



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No.14789 of 2009

M.M.Subramanian

... Petitioner

Vs.

1. The 0.556 Manappadu Catholic Coop Urban Credit Society, Manappadu, Tuticorin Dt.
2. The Deputy Registrar of Coop Societies, 5, East Car Street, Thiruchendur.
3. The Deputy Registrar of Coop Societies, Koilpatti Circle, Koilpatti.
4. The Joint Registrar of Coop Societies, Tuticorin Region, Tuticorin

... Respondents

Prayer: Writ petition filed under Section 226 of the Constitution of India seeking to issue a Writ of Certiorari to call for the records relating to the proceedings Na.Ka.No.18048/05 Pa U dated 31.03.2009 of the 4th respondent herein, quash the same.

For petitioner : Mr.S.Venkataraman

For respondents : Mr.S.Arumugam,
Government Advocate

ORDER

The petitioner while working as an Assistant in the office of the 2nd respondent, as per order of the 4th respondent, he held the additional in-charge of the post of a Special Officer of the 1st respondent Society. He has assumed the charge on 25.05.2001 and held the additional in-charge of the 1st respondent Society only for short duration.



2. On 16.12.2003, the then Secretary of the 1st respondent Society committed suicide, who had committed large scale of irregularities in the affairs of the Society. Therefore, the petitioner has recommended an inquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (in short 'Act'). Accordingly, the inquiry was ordered by the 2nd respondent on 25.02.2003 and the Co-op Sub Registrar, Vigilance was appointed to hold the inquiry. The inquiry report submitted to the Deputy Registrar of the Society on 27.10.2003 pointing out that there were serious irregularities to the tune of Rs.73,00,000/- by the deceased Secretary.

3. However, the 2nd respondent initiated disciplinary proceedings against the petitioner under Rule 17 (b) of the Disciplinary and Appeal Rules, by issuing charge memo dated 27.02.2004 and also lodged a criminal complaint dated 02.06.2004, which was taken on file by the C.C.I.W and registered a case in Crime No.6 of 2014, implicating the petitioner as an accused.

4. Based upon the inquiry report and criminal complaint, surcharge proceedings under Section 87 of the Act has been initiated as against the petitioner and passed orders on 21.06.2004 holding that the petitioner was also jointly responsible for the alleged misappropriation of the Society's funds. Against which, the petitioner has filed an appeal, which is pending before the Co-operative Tribunal, Tuticorin. According to the petitioner, the charge memo, criminal complaint and the surcharge proceedings were initiated by the same person and hence there is a possibility of bias.

5. The Disciplinary Authority imposed the punishment of stoppage of increment for a period of five years with cumulative effect. The said proceedings ought not to have been decided by the 4th respondent, since the petitioner was transferred from Tuticorin to Vellore.

6. He further submitted that the Inquiry Officer had relied upon only on two documents i.e., (i) The charge memo of the 2nd respondent dated 27.02.2004 and (ii) the acknowledgment of the charge memo by the delinquent and no other documents have been listed along with charge memo and there is no oral list of witness relied upon by the inquiry officer to prove the charges against the petitioner. The said inquiry was conducted by the 4th respondent without following the procedures as contemplated under the Rules. Therefore, the entire proceeding is vitiated and the same is liable to be set aside.

7. Learned counsel for the petitioner submitted that the order of punishment is a clear violation of principles of



natural justice and hence, filed the present writ petition under Article 226 of the Constitution of India.

8. Learned Government Advocate appearing for the respondents submitted that due to the irregularities committed by the then Secretary of the Society and the negligent act of the petitioner, who acted as in-charge of Society, the 1st respondent incurred huge financial loss to a tune of Rs.73,00,000/-. Therefore, the Inquiry Officer had conducted detailed inquiry under Section 81 of the Act. Based upon the inquiry report, the criminal case was registered as against the writ petitioner and as well as other staffs of the Society. All the charges levelled against the petitioner are based on documentary evidence and the list of documents were furnished to the petitioner along with charge memo itself. After an elaborate inquiry, punishment has been imposed by the 4th respondent and also surcharge proceedings initiated against the petitioner.

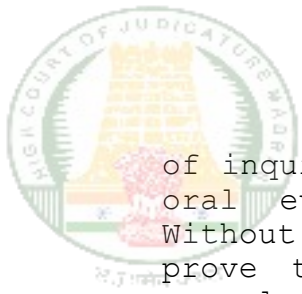
9. Heard the rival submissions of both the parties and perused the materials available on record.

10. The writ petitioner while working as the Special Officer of the respondent society on 25.05.2001, the then Secretary of the Society committed suicide, due to the irregularities committed by him in the affairs of the Society. But, the 2nd respondent lodged a criminal complaint as well as initiated disciplinary and surcharge proceedings against the petitioner. The petitioner was acquitted in the aforesaid criminal case in Cr. No.6 of 2014 filed by the C.C.I.W.

11. The Disciplinary Proceedings was initiated against the petitioner based on the inquiry officer's report. The 4th respondent imposed the punishment of stoppage of increment for five years with cumulative effect. Against which, surcharge proceedings has been filed before the Deputy Registrar and orders passed therein. Pursuant thereto, an appeal has been preferred by the petitioner before the Co-operative Tribunal challenging the orders of the surcharge proceedings, which is still pending.

12. Now, the present case on hand is a challenge against the punishment order imposed by the 4th respondent. According to the petitioner, the respondent has not followed the proper procedure as contemplated under the Rules by providing the necessary documents to the petitioner and they also relied upon only on two documents, which is a violation of principles of natural justice.

13. The contention of the petitioner is that a 88 page inquiry report dated 15.12.2007 has been filed on the next day



of inquiry i.e., 14.12.2007. In the inquiry report, there is no oral evidence and documents marked to prove the charges. Without any substantive materials as against the petitioner to prove the involvement of irregularities, the 4th respondent wrongly implicated the petitioner and imposed the said punishment. Hence, the impugned order has to be set aside.

14. On perusal of the impugned order it is seen that the 4th respondent framed charges against the petitioner on 27.02.2004 and the same was served on the petitioner and thereafter, the writ petitioner submitted his explanation denying the allegations on 09.06.2004. Subsequently, the petitioner appeared for enquiry on 14.12.2007 and submitted his written statement, but no other procedures have been followed by the inquiry officer and closed the enquiry.

15. At the time of enquiry, no witnesses were examined and no documents were marked for the aforesaid charges. On the next day, the inquiry officer submitted a 88 page inquiry report by holding that 12 out of 18 charges proved as against the petitioner. Based on the inquiry officer's report, the petitioner received a communication on 29.02.2008 and he submitted his explanation on 08.08.2008. Finally, on 31.03.2009, the 4th respondent imposed the punishment of stoppage of increment for a period of five years with cumulative effect.

16. Hence, it is clear that neither sufficient opportunity was given to the petitioner to peruse the documents nor furnished along with charge memo, but the enquiry officer submitted a detailed report. Therefore, this Court has come to the conclusion that the respondent has not followed the procedures as contemplated under Rules and Act for giving sufficient opportunity, which is a violation of principles of natural justice. Therefore it requires reconsideration and the 4th respondent has to take fresh decision based on the report.

17. Learned counsel appearing for the writ petitioner submitted that at this distance point of time, remitting back the matter would serve no purpose, since the aforesaid incident happened in the year 2001 and the charge was framed in the year of 2004 i.e., 27.02.2004, now more than 20 years lapsed. Further, it is brought to the notice of the Court that the writ petitioner was allowed to retire on 31.01.2020. Therefore, if the matter is remitted back to the authorities for fresh consideration, further delay would be caused. Therefore, the punishment awarded by the authority may be modified and award a relief to the petitioner.

18. The learned counsel for the respondents has no serious



objection for the aforesaid submission of learned counsel for the writ petitioner.

19. Therefore taking note of the fact that the incident happened in the year 2001 and the writ petitioner was allowed to retire from service on 31.01.2020, the punishment awarded by the 4th respondent requires modification. Hence, in the interest of justice, this Court is inclined to pass orders as follows:

(i) The punishment of stoppage of increment for five years with cumulative effect is modified as punishment of stoppage of increment of one (1) year with cumulative effect.

(ii) the petitioner is entitled for other revised retirement benefits as per the law.

(iii) The writ petitioner is directed to make a representation before the 4th respondent seeking the revised retirement benefits as per law.

(iv) If any such representation is made by the petitioner, 4th respondent is directed to consider and pass appropriate orders as expeditiously as possible within a period of twelve (12) weeks from the date of receipt of the representation, in accordance law.

20. Thus, the impugned order passed by the 4th respondent is hereby partly modified and the writ petition is partly allowed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

rkp

To

1. The 0.556 Manappadu Catholic Coop Urban Credit Society, Manappadu, Tuticorin Dt.
2. The Deputy Registrar of Coop Societies, 5, East Car Street, Thiruchendur.
3. The Deputy Registrar of Coop Societies, Koilpatti Circle, Koilpatti.



4. The Joint Registrar of Coop Societies,
Tuticorin Region, Tuticorin.

+1cc to Mr.Venkatraman, Advocate, S.R.No.68896

+1cc to the Government Pleader, S.R.No.69019

W.P. No.14789 of 2009

MG(CO)
SU(16/02/2022)