

(2007) 12 MAD CK 0017

In the Madras High Court

Case No : W.A. No. 2500 of 2002 and W.A.M.P. No. 4901 of 2002

Special Officer, Ramanathapuram District Co-operative
Central Bank Limited

APPELLANT

Vs

S. Sebastian and The State of Tamil Nadu

RESPONDENT

Date of Decision : 13-12-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 12 MAD CK 0017

Hon'ble Judges : S.J. Mukhopadhaya, J;M. Venugopal, J

Bench : Division Bench

Advocate : S. Janardhanan, for P. Srinivas, for the Appellant; K. Balasubramanian, Spl. Govt. Pleader, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The appellant-Ramanathapuram District Co-operative Central Bank Limited (hereinafter referred to as "Co-

operative Bank) preferred this appeal against the judgment dated 24th April, 2002 passed by the learned single Judge in W.P. No.1729 of 1996.

In the said order, learned Judge directed the appellant to reinstate the first respondent/writ petitioner in Araniel Agricultural Co-operative Society

in order to give such appointment as fresh entrant on and from the date of rejoining. No backwages was allowed.

2. The first respondent preferred the writ petition for his reinstatement on the ground that he has been acquitted in the criminal case. According to

him, he was appointed on 17th April, 1975 as an Approved Writer in the appellant-Co-operative Bank on a basic salary of Rs. 113/- and

dearness allowance of Rs. 12/- viz. on a pay of Rs. 125/- along with 20 persons. He was the fourth person in the appointment order and he was

deputed to Pattamangalam Agricultural Co-operative Credit Society in Tirupattur Taluk. On 7th October, 1976, he was transferred from

Pattamangalam Agricultural Co-operative Society to Aranaiyur Agricultural Co-operative Credit Society by the appellant-Co-operative Bank.

3. While he was functioning in the said Society, he was discharged from service on 10th May, 1977 on the ground that he was accomplice to the

President in the shortage of fertilizer to the extent of Rs. 28,541.30. The aforesaid order of discharge was passed without any enquiry except

calling upon him to submit his explanation. He denied his involvement but still without any enquiry he was discharged.

4. The first respondent accepted that he was prosecuted in a criminal case by the Magistrate Court, Devakottai. He took up the matter by way of

an appeal to the Additional Sessions Court, Madurai in C.A. Nos. 81 and 84 of 1979 and the learned Additional Sessions Judge, Madurai, by his

judgment dated 16th July, 1980, acquitted him from the offence and convicted the President. The acquittal of the first respondent was on merit.

5. The petition was opposed by the Co-operative Bank on different counts. Similar plea is taken up before this Court. According to the appellant-

Co-operative Bank, the writ petition was not maintainable against the Co-operative Society as the issue cannot be decided under Article 226 of

the Constitution of India. Learned Counsel relied on a Full Bench decision of this Court in K. Marappan Vs. The Deputy Registrar of Co-

operative Societies and The Special Officer, Vattur Co-operative Agricultural Bank, and submitted that the first respondent was never appointed

as an employee of the Co-operative Bank, but was approved as ""Recognized Writer"" to perform the duty of Writer in the Co-operative Society

for which certain wages were fixed. Learned Counsel placed reliance on letter No. Na.Ka. 4734/74-7 No. 1 dated 17th April, 1975 to suggest

that it was not a letter of appointment in the service of the Co-operative Bank, but was an approval of recognised Writer to perform certain jobs in

different Co-operative Societies. Further, according to him, the approval granted was merely de-recognised, when an order was issued in the year

1982. He was working in other Co-operative Society since 20th May, 1982. Initially he worked in Aranaiyur Agricultural Co-operative Society

and thereafter transferred to Jaggery Producers Co-operative Marketing Federation, Ramnad, but those Societies were not impleaded as party

respondents to the writ petition.

6. The counter affidavit has been filed by the first respondent-S. Sebastian, wherein he has reiterated that he was appointed on 17th April, 1975.

But from the letter dated 17th April, 1975, the indication was that of Recognised Writer. From the said counter affidavit, we find that the first

respondent was discharged from service on 10th May, 1977 and was subsequently acquitted by the Addl. Sessions Court on 16th July, 1980.

Though the acquittal was made in 1980, it has not been made clear as to why the writ petition was preferred after 16 years in 1996. Admittedly,

even if it is accepted that the first respondent was in service of the appellant-Co-operative Bank, but having accepted that he was discharged from

service on 10th May, 1977, we are of the view that no order of reinstatement could have been passed without setting aside the order of discharge

on merits.

7. From the impugned judgment dated 24th April, 2002, it is evident that learned single Judge failed to decide whether in the absence of an order

of discharge, a remedy of reinstatement could be allowed in favour of the first respondent. The Court passed the order without due consideration

of facts that the order of discharge was not in challenge and also failed to appreciate that mere acquittal in a criminal case automatically cannot

render an order of discharge illegal till it is shown that the order of discharge was passed in view of the conviction for the same set of charges and

allegations.

8. Further, we also notice that the learned single Judge failed to make a distinction between the reinstatement and fresh appointment; though in the

substantive portion of the judgment, it is mentioned as an order of reinstatement of the first respondent, it was made clear that reinstatement will

account to fresh appointment. We observe that this Court, under Article 226 of the Constitution of India, has no jurisdiction to direct the Authority

to give fresh appointment to the person though in an appropriate case it can order reinstatement in service as distinct from fresh appointment. We

accordingly set aside the judgment passed in W.P. No. 2500 of 2002 and allow the writ appeal. In the facts and circumstances of the case, there

shall be no order as to costs.