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**(2002) 04 MAD CK 0018**  
**In the Madras High Court**  
**Case No : Writ Petition No. 1729 of 1996**

S. Sebastian

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

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**Date of Decision :** 24-04-2002

**Acts Referred:**

**Citation :** (2002) 04 MAD CK 0018

**Hon'ble Judges :** K. Gnanaprakasam, J

**Bench :** Single Bench

**Advocate :** D. Peter Francis, for the Appellant; R. Chandrasekaran, G.A. and P. SRinivas, for the Respondent

**Final Decision :** Allowed

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## Judgement

K. Gnanaprakasam, J.—The petitioner has filed this writ for the issue of a writ of mandamus to reinstate him in service in the second

respondent bank for the post of senior clerk and to pay the backwages.

2. The petitioner was appointed as an approved writer by the proceedings of the second respondent dated 17.4.1975. Subsequent to the same,

the petitioner was working in Aaranaiyur Agricultural Co-operative Society and he was dismissed from service 10.5.1977 as there was a shortage

in the stocks of fertilizers. A criminal prosecution was launched against the petitioner and the President and the Magistrate Court, Devakottai

convicted the petitioner and on appeal in C.A.84/99 before the Additional Sessions Court, Devakottai, the petitioner was acquitted by the

judgment dated 16.7.1980 on merits. Pursuant to his acquittal, the petitioner sent letters to the second respondent requesting to reinstate him in

service for which the second respondent sent a reply stating that he must seek

employment in the Society where he was working at the time of his dismissal from service. As the petitioner was not reinstated, he has filed the above writ petition.

3.The second respondent has filed a counter affidavit wherein it was stated that the petitioner was working in Aranaiyur Agricultural Co-operative

Society at the time of his dismissal from service. The petitioner was receiving his salary and other allowances from the said Society. After

Cooperative Training, the "Approved clerk recognition" was conferred upon him. Pursuant to the offence committed by the petitioner, the

"Approved Clerk Recognition" which was conferred, was withdrawn on the basis of the charges framed against him. After acquittal, the petitioner

ought to have approached the Aranaiyur Agricultural Co-operative Society, where he was previously employed. But, he did not do so. The

petitioner ought not to have joined the Jaggery Society and therefore, the petition is liable to be dismissed.

4.Heard both sides.

5.Learned counsel appearing for the petitioner would contend that by the proceedings of the second respondent dated 17.04.1975, the petitioner

was appointed as an Approved Writer in the Society in the scale of Rs.113/- as salary and Rs.12/- as Dearness Allowance. It is also further stated

that the order of appointment would be issued on payment of Rs.250/- as deposit and on production of two conduct certificates by the petitioner.

Pursuant to the same, he was appointed as Secretary in Araniai Agricultural Co-operative Society and he was dismissed from service by the

proceedings dated 10.5.77 of the Special Officer of the Society. Though the trial Court convicted for the offence charged against him, the

Appellate Court acquitted him and therefore, the petitioner is entitled to reinstatement with backwages.

6.Learned counsel for the respondent would submit that the proceedings dated 17.4.75 is not an order of appointment and in the proceedings

passed by the second respondent, it is very clearly stated that the petitioner will not be considered as an employee of the second respondent. It is

also pointed out in the said proceedings that the appointment order would be issued after making a deposit of Rs.250/- and also on production of

two conduct certificates. As the petitioner was involved in misappropriation , a

show cause notice was issued and the petitioner had given a reply on 14.4.1977. As the said reply was not satisfactory, the Special Officer of the second respondent by his proceedings dated 10.5.1977 had withdrawn the recognition given to the petitioner as an approved Writer given on 17.4.1975. It is stated that the petitioner was never employed by the second respondent and therefore, the petitioner is not entitled for reinstatement with the second respondent. What was given under the proceedings dated 17.4.75, was only a recognition to work as a recognised clerk and it was also in the nature of licence granted to the petitioner as he had passed the Cooperative Supervisory Training. As the petitioner was involved in certain offence, the recognition given to him was withdrawn by the proceedings dated 10.5.77. Even otherwise, if the petitioner should have approached the Aranaiyur Cooperative Society from where he was dismissed from service, for reinstatement after having got acquittal in the criminal case. But, however, the petitioner got an employment in Ramnad-P.M. District Jaggery Producers Cooperative Marketing Federation, Ramnad. As the petitioner had chosen to get an employment elsewhere on his own accord, he is not entitled for reinstatement.

7. But the proceedings dated 17.4.75, the second respondent had recognised the petitioner as an approved clerk in the Cooperative Department.

Though two sentences in the said proceedings dated 17.4.75 states that:

m";fPfhuk; bgw;w vGj;jh;fshf Tl;Lw[t[ !jhgd";fs[[py; gzp g[hptjw;F mog;ggilr;rk;gsk; :U113-? fpuhf;fp;ggo :U 12/-/ ;k Mf bkhj;jk; :U125-? Vd;w tpfpj;jpy; epakdk; bra;ag;gLfpwhh;fs;./ ,th;fs; t";fpapd; nritapYs;sth;fshf fUjg;ggl khl;lhh;fs;.

It would not by itself to be construed as an order of appointment. That in the said proceedings, it is made clear that this proceedings will not be considered as the appointment order of the second respondent. In fact, in the foot of the order it is stated that the order of the appointment would be issued to the petitioner on deposit of Rs.250/- and also on production of two conduct certificates. This would clearly go to show that the proceedings dated 17.5.75 was not an order of appointment by itself. It was only a grant of recognition to the petitioner to work as a recognised clerk in the Cooperative Department and nothing more. That is why, in the proceedings dated 10.4.75, the second respondent had also stated that

the recognition given to the petitioner was cancelled. But, pursuant to the proceedings dated 17.4.75, the petitioner was appointed as a

recognised clerk in Aranaiyur Agricultural Cooperative Society where he has committed misappropriation along with the President. Criminal

proceedings initiated against the petitioner, though warranted conviction by the Trial Court, ended in acquittal by the Appellate Court.

8. Learned advocate for the petitioner has submitted that when once the criminal proceedings ended in acquittal, he is entitled for reinstatement. He

also relied upon the decision reported in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, wherein in para 34 the Apex Court

held as hereunder:

As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts namely, "the raid conducted at

the appellant's residence and recovery of incriminating articles therefrom." The findings recorded by the Inquiry Officer, a copy of which has been

placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who

had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry

Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were

examined in the criminal case but the Court, on consideration of the entire evidence, came to the conclusion that no search was conducted nor was

any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this

situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the

appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental

proceedings, to stand.

Though the second respondent was not satisfied with the explanation given by the petitioner and withdrew the recognition granted to the petitioner

on the basis of the charges levelled against him, when once criminal proceedings ended in acquittal, it is needless to say that the petitioner is entitled

to have the recognition that has been withdrawn by the second respondent by

the proceedings dated 10.5.77.

9.Learned counsel for the petitioner has submitted that he is entitled to backwages from the date of withdrawal of the recognition i.e.10.5.77 till

21.5.1982 on which date he joined duty in some other Society. But it is seen from the proceedings dated 5.5.82, produced by the petitioner

himself that he was gainfully employed in some other Society and he joined duty in the said Society on 21.5.1982. In view of the fact that he joined

duty in some other Society, I am not inclined to admit the claim of the petitioner. Soon after the acquittal, the petitioner had not chosen to approach

the Society where he was employed previously but whereas he has approached the second respondent and the respondent also replied stating that

he has to approach the Society where he was employed. Instead of doing so, the petitioner has chosen to seek his own employment elsewhere and

got employment in some other Society and in the said circumstances, the petitioner is not entitled for backwages as claimed by him. But however,

this will not come in his way from being reinstated in the Society where he was employed.

10.In the result, the writ petition is allowed to the extent that the second respondent is hereby directed to reinstate the petitioner in Arania

Agricultural Cooperative Society within eight weeks from the date of receipt of a copy of this order, where he was employed at the time of

withdrawal of recognition by the second respondent. I made it clear that the petitioner is neither entitled for backwages nor for any other attendant

benefits and his appointment would be treated as a fresh entrant on and from when he joins the duty. No costs. Consequently,W.M.P.2652/1996

is closed.