HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.7474 OF 2010

ORDER:

The Writ Petition is filed challenging the order dated 07.09.2009 in C.T.A.No.14 of 2007 passed by the A.P. Cooperative Tribunal at Warangal (in short "the Tribunal").

The petitioner is the Paid Secretary of the Primary Agricultural Cooperative Society, Gundrathi Madugu. In the process of enquiry, petitioner was found to have misappropriated a sum of Rs.1,24,470/- (Special Audit Report for 1998-99 recoveries of Rs.77,751/-, Suspense payable of 9742/- and Less Cash Balance of Rs.36,977/-). Surcharge proceedings dated 22.12.2006 were issued and after a detailed enquiry conducted, the petitioner was fastened with a liability vide orders dated 20.04.2007 of the 1st respondent-Deputy Registrar of Co-operative Societies, Mahabubnagar. Challenging the same petitioner approached the Tribunal and filed an appeal under Section 76 (i) of A.P. Cooperative Societies Act (in short "the Act"). The Tribunal also confirmed the surcharge proceedings of the 1st respondent. The Writ Petition is filed challenging the order of the Tribunal on the ground that during the enquiry he was not given adequate opportunity to inspect the books of accounts and also special report prepared and furnished by the Senior Inspector / Auditor and he had categorically raised these grounds before the Tribunal, but the same were not considered in a proper perspective.

A detailed counter affidavit has been filed denying the allegations and specifically adverting to the facts of the case.

Heard the learned counsel for the petitioner and the learned Government Pleader.

In the counter affidavit it has been categorically stated that in spite of the fact that several notices were issued to the petitioner, petitioner did not choose to attend the enquiry and as a matter of fact, petitioner himself had admitted his guilt by submitting his explanation to the surcharge notices dated 07.11.2006 and 27.11.2006. No reply affidavit as such was filed disputing the same. Further, the Tribunal had occasion to peruse the statements made by the petitioner along with ledger and cash book coupled with the statements of witnesses, gave a finding that the petitioner has collected amounts from the members of the Society without passing receipts and retained the said amount with him without depositing the same in the Society or in the Society's Bank account. It is only on detection of the same during the audit, the petitioner with a *mala fide* intention came up with a theory of adjustment of his salary arrears and tried to make adjustments in the cash book as if he was entitled to get the salary arrears. During the course of the trial, the Tribunal also found that the petitioner was not authorised by the competent authority to retain monies and for making the book adjustments. Virtually, these are all finding facts and also placed before the Enquiry Officer, which came to be confirmed by the Tribunal. Except making vague allegation, there is no material placed by the petitioner to support the plea that he was not given adequate opportunity and further there is no contention raised by the petitioner that either the Enquiry Officer or the Tribunal lacked the jurisdiction. On contrary, the very order of the Tribunal reveals that petitioner had in fact admitted his misdeed and agreed to repay the money. In that view of the matter, the finding of facts as recorded by the primary authority and confirmed by the Tribunal, does not warrant any interference of this Court in exercise of the jurisdiction under Article 226 of the Constitution of India. Accordingly, the writ petition is liable to be dismissed.

The Writ Petition is dismissed accordingly. However, if any amounts are due to the petitioner after adjusting the money, which are recoverable from the petitioner, the same shall be paid to him within 8 weeks from the date of receipt of this order.

There shall be no order as to costs. Miscellaneous petitioner, if any, pending shall also stand dismissed.

CHALLA KODANDA RAM, J

Dated: 30.11.2015
Ssv