

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.287 of 2010

and M.P No.2 of 2010

M.Arumugam

... PETITIONER

Vs

1. The Additional Registrar,
of Co-operative Societies
(Sales, Plan and Development)
Kilpauk, Chennai - 10.

2.The Chairman,
Common Cadre Authority /
Joint Registrar of Co-op Societies,
Villupuram Region, Villupuram,
Villupuram District.

3.The Special Officer,
Salai Agaram Primary Agricultural Co-op Credit Society,
Salai Agaram, Koliyanur Post,
Villupuram Taluk & District.

... RESPONDENTS

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.78240/2009 Sa.Pa.1, dated 17.12.2009 whereby confirming the order passed by the 2nd respondent in his proceedings No.Na.Ka.2544/09 Vae.Sae.Sa, dated 30.06.2009 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all backwages and other benefits.

For Petitioner :	Mr.C.Prakasam
For R1 & R2 :	Mr.L.P.Shanmugasundaram Special Govt. Pleader
For R3 :	No appearance.

O R D E R

Mr.C.Prakasam, learned counsel is present on behalf of the writ petitioner. Mr.L.P.Shanmugasundaram, learned Special Government Pleader is present on behalf of respondents 1 & 2 in the writ petition.

2. The second respondent has also filed Counter Affidavit dated 08.03.2011 in the main writ petition, by consent of both the learned counsel.

3. I propose to dispose of this writ petition on a short point and therefore, the main matter is taken up for disposal.

4. The matter arises under the Tamil Nadu Co-operative Societies Act, 1983. The writ petitioner was working as Secretary in Salai Agaram Primary Agricultural Co-op Credit Society, Salai Agaram, Koliyanur Post, Villupuram Taluk & District (hereinafter referred to as Society).

5. It is not in dispute that there was an enquiry that was ordered by the Deputy Registrar of Co-operative Society, Tindivanam Circle, Tindivanam. The enquiry ordered was under Section 81 of the Act. In that enquiry, documents were collected and an enquiry report was prepared as stated supra, pursuant to the order passed by the Deputy Registrar of Co-operative Society, Tindivanam Circle.

6. Based on the enquiry report dated 25.03.2008, the writ petitioner was placed under suspension, pending enquiry on 08.04.2008. Thereafter, a charge memo was slapped on the writ petitioner and the charge memo is dated 27.01.2009. In the charge memo, eight charges were framed against the writ petitioner.

7. A detailed enquiry was held by the original authority under the said Act. The original authority under the said act is the 2nd respondent in this writ petition. In other words, the original authority is the Joint Registrar of Co-operative Societies, Villupuram Region, Villupuram District. The original authority, after a detailed enquiry vide his order dated 30.06.2009, held that all the eight charges against the writ petitioner have been proved and ordered termination of the writ petitioner.

8. Aggrieved, the writ petitioner preferred a statutory revision under Section 153 of the said Act. Statutory revisional authority under the said Act is the 1st respondent herien namely the Additional Registrar of Co-operative Societies, Kilpauk, Chennai. The grounds of revision have been extracted by the revisional authority in his order. Ground (c)

in the revision petition specifically states that the writ petitioner has not been furnished with the copies of the enquiry report dated 25.03.2008 under Section 81 of the said Act.

9. Notwithstanding, the writ petitioner was not furnished with the copy of the enquiry report (Section 81 enquiry report) even pending revision. The revisional authority heard the matter and passed the order dated 17.12.2009 confirming the order of the original authority dated 30.06.2009.

10. Aggrieved by the said order, the writ petitioner has filed the instant writ petition.

11. Several grounds have been raised in the writ petition including those touching upon the merits of the matter. One of the main contentions raised by the learned counsel for the writ petitioner is that no loss has been caused to the said society but in the light of the order that I propose to pass, I am not going into the merits of the matter.

12. It cannot be disputed that Section 81 enquiry and Section 81 enquiry report dated 25.03.2008 is genesis and nucleus of the matter. The charge memo, proceedings thereafter, order of suspension, order of termination have all been passed on the basis of the Section 81 enquiry report. Therefore, there can be no two opinions about the position that the delinquent namely, the writ petitioner ought to have been furnished / favoured with a copy of Section 81 enquiry report, atleast pending revision, in the light of the fact that he has raised a specific ground in this regard, the details of which have been set out supra. Notwithstanding the above position, the 2nd respondent, in his counter affidavit dated 08.03.2011 now states that the petitioner has not insisted on furnishing the enquiry report in his explanation and therefore, he cannot say that the proceedings are vitiated. The relevant averment is in paragraph 3. That portion which is most relevant to the instant case as found in paragraph 3 of the counter affidavit is extracted and the same are as follows :

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The petitioner has not insisted to furnish a copy of the enquiry report in his explanation and hence it cannot be said that the entire procs. are violated as stated by the petitioner.

13. In the light of the rival submissions made, owing to all that have been stated supra, I am convinced that the writ petitioner has to be furnished a copy of the 81 enquiry report.

14. Therefore, the following order is passed :

(i) The impugned order of the revisional authority dated 17.12.2009 bearing Na.Ka.No.78240/2009 Sa.Pa.1 is set aside.

(ii) The impugned order of the revisional authority is set aside on the sole ground that a copy of the enquiry report under Section 81 dated 25.03.2008 has not been provided to the writ petitioner inspite of the same being raised as a specific ground of revision.

(iii) All other questions on merits touching upon the eight charges are left open.

(iv) The 2nd respondent is directed to furnish a copy of the Section 81 report dated 25.03.2008, within a period of two (2) weeks from the date of receipt of a copy of this order. Thereafter, the writ petitioner shall file a fresh revision under Section 153 of the said Act, before the revisional authority (1st respondent herein) within a period of four (4) weeks therefrom. If so filed, the 1st respondent revisional authority shall entertain the revision petition, without insisting on the limitation aspect, hear the matter elaborately within the contours of Section 153 of the Act and pass orders afresh, within a period of three (3) months from the date of the filing of the fresh revision petition.

15. The writ petition is allowed on the above terms. Parties are left to bear their respective costs. Consequently, connected Miscellaneous Petition is closed as unnecessary.

Sd/-
सत्यमेव जयते

Assistant Registrar

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Sub Assistant Registrar

rgr

To

1. The Additional Registrar,
of Co-operative Societies
(Sales, Plan and Development)
Kilpauk, Chennai - 10.

2.The Chairan,
Common Cadre Authority /
Joint Registrar of Co-op Societies,
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Villupuram District.

3.The Special Officer,
Salai Agaram Primary Agricultural Co-op Credit Society,
Salai Agaram, Koliyanur Post,
Villupuram Taluk & District.

+lcc to Mr.C. Prakasam, Advocate, S.R.No.11939
+lcc to the Government Pleader, S.R.No.12172

mv(CO)
md(07/04/2017)

W.P.No.287 of 2010



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