

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.22827 of 2008

and

W.M.P.No.2 of 2008

K.Rajagopal

..

Petitioner

Vs.

1. The Secretary,
Handlooms, Handicrafts, Textiles
and Khadi Department,
Government of Tamil Nadu,
Fort.St.George,
Chennai-9.

2. The Chief Executive Officer,
Tamil Nadu Khadi and Village
Industries Board,
Chennai.

.. Respondents

Prayer:-

Writ Petition has been filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in respect of the proceedings of the 2nd respondent herein dated 24.05.2006 in Rc.No.58907/E3(2)/95 and the same was confirmed by the 1st respondent herein in his proceedings dated 07.08.2008 in G.O.Ms.No.125 and quash the same and consequently direct the respondents herein to provide all pensionary and other monetary benefits within an appropriate time.

For Petitioner : Mr.R.Nalliyappan

For R1 : Mr.Thangavadhana Balakrishnan
Additional Government Pleader

For R2 : Mr.S.K.Bose

ORDER

The petitioner has filed this Writ petition, praying to issue a Writ of Certiorarified Mandamus, to quash the proceedings of the 2nd respondent herein order dated 24.05.2006 in Rc.No.58907/E3(2)/95 and the same was confirmed by the 1st respondent herein in his proceedings dated 07.08.2008 in G.O.Ms.No.125 and further consequently direct the respondents herein to provide all pensionary and other monetary benefits within an appropriate time.

2.The case of the petitioner is that, while he was working as Village Industrial Co-operative Officer in the office of the Assistant Director (Khadi and Village industries), Salem, he was directed to submit his feasibility report for the registration of the Jagir Ammapalayam Carpentry and blacksmith, paint, lime and other allied products produce Village Industrial Co-operative Society at Salem. As per the said directions, the petitioner has conducted investigation and has submitted his report on 03.05.1991. Pursuant to that, on 14.05.1991, the Assistant Director of Khadi and Village industries, Salem has forwarded his report along with the resolution of the said society to the Thirupur Zonal Joint Director. Accordingly, the above said proposals were sent to the 2nd respondent and the same was approved and the said society was sanctioned on 16.05.1991.

3.The learned counsel for the petitioner would further contend that the Divisional Engineer, Highways and Rural Works Madurai Division has placed supply order with the newly recognized society and purchased 379 cautionary sign boards, 36 Village name Boards and 171 arm direction Boards at exorbitant rate for a value of Rs.8,13,745/- and thereby, it was alleged that heavy loss has been caused to the State Exchequer to the tune of Rs.1,74,483/-

4.That apart, the 2nd respondent herein while conducting the investigation have found that the above said society at Salem was not at all functioning. Hence, the 2nd respondent has issued a charge memo to the petitioner dated 21.09.1995, wherein three set of charges have been framed in respect of the recommendation submitted by the petitioner for recognition of the said society.

5.The learned counsel for the petitioner would submit that the first charge is that the petitioner has failed to do the legitimate duties for the above said society for recognition and submitted a feasibility report without verifying the feasibility and any infrastructural facilities. The second charge is that the petitioner alleged to have recommended several lakhs of

rupees without verifying the existence of the functioning of societies and suffered Government funds. The third charge was issued due to his carelessness and negligence in his duties, he has spoiled the image of Tamil Nadu Khadi and Village Industries Board.

6.The learned counsel for the petitioner would further contend that after his submission of feasibility report on 02.05.2008, the said report did not contain any report regarding the infrastructural facilities and Director of Khadi and Village industries, Salem had accorded permission and forwarded the same to the Zonal Office, Thirupur and the Assistant Director has approved and forwarded the same to the 2nd respondent and finally the 2nd respondent recognized the said society after verifying the entire records and has passed the order in favour of the society. Hence, the petitioner would contend that he is not responsible for any of the act for the above said society for not having any infrastructural facilities, since in his report, he has recommended the society for recognition based on the welfare measures and has not expressed anything about the infrastructural facilities.

7.The learned counsel for the petitioner would further contend that the enquiry officer was appointed to enquiry into the said charges and he has after giving an opportunity to the petitioner has filed an enquiry report on 21.09.1995 and held that the charges 1 & 3 have been proved and the second charge has not been proved. Based on the said findings, the 2nd respondent has passed a final order of punishment dated 24.05.2006, imposing a punishment of cut in pension of Rs.100/- per month for 12 months besides recovery of a sum of Rs.43,695.75/- towards 25% of the total loss. Therefore, the petitioner has filed an appeal before the 1st respondent against the order of the 2nd respondent. The 1st respondent by his order dated 07.08.2008 has rejected the appeal and has confirmed the order of the 2nd respondent. Aggrieved by the said order, the petitioner has filed this writ petition.

8.The learned counsel for the petitioner has contended that considering the situation of the members and works that if the society was recognized, public and members will attain benefits, he has stated that only to uplift the members, he has given a report and in that report he has not given any opinion about the infrastructure of the newly proposed society. Hence, he has neither made any misrepresentation nor made any false report. It is for the other officers to verify the said feasibility report and it is not his false and the respondents have accepted the report and sanctioned the recognition.

9.The learned counsel for the petitioner would also

further submit that he retired in the year 1997 i.e., on 31.08.1997 and after 9 years the impugned order of punishment of reduction of Rs.100/- for 12 months in the pensionary benefits besides the recovery of Rs.43,696/- was ordered, which is not maintainable, since the charge memo dated 21.09.1995 was issued on the petitioner, whereas, the final order of punishment was passed on 24.05.2006 i.e., after 11 years and the respondents have not considered his 35 years of service without having any black mark however the charge memo issued at the verge of retirement, for an alleged occurrence was taken place in the year 1991. The learned counsel for the petitioner would also submit that the respondents have deducted 50% of his pension and not paid the gratuity amount and sought for stay in this matter and interim stay of recovery alone was granted in M.P.No.2 of 2008 by this Court on 18.09.2008.

10.The 2nd respondent has filed a counter, wherein, it has been submitted that the petitioner while working as Village Industrial Co-operative Officer in Salem District, had failed to verify the feasibility of the said society in person before sending proposals to the Board for registering the society. In that context, the said society which was recommended for registration by the petitioner was not at all in existence and the transactions valuing several lakhs of rupees by private individuals took place in the name of the society. As per the by laws of the society and the Government rules which were in

vogue, the materials indented by the departments should be produced only from the society which were manufactured by the members. The orders placed for materials by the Highways department were not at all manufactured in the society but procured from outsource by the non members of the society and supplied to the Government department in exorbitant rate thereby causing loss to the State exchequer. If the petitioner has not recommended for the said society, the Government would not have ended up in loss. Only based on the feasibility report submitted by the petitioner, the society was registered, if not society would not have been registered. Hence, necessary enquiry has been conducted and for the charges proved, 25% of the loss amount was ordered to be recovered from him.

11.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused all the materials on record.

12.This Court finds that only based on the recommendations, the authorities have recognized the said society without even going into the details or investigating the same. The feasibility report is the main basic report for a project and if the authorities have

recommended the same, the higher officials would have accepted the same without having the second thought. The higher authorities have blind foldedly believed the said feasibility report and without even conducting the investigation or an enquiry has immediately given recognition to the said society. Only when the Highways officials placed the orders, the same was un-earthened and the investigation went on. The petitioner's contention is that he as a officer, has given the feasibility report only to uplift the people over there who did not even have their own buildings and it was only functioning from the rented house of one of the members and the authorities ought to have visited the place and after conducting the enquiry, ought to have passed the order of recognition. The petitioner's contention that only to uplift the members he has given a feasibility report and in view of that they will buy a building for their own and they will improve, cannot be accepted. All the officials ought to have blamed for the act and accordingly, the loss sustained of 25% was ordered to be recovered by the respondents but the authorities have not acted swiftly and after a long delay of 11 years, they have ordered for recovery. This recovery cannot be done at the belated stages eventhough the loss has been occurred, which is barred by limitation.

13. Accordingly, this Writ Petition is allowed and the impugned orders are hereby quashed. The respondents are directed to provide all pensionary and monetary benefits to the petitioner within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vji/nsd

To

1. The Secretary,
Handlooms, Handicrafts, Textiles
and Khadi Department,
Government of Tamil Nadu,
Fort. St. George, Chennai-9.

WEB COPY

2. The Chief Executive Officer,
Tamil Nadu Khadi and Village
Industries Board,
Chennai.

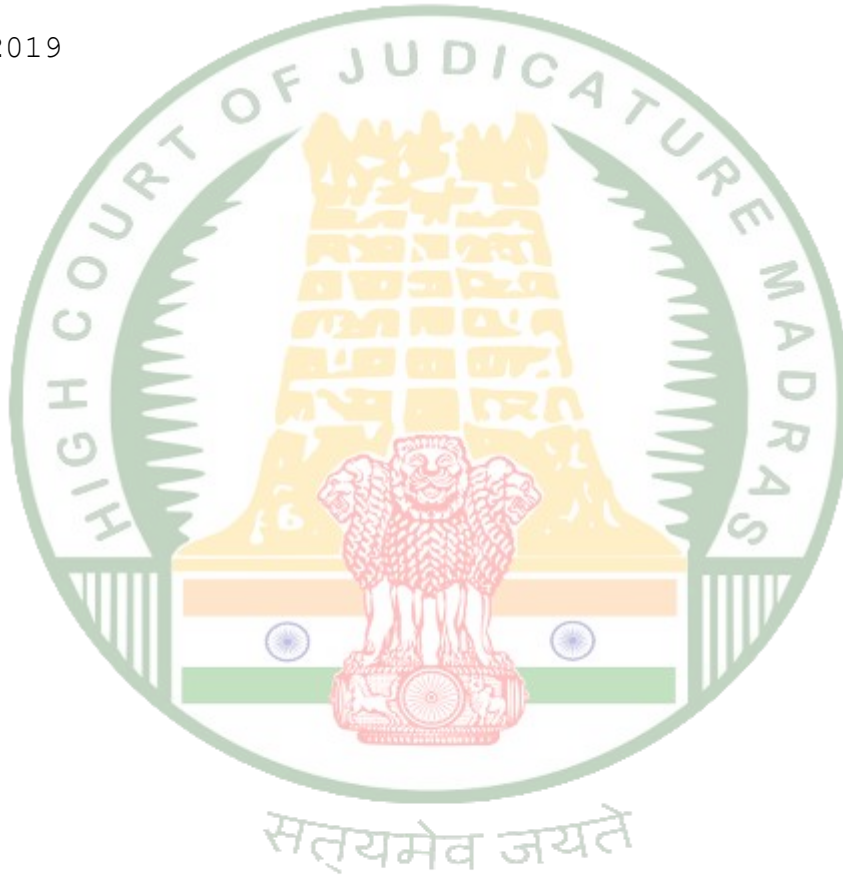
+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.76277

+1cc to the Government Pleader, S.R.No.76444

W.P.No.22827 of 2008
and

W.M.P.No.2 of 2008

EV (CO)
CS/07/03/2019



WEB COPY