

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.10.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.14937 of 2019

and

WMP.No.14903 of 2019

S. Raji

..Petitioner

Vs.

1. The Principal Secretary/Industries Commissioner,
Department of Industries and Commerce,
Thiru Vi.Ka. Industrial Estate,
Guindy,
Chennai- 600 032.

2. Mr. K.M.V. Manivannan,
Additional Director (Industrial Co-operatives)
Office of the Industries and Commerce,
Guindy, Chennai- 32.

3. The Anna Auto Transport Drivers Industrial
Co-operative Society Ltd.,
Represented by its Secretary,
No.242, Royapettah High Road,
Royapettah,
Chennai- 600 014.

4. The Board of Directors
The Anna Auto Transport Drivers
Industrial Co-operative Society Ltd.,
Represented by its President
No. 242, Royapettah High Road,
Royapettah,
Chennai - 600 014.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a writ of certiorarified
Mandamus or any other appropriate writ, order or direction in
the nature of a writ to call for the records of the 1st
respondent in Rc.No.21951/EG3/2018 dated 13.05.2019 and quash
the same and direct the 1st respondent to change the enquiry
officer and pass orders.

For Petitioner : Mr. A.P. Srinivas
For Respondents : Mr. R. S. Selvam,
Government Advocate for R1
Mr. Srinivas for R3

O R D E R

The petitioner filed this Writ Petition seeking to call for the records of the 1st respondent in Rc.No.21951/EG3/2018 dated 13.05.2019 and quash the same and direct the 1st respondent to change the enquiry officer

2. The case of the petitioner is that the petitioner was appointed in the 3rd respondent Society on 1.2.1979 and then appointed as accountant. The 3rd respondent is an Industrial Co-operative Society registered under the Tamilnadu Co-operative Societies Act, 1961 and the petitioner was employed as accountant and subsequently he retired from service on 30.04.2012 and the first respondent ordered 81 enquiry with regard to the irregularities allegedly committed by the petitioner and other persons in the 3rd respondent society and for that the second respondent was appointed as the enquiry officer. Aggrieved by the appointment of the enquiry officer, on an earlier occasion, the petitioner filed a Writ Petition before this Court in W.P.13321 of 2019 for mandamus to consider the petitioner's representation dated 25.3.2019 wherein the petitioner sought to change the enquiry officer who was arrayed as second respondent in the said Writ Petition. This Hon'ble Court, after hearing the Government Pleader in that matter issued direction to the first respondent to consider the petitioner's representation dated 25.03.2019 on merits and in accordance with law. Thereafter the present impugned order came to be passed, rejecting the request of the petitioner on the ground that the enquiry officer was not a superior officer of the petitioner and he was not working in the 3rd respondent society.

3. Mr. A.P. Srinivas, learned counsel for the petitioner submitted that as the appointment of the second respondent is barred in law, but still he was appointed as an enquiry officer for the petitioner and therefore a Writ petition was filed before this court in W.P.No.13321 of 2019, wherein this Hon'ble Court directed the enquiry proceedings initiated by the second respondent to be kept in abeyance thereafter the petitioner never appeared before the enquiry officer. Without hearing the petitioner, the enquiry officer filed a report and further at the time of retirement, the second respondent was placed under

suspension on the ground that he has not conducted 81 enquiry in a proper manner in respect of the affairs of the other society and therefore any person who is facing disciplinary proceedings is not fit to be an enquiry officer and hence prayed for allowing the Writ Petition.

4. Mr. S. Selvam, learned Government Advocate for the first respondent would submit that he did not dispute the suspension order issued to the second respondent and reiterated the ground as stated in the impugned order.

5. Mr. Srinivas, learned counsel appearing for the 3rd respondent would submit that scope of enquiry under section 81 is limited. The enquiry officer has no power to take any decision, on the other hand he has to simply submit the enquiry report to the competent authority to take decision as per the Act and also not disputed the fact that the second respondent was placed under suspension at the time of his retirement.

6. Considering the fact and circumstances that when a person is facing disciplinary proceedings before the authority for not conducting enquiry under section 81 in respect of other society, that person should not be allowed to be an enquiry officer. Hence, I feel that the second respondent is not fit for conducting enquiry relating to the affairs of the society. Hence, I am inclined to issue direction to the first respondent to appoint a new enquiry officer and that new enquiry officer shall be free conduct from conduct any enquiry. Further, the enquiry report if any filed by the second respondent need not be accepted.

7. However the new enquiry officer has to complete the enquiry within a period of twelve (12) weeks from the date of receipt of a copy of this order, after affording an opportunity to the petitioner and then file a report before the competent authority. The petitioner is also directed to co-operate with the enquiry officer.

8. Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Principal Secretary/Industries Commissioner,
Department of Industries and Commerce,
Thiru Vi.Ka. Industrial Estate,
Guindy,
Chennai- 600 032.

+1 cc to M/s.R.Sivakumar, Advocate Sr.No. 89727
+1 cc to Mr.A.P.Srinivas, Advocate Sr.No.89140
+1 cc to The Government Pleader Sr.No.89216

AKM/03.12.19/4P-5C /

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