



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2020

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD) .No.8569 of 2011

and

M.P. (MD) .No.2 of 2011

A.Rathinam

... Petitioner

vs.

1.The Joint Registrar of Co-operative Societies/
President of Public Services Committee,
Tiruchirapalli Region,
Tiruchirapalli.

2.The Special Officer,
M.M.355, Kovilpatti Primary Agricultural Co-operative
Credit Society Limited,
Kovilpatti, Manaparai Taluk,
Tiruchirapalli.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, calling for the records relating to the order of the 1st respondent dated 16.08.2010 in Na.Ka.No.3855/2008/VSS and quash the same and consequently, direct the respondents herein to re-instate the petitioner herein as the Secretary of the 2nd respondent Society with effect from 12.05.2008 with all attendant benefits.

For Appellant : Mr.AL.Ganthimathi

For Respondents : Mr.J.Gunaseelan Muthiah

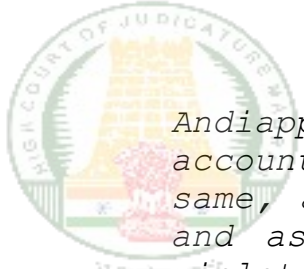
Additional Government Pleader

ORDER

This writ petition has been filed seeking for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the order of the first respondent dated 16.08.2010 in Na.Ka.No.3855/2008/VSS and quash the same and consequently, direct the respondents to re-instate the petitioner as the Secretary of the second respondent Society with effect from 12.05.2008 with all attendant benefits.

2.The case of the petitioner is that he was working as a Secretary in the second respondent Society from 1991 and from the date of joining, he was rendering his duties without any blemish. By proceeding dated 12.05.2008, he was placed under suspension from service. He was served with a memorandum of charges on 29.07.2009 by the first respondent, listing out two charges against him, are as follows:

"Charge No.1:- During the period 2000-01 to 2007 -08 one

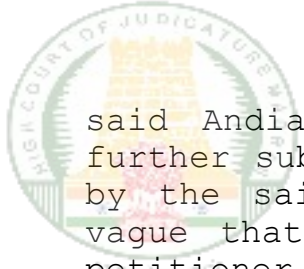


Andiappan had corrected the ledgers in respect of the loan accounts of the Members of the Society and in view of the same, a loss of Rs.3,900/- has been incurred to the Society and as Secretary of the Society, petitioner had acted in violation of Bye-law No.38 of the Society and as such, he had failed to discharge his responsibilities and thereby, he has been a cause for the loss incurred by the Society.

Charge No.2: During the period 2000-01 to 2007-08, several misappropriations were being done in the accounts of the Society in respect of Saving Accounts and Self-Help Loan Accounts given to the Women Self-Help Groups and as such, the petitioner had failed to discharge his duties and responsibilities and acted in violation of Bye-law No.38 of the Society and thereby, he has become a cause for the loss to the Society."

3.He further submitted that a sum of Rs.22,05,867/- has been misappropriated from the funds of the Society, for which, he was called upon to submit his explanation within 15 days, failing which, further disciplinary proceedings will be taken against him. Pursuant to which, he submitted his explanation on 20.08.2009 stating that one Andiappan, who was acting as an Assistant next to the Secretary, had made all the corrections in the ledgers and it was the duty and responsibility of the said Andiappan to carry out the accounts properly. Since another clerk viz., P.Sankaran was not able to attend the office regularly due to his ill-health, all the accounts have been checked and finalized by the said Andiappan and as such, the petitioner was concentrating in other works relating to the development of the Society, he was not able to find out the misappropriation committed by the said Andiappan. During the enquiry all the documents were seized from the said Andiappan, who has accepted his mistake and also paid a sum of Rs.20,10,606.55/- which would show that the said Andiappan has misappropriated the funds of the Society and the petitioner is an innocent person and he was only overseeing the Society activities. During that period, the petitioner was not in a position to check out each and every accounts, which were carried out by the said Andiappan and therefore, he was not responsible for the said misappropriation and requested the first respondent to drop the charges framed against him.

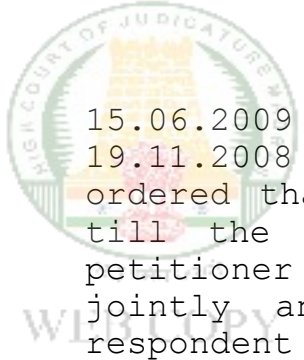
4.It is further seen that, by proceedings dated 29.09.2009, the first respondent had appointed an Enquiry Officer and after completion of enquiry, he submitted his report on 08.03.2010. On the basis of the Enquiry Officer's Report, the petitioner was called upon to show cause as to why action should not be initiated against him. Since the charges against the petitioner were proved, the first respondent by proceedings dated 16.08.2010 dismissed the petitioner from service with effect from 18.05.2010. During the enquiry, it was found that all the corrections in the ledgers were made by the said Andiappan and only the charge against the petitioner was that he had not checked the accounts properly and supervised the work of the



said Andiappan. Due to which, loss occurred to the Society. He further submitted that the said misappropriation has been done only by the said Andiappan and the Enquiry Officer's report was very vague that he had not considered any documents produced by the petitioner and as such, the charges against him are not proved. The Enquiry Officer has observed that the petitioner is responsible for supervising the activities of the Assistants and Clerks though he is not a person, who is maintaining the accounts and correcting the ledgers. As per the Enquiry Officer's report, as if the petitioner is guilty of the charges framed against him which is incorrect and untenable.

5.The learned counsel appearing for the petitioner further submitted that the petitioner is not a person, who is liable to be held responsible for misappropriation and prayed for quashing the said proceeding of the first respondent dated 16.08.2010 in Na.Ka.No.3855/2008/VSS and further prayed to the respondents to reinstate the petitioner as Secretary with effect from 12.05.2008.

6.The learned Additional Government Pleader appearing for the respondents had filed a counter affidavit and submitted that the second respondent is a Co-operative Institution constituted under the provisions of the Tamil Nadu Co-operative Societies Act and Rules and under a Larger Bench of Five Judges of this Court has held that "no writ will lie against a co-operative Institution as a matter of course". It has been further emphasized that as the co-operative Society is not a State of Instrumentality of the State, is not attracted by Article 12 of the Constitution of India. Therefore, the present writ petition is liable to be rejected. He further submitted that the petitioner while working as a Secretary in the respondent Society has been suspended by the President of the Public Services Committee for the Secretaries of Primary Agricultural Co-operative Banks, vide proceedings dated 12.05.2008, for the irregularities committed by the petitioner. Pursuant to which, charges were framed against the petitioner and for which, the petitioner has also submitted his explanation and subsequently, Enquiry Officer was appointed in this regard and the Enquiry Officer has submitted his report and the same was forwarded to the petitioner and a show cause notice was issued calling for his explanation within 45 days. Since he did not submit his explanation before 45 days, contempt was initiated only at the end of the 45th day. Based on the petitioner's explanation, the Committee has passed its proceedings dated 12.08.2010 and dismissed the petitioner from service with effect from 12.05.2008. It is further submitted that the main charge against the petitioner is that he has failed to supervise the activities of the staff working under him, thereby causing loss to the Society. The main contention of the petitioner is that the said Andiappan has voluntarily accepted his mistake and paid a sum of Rs.20,10,606.55/-. The actual loss caused to the Society is Rs.22,05,867/-and not Rs.20,10,606.55/- as wrongly alleged by the petitioner. Hence, the Deputy Registrar of Co-operative Societies, Trichy Circle, has passed an award dated



15.06.2009 for the amount of Rs.1,92,948/- along with interest upto 19.11.2008 to the tune of Rs.10,69,549/-. Further, it has been ordered that the interest at the rate of 18% has to be collected till the realisation of the entire principal amount from the petitioner and the said A.Andiappan holding both of them liable jointly and severally for the financial loss caused to the respondent Society. It is also pointed out by the learned counsel appearing for the petitioner that no single allegation has been made against him regarding the misappropriation in the Society, as false and the report of the Enquiry Officer was very vague and in this regard, the Enquiry Officer has held that the petitioner, who is the Principal Officer of the Society, has failed to discharge his duties and responsibilities. Hence, the learned Additional Government Pleader prays that this writ petition is liable to be dismissed.

7.Heard the learned counsel appearing for both sides and perused the materials available on records.

8.It is made clear that the sole explanation given by the petitioner in Page No.18 of the typed set of papers would show that he had given various statements, out of which, one of the statement was that the said Andiappan has not maintained the records properly and had misappropriated the amounts and inflated the number in the ledger and caused loss. According to the said Andiappan, the said loss were occurred, due to the ill-health of one Sankar. Therefore, all the accounts have been checked and finalised by the said Andiappan. There is no proper sufficient employees to conduct day to day affairs of the Society. Since the jewel loan was increasing and it was reaching 3 crore, he was concentrating on the disbursement of jewel loan. Regarding the fixed deposit, he was standing on his own legs to concentrate on that job. He had concentrated on the loan issued to the Women Self Welfare Group and hence, he is not in a position to take care of the day to day affairs of the Society. He further submitted that under the Societies, 7 full time shops and two part time shops were there and all the activities have been supervised and submitted the details before the authorities. Since the shortage of workers, he was not in a position to concentrate the accounts maintained by the said Andiappan who had caused loss to the society. Since there was no contingency in the job either by the auditor or by the higher official, no suspect has been made against the said Andiappan. The said Andiappan has taken his signature in a blank paper and after getting his singnature, the said Andiappan has also corrected the ledger and the documents. During the enquiry, the petitioner has produced some documents, from which, the said Andiappan has paid a sum of Rs.20,10,606.66/-, which would show that the petitioner is not responsible for the said misappropriation and he has not accepted the said loss is considered by this Court.

9.It is the duty of the petitioner to check the accounts and other works done by his subordinates in the supervising capacity. He cannot shift the blame on other persons stating there is shortage of staff. His excuse such as he was concentrating on some other loan



scheme to various personal groups also cannot be a valid reason to his dereliction of duty. No prudent Officer would sign in a blank paper and give to others. Hence, the explanation cannot be accepted as true.

10. It is clearly contemplated that the Co-operative Societies run by the persons, who are the members and trust of the said Society, try to deposit amounts and also take jewel loan, depending upon the Society for their livelihood. These kind of persons swindling the amount and causing loss to the Society cannot be pardoned. The petitioner submission is that he is not responsible for the said loss and the said Andiappan has to be framed and he ought not to have left out and to be reinstated in service is also not accepted by this Court. It is also submit that the findings of the Enquiry Officer that the petitioner is being the higher authority ought to have seen the ledger and accounts which maintained by the said Andiappan and he signed all the accounts and ledgers without even verifying the same, due to over work cannot be accepted. It is also seen that as he has misappropriated the amount, he cannot escaped from the clutches of law. As he is the person to maintain the said accounts of the said Society and blaming on the subordinate is highly untenable.

11. The first respondent has passed the order based on his explanation given already and which is the speaking order and sufficient opportunity was given, was not utilized by the petitioner and accordingly, the first respondent has passed the order of dismissal from service, this Court upholding the order passed by the first respondent. The petitioner, by dereliction of duty, caused huge loss to the Society and in the considered view of this Court, he cannot be reinstated into serve and accordingly, the prayer sought for in the writ petition filed by the petitioner cannot be considered. The Society can proceed against the said person for the amount if any to be recovered from him.

12. In the result, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

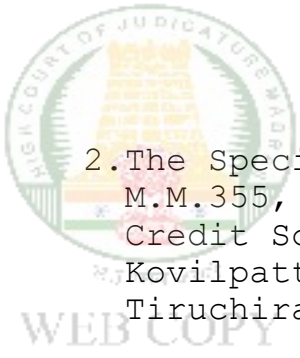
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/ /2020

Sub Assistant Registrar(CS)

To

1. The Joint Registrar of Co-operative Societies/
President of Public Services Committee,
Tiruchirapalli Region,
Tiruchirapalli.



2.The Special Officer,
M.M.355, Kovilpatti Primary Agricultural Co-operative
Credit Society Limited,
Kovilpatti, Manaparai Taluk,
Tiruchirapalli.

+1 CC to M/s.AL.GANTHIMATHI,Advocate (SR-10318[F] dated 06/03/2020)

+1 CC to M/s.SPL.GP (SR-10324[F] dated 06/03/2020)

W.P. (MD) .No.8569 of 2011
and
M.P. (MD)No.1 of 2014

SPU (11.06.2020) 6P-5C