant show of favouritism. In a detailed enquiry conducted against the fifth respondent, the Enquiry Officer finds the fifth respondent guilty of misappropriation of public money on several counts. Under charge No.1, he is found guilty of having misused funds of the bank totalling to a sum of Rs.3,13,549.64. After taking into account, the amount of Rs.1,95,300/- repaid by him, found that the Bank was put to loss of a sum of Rs.1,17,249.64. He has also taken into account that in the surcharge proceedings, he has admitted that he was responsible for the said sum of Rs.1,17,249.64. Under Charge No.2, further sum of Rs.83,200/- is shown as having been disbursed towards loan on jewels without actually receiving any jewels. There are no proper entries in the Ledger. In fact, defalcation of this amount is admitted by the fifth respondent and he deposits the said amount in the Bank. Under Charge No.3, without receiving payment of any amount towards the loans disbursed on jewels, jewels have been returned to the loanees, thereby causing a loss of Rs.85,676. Under Charge NO.4, he is found guilty of having caused loss of Rs.19,500/- in the context of loan amounts under other heads. Under Charge No.5, he is found guilty of having caused loss of further sum of Rs.41,042/- in the context of disbursing dividend to the share-holders. The said amount had to be recovered from the said members. Under Charge No.6, he was charged with having caused loss of Rs.21,400/- to the Bank in having shown several amount of expenditure without any bill or voucher. On this charge, the Enquiry Officer found that the amounts had been repaid and no loss was caused to the Bank and that the only mistake of the fifth respondent was not maintaining proper accounts. Under Charge No.7, he was accused of having caused loss to the Bank to the tune of Rs.50,805/- by paying amounts to the holders of Savings Bank Account without even cheque or withdrawal slips from them. Out of the said amounts, a sum of Rs.11,560 was repaid with the result causing a loss of Rs.39,245/-. Under Charge Nos.8 and 9, he was found guilty of having caused loss to the extent of Rs.1,200/- and Rs.203/- respectively towards having brought into existence false receipts of payment of amount due towards jewel loan and closing the loan without actually having received any amount and in having shown incorrect cash balance. All these findings were confirmed by the President and the fifth respondent was dismissed from service.

9. Apart from having been found guilty of the above serious charges (Except charge No.6), he is also facing as on date, a criminal proceeding before the Judicial Magistrate, Orathanad and he has also been adjudged as liable under surcharge proceedings dated 26.9.1997 u/s 87(1) of the Act, as one of the employees who had been directed to repay a sum of Rs.4,78,964.34 with interest at the rate of 18.5 per cent per annum. This order of surcharge has admittedly become final and no appeal has been filed by the fifth respondent, nor had the amounts been repaid to the Bank. In this background, the Special Officer, the fifth respondent had chosen to reinstate the first respondent in duty

only on the ground that the President had no power to dismiss him from service. The reinstatement is not made subject to any re-enquiry by the competent authority departmentally. On the other hand, the departmental proceeding is totally given up. In fact, the Special Officer does not set aside any of the findings against the fifth respondent on merits. Strangely the orders of reinstatement are made subject to the result of the criminal proceedings and collection of the amounts due under the surcharge proceedings and collection of the amounts due under the surcharge proceedings. There is no reference to any disciplinary proceeding which is apparently given up. The action of the Special Officer is in my opinion, high handed and against the interest of the public service, having regard to the nature of the allegations against the fifth respondent. If the writ petitioner was also a party to the surcharge proceeding, it is open to the authorities to initiate any proceedings against him if he is guilty of any charge. But to reinstate the fifth respondent in service, a person who has been found guilty of very serious charges is an arbitrary exercise of power. Such a high-handed nature of the order of the Special Officer stares in the face of this Court and the question is whether this Court should dismiss the writ petition on a technical ground that the petitioner had not questioned the order of the Special Officer, setting aside the dismissal order passed by the President.

10. It is true that the President does not appear to be a competent authority to pass an order of dismissal in terms of the bylaws of the Bank. But the proper thing which should have been done by the Special Officer was to have re-enquiry by the appropriate disciplinary authority. On the contrary, no enquiry is contemplated and the delinquent is gifted with reinstatement, in spite of the fact that he has been found guilty of serious charges by the Enquiry Officer. It is also very pertinent to note that that the order of dismissal is not set aside on the merits of the charges. Therefore, the delinquent is reinstated by (i) giving up the disciplinary proceedings; (ii) by ignoring the criminal proceedings; and (iii) by stating that he should reimburse the amount adjudged against him in the surcharge proceedings, presumably at his will and pleasure. The delinquent had not even been directed to repay the amounts at least as a precondition for reinstatement. At any rate, there is absolutely no justification for totally giving up the disciplinary proceedings containing very serious charges of misappropriation, fraudulent manipulation of accounts, receipts etc., and having caused a total loss of about Rs.6,00,000/- to the Bank out of which a sum of Rs. 2,00,000/- appears to have been repaid. Some other charges have in fact been admitted by him and amounts had been repaid. It is this kind of person who is favoured with an order of reinstatement. It is no justification to state that the petitioner was also a party to the surcharge proceedings. Even otherwise, the fact that the petitioner may also be responsible to repay the amounts due under the surcharge proceedings, cannot a justification for reinstating the petitioner in service in spite of having found him guilty of serious charges. If the petitioner is also guilty, appropriate proceedings have to be initiated against him and he should also be sent out of service. It is not as though that no other individual is

available to be appointed in the post of Secretary.

11. The contention that the petitioner had not questioned the order setting aside the order of dismissal, cannot be an obstacle for this Court to undo injustice in public interest. The petitioner is not a party to the said illegal order of the Special Officer and the impugned order relieving the petitioner from duties, is passed independently by merely relieving him from duties and reverting him as Assistant Secretary. Therefore, having regard to the highly irregular, arbitrary and illegal action of the Special Officer reinstating the fifth respondent resulting in throwing public interest to winds, this Court will not be carried away by such technical objections. The powers of this Court under Article 226 of the Constitution of India to mould the relief in public interest and to do complete justice between the parties are well-known.

12. In *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, , the founding fathers of the Constitution have designedly couched the article in comprehensive phraseology to enable the High Court to reach injustice wherever it is found. In a sense, the scope and nature of the power conferred by the article is wider than that exercised by the writ courts in England. However, the adoption of the nomenclature of English writs, with the prefix "nature of" superadded, indicates that the general principles grown over the years in the English Courts, can, shorn of technical procedural restrictions, and adapted to the special conditions of this vast country in so far as they do not conflict with any provision of the Constitution, or the law declared by this Court, be usefully considered in directing the exercise of this discretionary jurisdiction in accordance with well-recognised rules of practice."

13. Again in paragraph No.50 the Supreme Court observed as follows:-

"While a Procrustean approach should be avoided, as a rule, the Court should not interfere at the instance of a "stranger" unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact of public interests."

14. The order reinstating the fifth respondent herein in service by giving up disciplinary proceedings against him "is a grave miscarriage of justice having an adverse impact of public interest."

15. In *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], , the Supreme court observed (paragraph No.59) as follows:-

"The founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self imposed limitation. The arm of the Court, is sentinel on the quivive is to mete out justice in given facts.

16. The action of the Special Officer in this case, is a typical example of the manner in which co-operative institutions are being run by the Special Officers in most of the institutions. Each one of them is placed in a position to discharge the duties to be exercised by a collective body of several elected individuals namely,

the Board of Directors. But unfortunately some of them behave in such a fashion totally belying the hopes of the Legislature that they would act in accordance with law.

17. In the context of the rights of the writ petitioner, it is also necessary to bear in mind that the specific allegation of the petitioner that he has been regularised in the service as Secretary and had been made permanent had not been specifically denied by the respondent. The only reason given for reverting the petitioner as Assistant Secretary is that there is only one sanctioned post of Secretary, and he had to be reverted. It is needless to state that the said answer by the respondents cannot justify the reversion of the petitioner. If he is found surplus in the respondent Bank, he has to be fitted in alternate equivalent post. Therefore, there is no justification for reverting the petitioner to a lower post, without notice to him.

18. Therefore, all the orders of the Special Officer dated 14.12.2001 resolving to reinstate the fifth respondent in service, reinstating the fifth respondent in service are liable to be set aside with liberty to pass orders afresh by re-opening the departmental enquiry against the fifth respondent by the Disciplinary Authority. The Registrar of Co-operative Societies, the fourth respondent, is also directed to take appropriate action against the Special Officer for giving up the disciplinary proceedings without any justification. It is made clear that either in the disciplinary proceedings against the fifth respondent or in any action to be taken against the Special Officer, the appropriate authority shall proceed in accordance with law and on the merits of the materials available before them independently without being influenced by any of the observations contained in this order. The observations against the fifth respondent are made in the context of findings rendered against him which had not been found against by any competent authority. The merits of the charges have to be independently considered by the appropriate authority while reconsidering the charges against the petitioner.

19. The writ petition is allowed subject to the above observations. No costs. Connected W.P.M.P. is closed as unnecessary.