



WEB COPY

W.P.(MD).No.20780 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD).No.20780 of 2013

and

M.P (MD)No.2 of 2013

V.Ravi

... Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies,
Tiruchirappalli Region,
Tiruchirappalli.

2.The President/Special Officer,
R.1594, Pillathurai Primary Agricultural
Co-operative Credit Society Ltd.,
Musiri Taluk,
Tiruchirappalli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 29.08.2011 passed by the second respondent and consequential impugned order in Na.Ka.No.9711/2011/SaPa, dated 18.02.2013 passed by the first respondent dismissing the Revision Petition filed under Section 153 of the Tamil Nadu Co-operative Societies Act and quash the same and consequently, direct the respondents to reinstate the petitioner in service in the second respondent Society with continuity of service and all other attendant benefit.

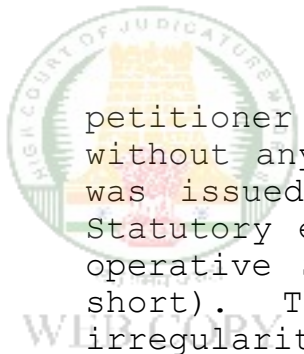
For Petitioner	: Mr.D.Shanmugaraja Sethupathi
For Respondents	: Mr.M.Lingadurai Government Advocate

ORDER

This Writ Petition is filed for issuance of a writ of Certiorarified Mandamus to quash the impugned order passed by the second respondent dated 29.08.2011 and the consequential impugned order in Na.Ka.No.9711/2011/SaPa, dated 18.02.2013 passed by the first respondent, dismissing the Revision Petition filed under Section 153 of the Tamil Nadu Co-operative Societies Act and to direct the respondents to reinstate the petitioner in service in the second respondent Society with continuity of service and all other attendant benefits.

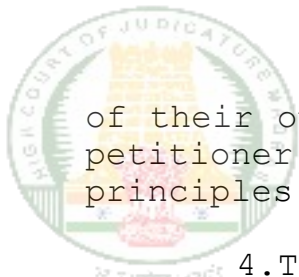
2.The petitioner was employed as a Salesman in the second respondent Society from 01.02.1985. Though it is stated that the

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petitioner was working with utmost satisfaction of his superior and without any blemish of records, it is admitted that a charge memo was issued to the petitioner for grave charges, pursuant to the Statutory enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act (hereinafter referred to as the "Act" for short). The earlier enquiry was ordered to find out the irregularities alleged to have been committed in relation to the affairs of Fair Price Shops run by the second respondent Society at Thevanur, Thevanur Pudur, Vadamalaipatti and Karuppampatti, from 01.11.2007 to 31.10.2010. The Co-operative Sub-Registrar was appointed as an Enquiry Officer to go into the lapses. After completion of enquiry, the Enquiry Officer submitted a report. The petitioner challenged the enquiry report dated 20.04.2011, said to have been submitted by the Enquiry Officer in W.P.(MD).No.8375 of 2011 and the operation of Enquiry Report was stayed by this Court for some time. Thereafter, the second respondent issued charge memorandum, dated 21.02.2011 framing as many as four charges against the petitioner. Though the petitioner submitted his explanation, a copy of the explanation not even found in the typed set of papers filed by him. It appears that the petitioner submitted a few representations to furnish some of the documents. It is admitted before this Court that the petitioner did not participate in the domestic enquiry. Though an explanation was given by the learned counsel for the petitioner that the petitioner could not participate for want of relevant documents, not even an attempt is made before this Court to establish the prejudice that was caused to the petitioner to appear for an enquiry without the documents. Not even the details of documents that was sought to be obtained by the petitioner is disclosed in the writ petition. It is seen that a domestic enquiry was conducted ex-parte and a report was filed holding that the petitioner is guilty of all the four charges. Based on the enquiry report and the materials produced, the petitioner was terminated from service by the second respondent, by order dated 29.08.2011. As against the dismissal, the petitioner preferred a statutory revision before the first respondent under Section 153 of the Act. The statutory revision was also dismissed by the first respondent. Challenging the order of dismissal, as confirmed by the first respondent by order dated 18.02.2017, the above writ petition is filed.

3.The learned counsel appearing for the petitioner submitted that the order of the first respondent, confirming the order of the second respondent, dismissing the petitioner from service is illegal, without application of mind and without the authority of law. The first respondent failed to consider that the enquiry was conducted ex-parte and that the petitioner could not participate in the enquiry, as the request of the petitioner to furnish the documents and records pertaining to the enquiry, was not considered by the respondents. Stating that the petitioner was prevented from participating the enquiry for want of records, it is contended by the learned counsel for the petitioner that the respondents cannot take advantage

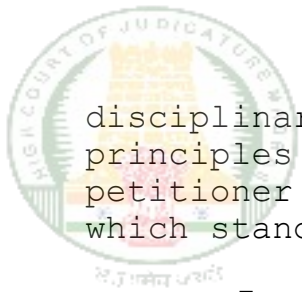


of their own wrong. It was contended by the learned counsel for the petitioner that the whole enquiry is vitiated, as it was against the principles of natural justice.

4.The learned counsel for the petitioner then contended that the Enquiry Report, under Section 81 of the Act, was not furnished to the petitioner. It is further contended by the learned counsel that the petitioner came to know that many of the documents sought from the Enquiry Officer was not furnished to him, on the ground that the office bearers had removed all those records from the society and that the records had not been resubmitted by them, despite several calls in this regard. The counsel further submitted that when the charges were framed on the basis of enquiry report under Section 81 of the Act, the enquiry report ought to have been furnished to the petitioner. The respondents 1 and 2 ought to have considered the legal issue whether the enquiry report alone is sufficient to prove the charges framed against the petitioner and for imposing the punishment awarded to him. The learned counsel then submitted that the findings of the disciplinary authority and the revisional authority are not based on any documents or materials. The learned counsel then submitted that in the absence of any clinching evidence or materials to suggest that the petitioner had committed serious irregularities, during the relevant point of time, the responsibility cannot be fixed against the petitioner alone as several other persons were also in-charge of the Fair Price Shop referred to in the charge memo. This Court is unable to accept any of the contentions put forth by the learned counsel for the petitioner. Having regard to the nature of charges proved against the petitioner as found in the enquiry report and other connected records.

5.The learned counsel for the petitioner is unable to convince this Court why the petitioner has not submitted his explanation to the charges. Though the petitioner states that several other persons were in charge of fair price shop, during the relevant period, it is not demonstrated before this Court how this was conveyed to enquiry officer at the time of enquiry or by an explanation. In the absence of any scrap of papers to indicate that the petitioner had expressed his grievance before the enquiry officer or before the disciplinary authority, it is not open to the petitioner to canvass such points before this Court.

6.Admittedly, the petitioner did not participate in the enquiry. Despite notice by the enquiry officer to attend, the petitioner for reasons best known to him did not appear before the enquiry officer. No attempt was made by the petitioner to explain his difficulties to face the enquiry before the enquiry officer. The petitioner had sufficient opportunity to put forth his case before the enquiry officer. The petitioner having failed to appear before the enquiry officer cannot take advantage of his own wrong while



disciplinary authority on the ground that they are violative of principles of natural justice. The prime charge against the petitioner is that the petitioner had caused loss to the society which stands proved while taking inventory of stocks.

7. Unless the petitioner highlight the prejudice that was caused to him on account of failure to produce the relevant records and documents, it is not open to the petitioner to just make an allegation as against the respondents for not collecting or supplying any documents. Merely because some of the records sought for by the enquiry officer was not supplied or furnished to the enquiry officer by the office bearers of the society, it cannot be concluded that the whole enquiry report is vitiated. Unless it is demonstrated before this Court that the respondents have relied upon certain documents to prove the charges without furnishing them to the petitioner, the general statement of the petitioner cannot be considered relevant. Having regard to the fact that the charges were framed based on inventory of stocks, no explanation is offered to account for the deficiencies.

8. In view of the facts narrated above, this Court is of the view that the petitioner has raised several grounds without filing necessary documents to appreciate his arguments. This Court is unable to find any irregularity or perversity in the order of disciplinary authority or revisional authority confirming the punishment.

9. As a result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Joint Registrar of Co-operative Societies,
Tiruchirappalli Region,
Tiruchirappalli.

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2.The President/Special Officer,
R. 1594, Pillathurai Primary Agricultural
Co-operative Credit Society Ltd.,
Musiri Taluk,
Tiruchirapalli District.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-29136[F] dated 15/09/2021)

+1 CC to M/s.SPL. GP (SR-29337[F] dated 16/09/2021)

W.P. (MD) .No.20780 of 2013

and

M.P (MD) No.2 of 2013

14.09.2021

SRR(CO)

RS (06.10.2021) 5P 5C