

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.36138 of 2003

J.Gabriel

... Petitioner

/Vs/

1.Kulasekharam primary Agricultural
Co-operative Bank Ltd., Kulasekharam,
Rep. by its President.

2.The Joint Registrar of Co-operative Societies,
Nagercoil,
Kanniyakumari District.

3.S.Samsundar, Advocate

4.J.Sahayadhas,
(Former Spl. Officer),
Co-operative Sub Registrar,
Kuruvipattukaraikkadu,
Thirpparappu Road, Kulasekaram,
Kanniyakumari District - 629 161.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the fourth respondent dated 28.02.1996 and the proceedings of the second respondent in Na.Ka.No.8733/97 Sa.Ba. Dated 23.02.1999 and to quash the same and direct the respondents to reinstate the petitioner in service.

For Petitioner : Mr.P.T.Perumal

For Respondents: Mr.A.S.Thambusamy for R1

Mr.L.P.Shanmugasundaram for R2 to R4

O R D E R

Heard the learned counsel appearing for the petitioner as well as the respondent.

2.The brief facts are as follows. The petitioner joined as a sales man in the first respondent society on 20.08.1966 and in the year 1982 he was promoted as a Secretary and he was working as Secretary of the first respondent society. The petitioner was suspended on 29.12.1993 on the allegations that the agricultural loans have been given to illusory persons and thus made huge loss to the society. Immediately after the suspension, the Deputy Registrar ordered inspection under Section 82 of the Tamil Nadu Co-operative Societies Act (In short "the Act").

3.Subsequently on 12.01.1994 the Deputy Registrar on his own motion ordered an enquiry under Section 81 of the Act, appointing the fourth respondent as Enquiry Officer. The fourth respondent conducted enquiry. However, he could not complete the enquiry within the statutory period of nine months and there was a delay of 92 days in submitting his enquiry report under Section 81 of the Act and the fourth respondent also not complied with the provisions of Rule 104(6) (a), Rule 104(7) of the Tamil Nadu Co-operative Societies Rule and Section 81(4) of the Tamil Nadu Co-operative Societies Act.

4.Thereafter, a copy of the charge sheet was issued to the petitioner. After receipt of the charge sheet, the petitioner has requested on 23.01.1995 and 03.08.1995 for necessary records. Since the petitioner was not furnished with the necessary records, he was not able to attend the enquiry.

5.However, the enquiry officer posted the hearing on several dates. The petitioner was allowed to peruse some records. Finally, the fourth respondent/enquiry officer drawn the enquiry report on 30.01.1996. After receipt of the enquiry report, show cause notice was issued on 01.02.1996, enclosing the enquiry report. However, since the enquiry report was in English, the petitioner requested to furnish the report in Tamil and the same was rejected.

6.The petitioner did not appear on that day, due to medical grounds. However, the respondent passed the Order of Termination, terminating the petitioner from service on 28.02.1996. As against the termination order, the petitioner filed a revision under Section 153 of the Act before the Joint Registrar, Nagercoil and the same was dismissed on 29.04.1997. Further, a revision petition under section 154 of the Act was filed and the same was dismissed on 23.02.1999. Against which, the present Writ Petition is filed.

7.The learned counsel appearing for the petitioner substantiated his arguments on two grounds. First one is that the enquiry is beyond nine months and without obtaining

extension order, the order of dismissal is not sustainable. Second contention is that, without giving any opportunity and conducting the enquiry is bad in law and violation of principle of natural justice.

8.The first contention raised by the learned counsel appearing for the petitioner is not sustainable, since this Hon'ble Court in the case of S.V.K.Sahasramam /Vs/ Deputy Registrar of Co-operative Societies, Tiruvannamalai Circle, Tiruvannamalai and Others reported in (2008) 8 MLJ 231 has held as follows:

"11.We are constrained to hold that even though no appeal has been taken to us from the said judgments, yet having regard to the well settled legal position which has been referred to hereinabove, the finding of the learned Judge in these two judgments that the period of six months in the second proviso to Section 87 of the said Act is mandatory is not a correct finding in law. We find that even though before the learned Judge of the writ Court those two judgments of the learned single Bench were cited, the learned Judge of the Writ Court was not swayed by those two decisions and came to a correct finding, relying upon the well settled proposition laid down by the Supreme Court as pointed above hereinabove.

12.We, therefore, affirm the order of the learned single Judge in this case. We are of the view that in a case where there are allegations of embezzlement and misappropriation of public funds, the members of general public who have been cheated have no control over those who hold the enquiry in respect of the time limit. To hold that such an enquiry which has been continued beyond the time limit is bad would cause great injustice.

13.Therefore, if such enquiry is continued beyond the time limit mentioned in the relevant statute the said time cannot be held to be mandatory in view of the principles laid down in Montreal Street Railway Company v. Normandi (Supra), which has been affirmed by the Supreme Court."

9.Wherein the enquiry continued beyond the time limit, claim cannot be the mandatory, it is only the regulatory. Hence, the first contention raised by the counsel deserves to be rejected and the second contention raised with the specific proceedings can only fixed with the misconduct after forwarding all particulars. Though the petitioner participated in the enquiry and repeatedly raised the issue before the enquiry officer for furnishing the copies is only to protract the enquiry proceedings. Though the enquiries initiated in the year 1993,

the enquiry is completed only in the year 1996. Thereafter', the Special Officer passed an impugned order on 28.02.1996. It shows that the petitioner intended to prolong the issue one way or other. A perusal of the dismissal order passed on 28.02.1996 that there are specific act implicated by the petitioner being the Secretary, he had perverted the procedure of society and also responsible for the grave loss to the society by preparing the forged documents and misappropriate the fund.

10. In this context, it is necessary to refer the judgment of the Hon'ble Apex Court in the case of D.Krishnan and Another / Vs/ Special Officer, Vellore Co-operative Sugar Mill and another reported in (2008) 7 Supreme Court Cases 22 is extracted hereunder:

"12. We have considered the arguments advanced by the learned counsel for the parties. The fact that proceedings under Section 33-C(2) are in the nature of execution proceedings is in no doubt, and such proceedings presuppose some adjudication leading to the determination of a right, which has to be enforced. Concededly there has been no such adjudication in the present case. It will be seen that the reliance of the appellant workmen is exclusively on documentary evidence placed on record which consisted primarily of the punch time cards and the representations that had been filed from time to time before the respondents. It is also true that the claim raised that arises in this situation is whether reliance only on the documentary evidence was sufficient to prove the case."

11. The Hon'ble Apex Court in the case of State Bank of Hyderabad /Vs/ P.Kata Rao reported in (2008) 15 SCC 657 has held as under:

"11. In this context, it is necessary to refer to the judgment of the Supreme Court in State Bank of India /Vs/ S.N.Goyal reported in (2008) 8 SCC 92. In paragraphs 23 and 41, the Supreme Court held as follows:

3. Where the enquiry was found to be fair and proper and the finding of guilt in the enquiry in respect of a serious charge was found to be valid, in the absence of any other valid ground of challenge, the Courts below ought to have held that the penalty of the suit. Be that as it may. We will now consider the matter on merits on the assumption that the averments in the plaint were sufficient to enable the Court to consider this issue."

12. At the relevant point of time, the petitioner was functioning as Secretary in the Bank, received the amount from

the borrowers and the same was not paid on their account. However, he has taken the amount and deposited in his savings bank account by preparing the forged documents and forged signatures and taken money, by which he had committed breach of trust and made loss to the society. If the matter is to be viewed lightly or leniently, it will encourage the employees to indulge in such activities and thereby under mining the entire co-operative societies function. In the light of the above, this Court is not inclined to interfere with the impugned order of the respondent.

13.Hence, the Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ah

To

1.The Joint Registrar of Co-operative Societies,
Nagercoil,
Kanniyakumari District.

+1cc to the Government Pleader, S.R.No.52997

W.P.No.36138 of 2003

GN(04/09/2017)

सत्यमेव जयते

WEB COPY