



C.R.P.(MD)No.2422 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 25/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.2422 of 2023

and

CMP (MD) No.12544 of 2023

G.Balasubramanian : Revision Petitioner/
Appellant

Vs.

1.The Special Officer,
G.508.Mamsapuram Primary Agricultural
Cooperative Bank Limited,
Mamsapuram,
Srivilliputhur Taluk,
Virudhunagar District-626 110.

2.The Deputy Registrar of Co-operative,
Office of the Deputy Registrar,
Srivilliputhur,
Virudhunagar District-626 125. : Respondents/
Respondents

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the judgment and decree passed in CMA(CS)No.8 of 2008 on the file of the Principal District and Sessions Judge, Virudhu Nagar at Srivilliputhur, dated 22/12/2022 and pass such order orders.

For Petitioner : Mr.C.M.Mari Chelliah Prabhu

For Respondents : Mr.J.Ashok
Additional Government Pleader



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O R D E R

WEB COPY This civil revision petition has been filed seeking to set aside the judgment and decree, dated 22/12/2022 passed in CMA(CS)No.8 of 2008 by the Principal District and Sessions Judge, Virudhunagar at Srivilliputhur.

2.The facts in brief:-

There was misappropriation of money in the 1st respondent Society called '0.508 Mansapuram Primary Agricultural Cooperative Society' during the period 1992-2006. Preliminary enquiry was made. Thereafter, enquiry under section 81 of the Tamil Nadu Cooperative Society was also conducted. Report was also submitted, on 08/03/2006. Based upon the orders passed under section 87(1) of the Tamil Nadu Cooperative Societies Act, a surcharge notice was issued, on 10/12/2007. The order was passed by the second respondent. Against which, petitioner filed appeal before the Principal District Judge, Srivilliputhur in CMA(CS)No.8 of 2008. That was dismissed.

3.Against which, this civil revision petition is preferred on the ground that the Principal District Judge, Srivilliputhur did not consider the fact that opportunity was not given to the petitioner during the



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enquiry process. He is only a temporary employee, did not take part in the day today affairs of the Society. Since the misappropriation took place in respect of the Savings Bank Account, over which, no duty is cast upon him, he is not liable to pay any surcharge proceedings.

4.Heard both sides.

5.By resolution, dated 02/01/1996, this petitioner was temporarily appointed on consolidated pay of Rs.900/- as Clerk. When he was acting as an Assistant Clerk, it was found that there was mismanagement and misappropriation of the Society fund. So, as per the procedures under section 81 of the Tamil Nadu Cooperative Societies Act, recommendation was made to initiate proceedings under section 87 of the Act stating that a total amount of Rs.14,39,700/- was misappropriated and proceedings were initiated and enquiry was also conducted. During the enquiry process, this petitioner did not appear, so also the other persons. A request was made by the petitioner to supply the documents and enquiry report under section 81 of the Act.

6.In response to the above said request, that was made by the petitioner and others, again notice was



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issued. This petitioner received the notice, on 13/01/2008. Again, this petitioner stated that he is affected by viral fever, so he could not attend the enquiry process. Again, notice was issued to the petitioner and others. It was received by the wife of the petitioner. On 29/02/2008, this petitioner appeared before the Enquiry Officer and again, requested to supply certain documents. The Enquiry Officer found that in-spite of repeated adjournments and opportunity, the petitioner and others purposely dragging on the matter. So, it was taken, on 29/02/2008 for passing final orders. Finding was recorded by the Enquiry Officer against all the officials. So far as this petitioner is concerned, the duty was cast upon him to maintain proper accounts for the daily cash movement and issuance of receipts. So, it was found that in respect of Savings Accounts, no proper entries were made with regard to the debit. The Account-Holders also appeared before the Enquiry Officer and gave statement that they did not withdraw the amount from their respective accounts. They also denying their signatures in the vouchers. Fake disbursement receipts were created, in which, this petitioner also made his initial. So, by that way, a sum of Rs.2,06,800/- were misappropriated by the staff namely Kavin, this petitioner and Seetha and Ramasamy. In such a way,



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innocents of several accounts also. Finding has been recorded as detailed in the report. Finally, order was passed directing the petitioner and others to pay the money jointly and severally as detailed in the order.

7. Against which, the petitioner filed CMSA(CS)No.8 of 2022 before the Principal District Judge, Virudhunagar. That was dismissed, on 23/06/2015. Against which, he filed CRP(MD)No.2456 of 2015 before this court. At that time, it was submitted that the Cooperative Tribunal did not consider the pleadings and evidence independently. It simply recorded the findings rendered by the District Registrar of Cooperative Societies, Srivilliputhur. The finding of this court runs as under:-

"6. A perusal of the order of the co-operative tribunal indicates that the entire order of the original authority has been extracted up to paragraph number 27. Thereafter, from paragraph number 28 and 29, without independently considering the contentions of the revision petitioner and without analysing the grounds raised by the revision petitioner, the



co-operative tribunal has simply dismissed the appeal with a finding that there is no reason to allow the appeal. A perusal of the impugned order of the co-operative tribunal will clearly indicate that the co-operative tribunal has not considered the grounds of appeal and the submissions made during the hearing of the appeal, but has simply been carried away by the findings of the second respondent herein."

8.After recording the above said findings, the matter is remitted back to the Cooperative Tribunal. Thereafter, again the matter was taken up by the Tribunal, in which, the impugned order is passed.

9.Against which, this civil revision petition is preferred.

10.The learned counsel appearing for the petitioner would reiterate the very same allegations to the effect that even after remand, the Cooperative Tribunal has not undertaken any independent enquiry, he has simply recorded the very same finding and dismissed the appeal.



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11.It is also submitted by him that he was only a temporary employee, did not do the day today affairs of the Society. No duties and responsibilities were also imposed upon him. During enquiry, again, they did not provide sufficient documents. But it is admitted by the petitioner that he was appointed as temporary staff by resolution, dated 02/01/1996. Thereafter, he discharged his duty as a Clerk. Regarding the duties and responsibilities, the relevant portion may be extracted:-

“திரு.ஜி.பாலசுப்பிரமணியன், காசாளர்
(தற்காலிக பணநீக்கம்).

வங்கி தனி அலுவலர் தீர்மானம்
(பக்கம் 62) எண்.2 நாள் 2.1.96 முதல் ஒட்டு
மொத்த சம்பள அடிப்படையில் எழுத்தராக
நியமம் செய்யப்பட்டுள்ளார்.

இவருக்கு தனி அலுவலர் தீர்மானம்
(பக்கம் 123, 124) எண் 2 நாள் 3.1.2002ன்படி
பின்வரும் கடமையும், பொறுப்பும்
நிர்ணயிக்கப்பட்டுள்ளன.

1)ரொக்க இருப்பிற்கு பொறுப்பு, தினசரி
வரவு செலவு முடித்து ரொக்க இருப்பை
பாதுகாப்பு பெட்டகத்தில் வைக்க வேண்டும்.

2)ரொக்க ரசீது போட்ட விபரம்
செயலாளருக்கு தெரிவிக்க வேண்டும்.



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கடமையும் பொறுப்பும் நகல் பெற்றுக்
கொண்டதற்கு தீர்மானப் புத்தகம் பக்கம்
123ல் கையொப்பம் இட்டு ஒப்புதல்
வழங்கியுள்ளார்.

இவர் பற்று சீட்டுகளில் பணம்
வழங்கியதற்கு காசாளர் என்ற வகையில்
கையொப்பம் செய்தும், ரொக்க சீட்டையினை
எழுதி பராமரித்தும் வந்து காசாளர்
பணியினை செய்து வந்துள்ளார்.”

12.Reading of the above said does indicate that the petitioner discharged the duties of the Clerk and at that time, he was imposed with the duties and responsibilities as noted above. Even though, he was a temporary employee, he has discharged the functions of the permanent employee. So, the duties and responsibilities as called, for assigning to the permanent employee, he is maintaining the day today accounts, cash accounts, making initial in the withdrawn vouchers and disbursement account was also maintained by him. So, these things cannot be denied and disputed now at this revisional stage.

13.Reading of the order passed by the District Registrar does indicate that several opportunities were given to the petitioner. Apart from that, he was very



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particular in evading the enquiry, repeatedly getting adjournments. So, this conduct on the part of the petitioner also indicates that he was not cooperating in concluding the enquiry process now. He cannot take advantage his own wrong stating that no opportunity was given to him and no document was also furnished to him at the enquiry stage. This court cannot take this exercise for re-appreciating the finding of the Enquiry Officer. In the statement given by the petitioner before the Enquiry Officer. The extracted portion does indicate that he was imposed the duty upon maintaining cash receipts and vouchers, credit particulars and day today cash accounts, etc. He has also the Distributing Officer for withdrawal from the accounts. He also made initials in the pay slips. He made allegation against the Secretary namely Ramasamy and so dare enough to say that amounts were withdrawn from the accounts for the purpose of meeting out some other expenses at the instance of the Secretary Ramasamy. He is dare enough to say that such sort of misappropriation was the regular affair even before the date of his appointment. So, reading of the statement shows that he was also a party to the misappropriation.



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14. When there is a clear admission on the part of the petitioner in the statement that misappropriation took place and he was compelled to be a party to the misappropriation by the Secretary, when this being the position and statement, I find that it is an abuse of process of law to say that no opportunity was given and no document was furnished to him, the appellate court was carried away the Enquiry Report are all not available to the petitioner.

15. In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

25/03/2024

Index: Yes/No
Internet: Yes/No
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To,

- 1.The Principal District Judge,
Virudhunagar @ Srivilliputhur.
- 2..The Special Officer,
G.508.Mamsapuram Primary Agricultural
Cooperative Bank Limited,
Mamsapuram,
Srivilliputhur Taluk,
Virudhunagar District-626 110.
- 3.The Deputy Registrar of Co-operative,
Office of the Deputy Registrar,
Srivilliputhur,
Virudhunagar District-626 125.
- 4.The Section Officer,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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