

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No.9154 of 2013

and

M.P. No.2 of 2013

K.Rathinam

.. Petitioner

Vs

- 1.The Presiding Officer,
Co-operative Tribunal/District Judge,
Vellore District, Vellore.
2. The Deputy Registrar of
Co-operative Societies,
Thirupattur,
Vellore District.
3. The Special Officer/Secretary,
Veerachettipalli,
Primary Agricultural Co-operative bank,
Veerachettipalli Village,
Gudiyatham Taluk,
Vellore District.
4. Thajudeen

.. Respondents

PRAYER : This Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the entire records in respect of the order passed by the second respondent dated 08.04.2008 in Tha.Thi No.7/2005-2006 Sa.Pa which was confirmed by the 1st respondent in C.T.A. No.18/2008 dated 30.10.2012 and quash the same and pass such other orders.

For Petitioner :Mr.D.Rajagopal

For Respondents:Mr.V.Selvaraj,
Additional Government Pleader for R1 & R2

Mr.P.S.Sivashanmuga Sundaram,
Special Government Pleader for R3.

Mr. N. Manokaran for R4.

O R D E R

This Writ Petition has been filed, seeking to quash the order passed by the second respondent dated 08.04.2008 in Tha.Thi No.7/2005-2006 Sa.Pa which was confirmed by the 1st respondent in C.T.A. No.18/2008 dated 30.10.2012.

2. The learned counsel appearing for the petitioner submits that the petitioner was working as an Assistant Secretary in C.2446 Veerachettipalayam Primary Agricultural Co-operative Marketing Society. Whiles, the second respondent ordered for an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 for the irregularities committed during issuance of loans and non recovery of the loan amount. In this regard, summons were issued to the petitioner. The enquiry was conducted and report was submitted to the 2nd respondent, without considering his request to furnish certain documents enabling him to submit a detailed explanation. According to the petitioner, under threat, he signed in the statements prepared by the enquiry officer. Based on the enquiry report, without issuing any show cause notice, under Section 87 of the Act, the 2nd respondent passed an order dated 23.08.2005, holding that the petitioner is liable to pay Rs.20,00,000/-, along with the then Secretary Thajudeen. Against the same, the Petitioner filed a Petition before this Court in W.P. No.31705 of 2005. By order dated 20.12.2007, this Court directed the petitioner submit his explanation. However, without issuing any notice and without conducting any enquiry, the second respondent passed an order on 03.04.2008 in Thanda Theerve No.7/2005-2006, holding that the petitioner has committed misappropriation of Rs.20,82,049/-. According to the petitioner, without issuing any notice for enquiry and without giving any opportunity to the petitioner, the final surcharge order has been passed by the second respondent i.e., the Deputy Registrar. Aggrieved by the said order, the petitioner filed an appeal before the Appellate Tribunal.

3. The learned counsel for the petitioner submitted that the Appellate Tribunal has dismissed the appeal, without considering the contention of the petitioner, but accepting the

submission of the 2nd respondent that the petitioner did not file his explanation within a period of two weeks from the date of receipt of a copy of the order passed by in W.P. No.31705 of 2005. The Tribunal has erred in accepting the submission of the 2nd respondent held that the appellant and the 4th respondent, Tajudeen, the Secretary of the Society, when examined, did not dispute the irregularities as well as the loss caused to the society and that the petitioner has not placed any materials before the authorities concerned to prove the dispute as bonafide. According to the petitioner, the Appellate Court has failed to consider the claim of the petitioner that he has not been furnished with the copy of the enquiry report, although he is entitled for the same, as per the principals of law settled by this Court and so the award is unsustainable by law.

4. The learned counsel appearing for the second respondent would submit that though sufficient opportunities were given to the petitioner by the concerned authorities, the petitioner has not availed the said opportunity. Hence, there is no error in the order passed by the Tribunal, against the petitioner.

5. The learned counsel appearing for the 4th respondent would submit that this Court granted time for submitting his explanation. So, the contention of the petitioner that no opportunity was given to the petitioner to submit his explanation, cannot be accepted. Subsequent to the order of this Court, the Petitioner ought to have submitted his explanation within a period of two weeks from the date of receipt of the said order and thereafter the respondents to conduct fresh enquiry. But, the petitioner has wantonly not submitted his explanation. Hence, the Writ Petition is liable to be dismissed.

6. Heard, the rival submissions of both the parties and perused the materials available on record.

7. The point for consideration before this Court is whether opportunity was granted to the petitioner, by furnishing a copy of the enquiry report to submit his explanation. The contention of the petitioner before this Court is that the 2nd respondent has not furnished the copy of the enquiry report, to submit his explanation and that no notice has been served to the petitioner before passing the impugned proceedings.

8. On perusal of the judgment passed by the Appellate Tribunal it is seen that the Tribunal has observed that the petitioner has preferred the Writ Petition No.31705 of 2005 and this Court has directed the petitioner to submit his explanation within a period of two weeks, thereof. The said

fact is not disputed by the petitioner. But, the petitioner has disputed that the authority/ second respondent has not issued notice granting time to submit his explanation before the second respondent. These facts has been raised only at the appellate stage, subsequent to the surcharge order being passed against the Petitioner. The petitioner had further submitted that the enquiry report has not been furnished. The petitioner has not furnish copy of the order passed by this Court in the earlier Writ petition. On perusal of the records, it is seen that the Tribunal had observed that the petitioner and the 4th respondent Tajudeen, Secretary of the Society, while examination, have not disputed the irregularities as well as the loss sustained by the society.

9. In the counter affidavit it is stated that the petitioner was working as an Assistant Secretary and the 4th respondent Tajudeen as Secretary of the respondent Society. During the period 16.11.2000 to 29.08.2002, as the Secretary failed to recover the loan amount with interest, to a sum of Rs.20,82,049/-. On the basis of the enquiry report, the surcharge order, under Section 87 has been passed. It is further submitted in the counter affidavit that the High court has given opportunity to the petitioner to submit his explanation before the enquiry officer but he has not submitted his explanation. Therefore, in the absence of any explanation, as the petitioner has not disputed the said irregularities and loss caused the society, the Appellate Court has rightly dismissed the appeal.

10. It is clear from the said order passed by the Appellate Tribunal, that though opportunity was given to the petitioner, he has not availed the said opportunity to submit his explanation. Further, there is no material placed before this Court to show that the petitioner has requested to furnish copy of the enquiry report, for submitting his explanation. Therefore, the prayer of the petitioner is liable to be rejected. This Court finds no error or irregularities in the judgment passed by the Tribunal and so the judgment and decree passed by the Tribunal is confirmed.

11. In view of the aforesaid contention, this Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

rkp

To

1.The Presiding Officer,
Co-operative Tribunal/District Judge,
Vellore District, Vellore.

+ 1 cc to Mr.D.Rajagopal, Advocate Sr.No.66162

+ 1 cc to Mr.L.P.Shanmuga Sundaram, Advocate Sr.No.67175

+ 1 cc to Mr.N.Manokaran, Advocate Sr.No.66301

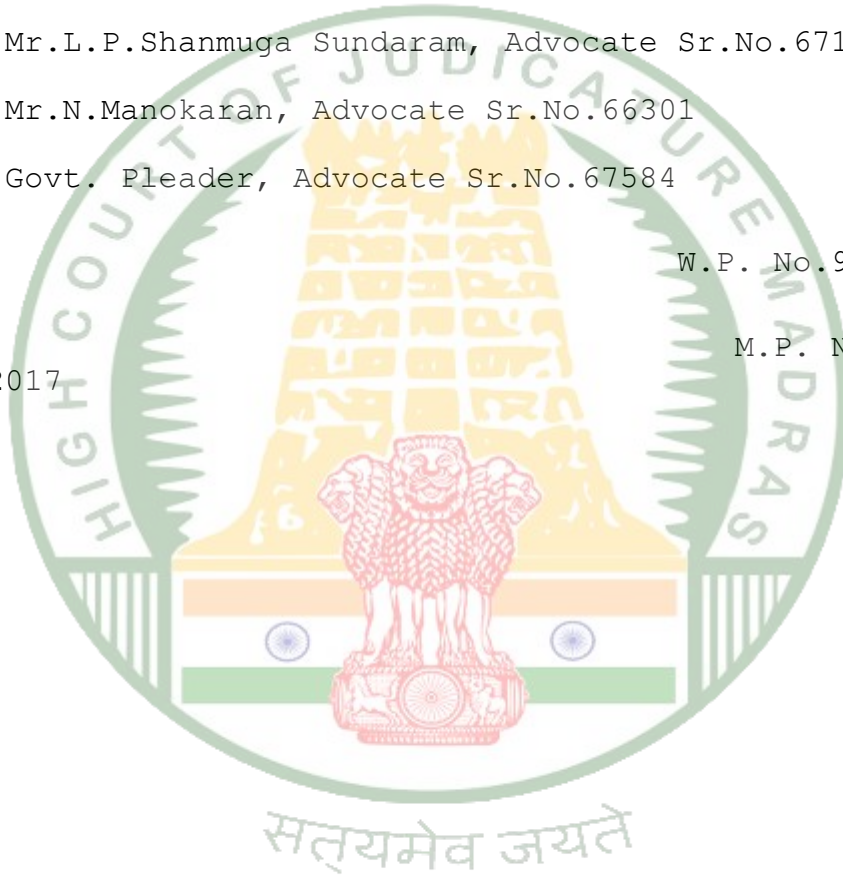
+ 1 cc to Govt. Pleader, Advocate Sr.No.67584

W.P. No.9154 of 2013

and

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RR 20/11/2017



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