

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-08-2017

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.21441 of 2017

And

W.M.P.Nos.22423 and 22424 of 2017

S.V.Kandasamy

.. Petitioner

vs.

1.The Director of Handlooms and Textiles,
II Floor,
Kuralagam,
Chennai-108.

2.The Deputy Director of Handlooms and Textiles,
Kancheepuram,
Kancheepuram District.

.. Respondents

This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records of the first respondent issued in Na.Ka.No.3855/2013/H1-1 dated 7.7.2017 and quash the same in so far as the petitioner is concerned

For Petitioner :Mr.P.Chandrasekaran

For Respondents:Mr.L.P.Shanmugasundaram,
Special Government Pleader (Co-op.)

O R D E R

The memo dated 7.7.2017 issued by the first respondent is under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner contended that the writ petitioner has joined in the post of Junior Technical Assistant in the Office of the Director Handlooms and Textiles and thereafter promoted to the post of Senior Technical Assistant and further promoted to the post of Assistant Director in the year 1999 and posted at Meenakshipettai Handloom Weavers Co-operative Society, Cuddalore.

3. By virtue of his service, he was further promoted to the post of Deputy Director and posted at Thirubuvanam Silk Handloom Weavers Co-operative Society, Kumbakonam and on

27.2.2014, he was promoted to the post of Joint Director (Handlooms) and posted at the Office of the Director of Handlooms and Textiles, Chennai. The writ petitioner was allowed to retire from service on 30.6.2015 on attaining his age of superannuation. The learned counsel for the writ petitioner stated that the writ petitioner has got an unblemished record of service throughout his career.

4. The learned counsel appearing for the writ petitioner contended that there was an enquiry conducted with regard to the allegations set out in the impugned memo dated 7.7.2017 and an enquiry was conducted by the Handloom Officer under Section 81 of the Tamil Nadu Co-operative Societies Act and he has stated that the writ petitioner is not responsible for any of the irregularities. Therefore, any further action and investigation will be a harassment to the writ petitioner. Further, the writ petitioner was already retired from service and he should not be subjected to any further enquiry in this regard.

5. The Enquiry Report states that there is no documentary evidences to show that the writ petitioner has got any direct involvement with regard to the alleged irregularities cited in the impugned memo dated 7.7.2017. Relying on the said report, the learned counsel appearing for the writ petitioner strenuously contended that the said report has not relied upon by the respondent and they have unnecessarily impleaded the writ petitioner in the memo and an action was sought to be initiated by the Commercial Crime Investigation Wing (CCIW) in this regard.

6. This Court is of the opinion that the impugned memo will not provide a cause by the writ petitioner to move this writ petition at this stage. The impugned memo states that an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, was conducted and it was found that there is a huge loss of Rs.4,91,92,285.12 for the Kancheepuram-Thiruvallur Silk Handloom Weavers Co-operative Production and Sale Society Ltd. The loss occurred on account of the irregularities committed by the employees and an enquiry under Section 81 was issued and on receipt of the statutory enquiry report, submitted under Section 81 of the Tamil Nadu Co-operative Societies Act, it was found that there is a huge loss as cited supra.

7. Under these circumstances, it is necessary to initiate further action under the provisions of the Tamil Nadu Co-operative Societies Act, based on the report submitted under Section 81 of the Tamil Nadu Co-operative Societies Act.

8. Section 81 of the Tamil Nadu Co-operative Societies Act, deals with the enquiry. The Registrar may, of his own motion and shall, on the application of a majority of the board or of not less than one-third of the members or one the request of the financing bank or of the District Collector, hold an inquiry, or direct some person authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financing condition of a registered society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice, or mismanagement in relation to that society or into any particular aspect of the working of that society.

9. Accordingly, the Registrar is empowered to order for an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. Pursuant to the enquiry report, the Registrar has to apply his mind and find out the nature of the findings in the report and thereafter initiate action under Section 81 of the Act.

10. Section 87 deals with surcharge proceedings and the procedures are contemplated to initiate surcharge proceedings under Section 87 of the Act. If surcharge proceedings are initiated under Section 87 of the Act, then there is an appeal before the Co-operative Tribunal under Section 152 of the Tamil Nadu Co-operative Societies Act. Section 152 deals with appeal which states that any decision or award passed or order made or proceedings taken under sub-section (1) of section 87, sub-section (2), sub-section (3) or sub-section (4) of section 90 and Section 118, Section 119, Section 143, Section 144 or Section 167, appeal lies before the Co-operative Tribunal constituted under Section 151 of the Tamil Nadu Co-operative Societies Act.

11. Section 164 deals with cognizance of offences and Section 164-A deals with other provisions of law not barred. Section 164-A stipulates that "any action taken against any person under this Act shall not affect, and shall be in addition to, any other proceedings by way of investigation or otherwise which might apart from this Act be instituted against him".

12. The memo impugned in this writ petition dated 7.7.2017 merely states that the action to be initiated under Section 164-A and a further instructions are issued to the Deputy Director of Handlooms and Textiles, Kancheepuram to file a complaint against all the persons who served during the relevant period of time in relation to the huge irregularities the Co-operative Society. Thus, on finding a

prima facie materials on record, pursuant to the enquiry report submitted under Section 81 of the Tamil Nadu Co-operative Societies Act, the Director issued instructions to the Deputy Director of Handlooms and Textiles, Kancheepuram to initiate action to file a complaint before the Commercial Crime Investigation Wing, Kancheepuram, so as to conduct an investigation under the Criminal Law.

13. Thus, this Court is of the opinion that the impugned memo dated 7.7.2017 is an instruction given by the Director to the Deputy Director to initiate action against all the officials worked during the relevant point of time in the said Society wherein huge irregularities were alleged to have been committed by the officials.

14. A mere providing of instruction to the Subordinate Officer to initiate appropriate action under law, will not provide a cause of action for the writ petitioner to file a writ petition. As on today, the writ petitioner is unable to establish that any action was initiated against him nor an order was passed against him. No employee or a retired employee has any locus standi to question the administrative instructions issued by the Director to the Deputy Director. Such an internal instruction shared between the Department will not provide a cause for moving this Court under Article 226 of the Constitution of India because this Court is of the view that wherever irregularity is found and wherever there is an allegation of misappropriation or loss to the public institution, it is the duty of the officials to initiate appropriate action for investigation and proceed with the matter to find out the truth behind the issue and all the persons involved or committed irregularities are to be prosecuted under the law and such monetary losses to be recovered under the Act.

15. The Constitutional Courts are to be cautious while entertaining such internal memos issued/shared between the Department Officials because based on the instructions, this Court cannot come to a conclusion that who are all responsible persons for the alleged irregularities/losses to the public institutions, prima facie materials are sufficient to initiate appropriate action against the public officials.

16. A memo like that of the present memo, which is under challenge can be entertained only under exceptional circumstances and cannot be entertained in a routine manner. If the memo is interfered by this Court, certainly it will cause greater inconvenience for the public administration to initiate appropriate action on the allegations against the public officials.

17. In the case on hand, the alleged loss to the said Society is running to the tune of Rs. 4,91,92,285.12 and this cannot deal with this issue in a casual manner against the authorities. The Director, based on the report submitted under Section 81 of the Tamil Nadu Co-operative Societies Act, rightly instructed the Deputy Director to initiate action for registration of a complaint before the Commercial Crime Investigation Wing, Kancheepuram.

18. The law is set in motion in this case and the writ petitioner, at this stage, cannot be construed as an aggrieved person, warranting interference of this Court under Article 226 of the Constitution of India. It is for the writ petitioner to participate in the investigation if he is called for and to submit his depositions/statements to defend him, if he is directed to do so. Instead he has filed this writ petition, seeking exoneration in totality which cannot be extended by this Court at this point of time at this stage. It is for the writ petitioner to appear before the appropriate Competent Authority if he is called for to submit his explanations and not otherwise.

19. Accordingly, the writ petition is premature and the writ petitioner cannot be considered as an aggrieved person at this point of time, since no action under law has been taken against him as of today and the writ petition is devoid of merits and it stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

Svn

To

1.The Director of Handlooms and Textiles,
II Floor,
Kuralagam,
Chennai-108.

2.The Deputy Director of Handlooms and Textiles,
Kancheepuram,
Kancheepuram District.

+lcc to Mr.P.Chandrasekaran,Advocate sr.58490
+lcc to the Government Pleader sr.58504

WP No.21441 of 2017