



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.5882 of 2013

P.Seetha

... Petitioner

vs.

1.The Joint Registrar of Cooperative Societies,
Virudhunagar, Virudhunagar District.

2.The Special Officer,
O.508, Mamsapuram Primary Agricultural
Cooperative and Credit Society,
Mamsapuram, Virudhunagar District.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent in RP No.3/2011 in Na.Ka.9948/10 Sa Pa dated 30.11.2012 and the impugned order of the second respondent, dated 30.06.2008 and quash the same and consequently, to direct the respondents herein to reinstate the petitioner with back wages from the date of dismissal till reinstatement with all monetary and attendant benefits with all costs.

For Petitioner	: Mr.Kannan for M/s.Veera Associates
For R-1	: Mr.K.Selva Ganeshan Government Advocate
For R-2	: J.PAREKH KUMAR

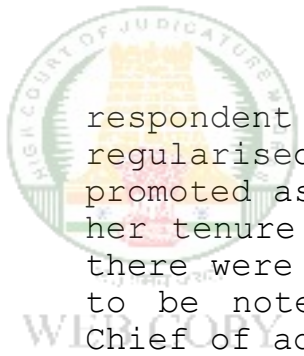
O R D E R

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus to quash the impugned order of the first respondent, dated 30.11.2012 confirming the order of the second respondent, dated 30.06.2008 and to direct the respondents to reinstate the petitioner with back wages and all monetary and attendant benefits.

2.Heard Mr.Kannan, learned Counsel for the petitioner and Mr.K.Selva Ganeshan, learned Government Advocate appearing for the first respondent.

3.The brief facts that are necessary for the disposal of this Writ Petition are as follows:

3.1.The petitioner was appointed as Clerk in the second



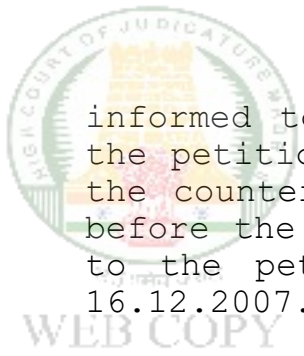
respondent Society in the year 1986 and her services were duly regularised with effect from 02.10.1987. The petitioner was later promoted as Assistant Secretary with effect from 07.11.1998. During her tenure as Assistant Secretary in the second respondent Society, there were serious charges against the petitioner and others. It is to be noted that the petitioner, as Assistant Secretary, is the Chief of administrative staff and engaged for remuneration.

3.2. There was an audit in the second respondent Society and several irregularities were noticed by the Auditor. Based on the special report, an enquiry was ordered by the Deputy Registrar of Cooperative Societies, Srivilliputhur under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983. On further enquiry under Section 81 of the Act, it was found that the petitioner and others have falsified SB accounts and Crop Loan accounts and misappropriated a huge amount of Rs.89,27,945.65/- between 1993-2005. Other instances of misappropriation were also indicated.

3.3. A criminal case was also lodged by the Deputy Registrar of the Cooperative Societies, Srivilliputhur, in Cr.No.11 of 2005 against the petitioner and others. The petitioner was even arrested and remanded to judicial custody and she was released, thereafter, on bail. Independent disciplinary proceeding was initiated against the petitioner and others. During the pendency of the disciplinary proceedings, the petitioner was also suspended from service in contemplation of enquiry into the charges against the petitioner. The first charge is that the petitioner along with others has misappropriated a sum of Rs.89,27,945.65/-. The second charge is again one for misappropriation of Rs.20,81,000/- and the third charge is also one for misappropriation of Rs.2,97,646/-.

3.4. The petitioner, who is the Assistant Secretary of the second respondent Society, is the person in charge of disbursement of loan to eligible farmers and allowing cash withdrawals and day-to-day administration of all the business transactions of the second respondent Society. A specific allegation is made against the petitioner that huge amounts were withdrawn by making entries in the day book, as if one of the members had withdrawn money from his account. There is no correspondent entry in the independent account of the said person separately maintained. Again, by preparing false debit cards, several amounts had been withdrawn. After making entries in day book and under the pretext of disbursement of loan amounts, huge amounts had been misappropriated from the second respondent Society.

3.5. Each and every charge against the petitioner is specific with reference to the manner by which, the amounts had been withdrawn and misappropriated, thereby, causing loss to the second respondent Society. There was no proper explanation for the charges by the petitioner. Thereafter, an Enquiry Officer was appointed for disciplinary enquiry on 20.08.2007 and the same was also



informed to the petitioner. The Enquiry Officer issued notice to the petitioner for enquiry on several occasions and it is stated in the counter affidavit that the petitioner did not choose to appear before the Enquiry Officer. The Enquiry Officer has issued notices to the petitioner for the enquiry on 19.10.2007, 17.11.2007 and 16.12.2007.

3.6.It is the specific case of the respondents that the petitioner had not chosen to appear before the Enquiry Officer. It is also stated that at one point of time, the petitioner has made an attempt to mislead the Enquiry Officer, as if this Court has granted an order of interim stay. After verifying that there is no order of any Court stalling the enquiry proceedings, the Enquiry Officer proceeded with enquiry. Since the petitioner did not appear before the Enquiry Officer, it is stated that the petitioner was set *ex parte* and further enquiry was conducted by the Enquiry Officer based on the available records and evidence, that was supplied by the Management, namely, the second respondent Society. Thereafter, the Enquiry Officer submitted his report on 15.03.2008 finding that the charges against the petitioner were proved. Thereafter, a second show cause notice, dated 18.03.2008 along with the enquiry report, dated 15.03.2008 was issued to the petitioner and explanation was called from the petitioner. After receiving the second show cause notice, it is stated by the respondents that the petitioner did not come forward to submit her explanation immediately. However, the petitioner sought time for submitting her explanation.

3.7.After giving sufficient opportunity to the petitioner, final order of dismissal was passed by the second respondent on 30.06.2008. Thereafter, the petitioner filed a Writ Petition challenging the order of dismissal in W.P.(MD)No.6269 of 2009. Since an alternative remedy is available, the Writ Petition was dismissed with the liberty to the petitioner to approach the first respondent by way of revision. Thereafter, the petitioner has filed a revision before the first respondent. The Revision Petition filed by the petitioner was also dismissed by the first respondent by impugned order, dated 30.11.2012, after elaborately considering the issues raised by the petitioner. Challenging the impugned order of first respondent, dated 30.11.2012 confirming the order of the second respondent, dated 30.06.2008, the present Writ Petition is filed.

4.Though several grounds were raised in the Writ Petition in the memorandum of grounds, the learned Counsel for the petitioner submitted that based on *ex parte* enquiry, the order of dismissal was passed by the second respondent without even providing sufficient opportunity to the petitioner. The learned Counsel for the petitioner further submitted that all the charges framed against the petitioner were based on the enquiry report pursuant to the direction for enquiry under Section 81 of the Tamil Nadu Cooperative



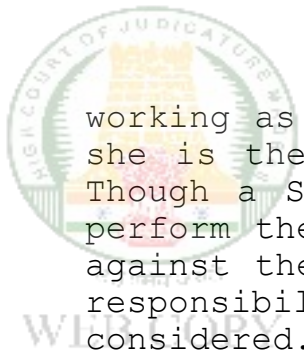
Societies Act, 1983. Since the copy of the enquiry report was not furnished to the petitioner, the learned Counsel for the petitioner stated that the petitioner was unable to defend her case effectively in the departmental proceedings.

5.The learned Counsel for the petitioner then submitted that the petitioner had been making representations for subsistence allowance from August 2007 and that the petitioner was unable to attend the enquiry, as she was deprived of her livelihood. The learned Counsel also submitted that the petitioner could not get along with the enquiry for want of documents, which are required to be furnished to the petitioner by the respondents. The learned Counsel for the petitioner also submitted that the petitioner was not in charge of the day-to-day affairs in the financial transactions of the second respondent Society and that the duty of the petitioner was only to maintain the registers and books of the second respondent Society and not to maintain accounts or look after financial transactions of the second respondent Society. Since the financial transactions were done by the Secretary himself, the enquiry against the petitioner without involving the Secretary of the Society is vitiated.

6.The learned Counsel for the petitioner strongly advanced an argument that the petitioner was put to serious prejudice on account of non furnishing of enquiry report. It is also stated that on account of non payment of subsistence allowance, the petitioner was practically prevented from participating the enquiry and defend the charges during the period of suspension. It is also submitted by the learned Counsel for the petitioner that the petitioner submitted a few representations for furnishing copies of the documents referred to in the charge memo apart from the enquiry report submitted pursuant to the enquiry under Section 81 of the Act.

7.It is admitted that the petitioner and others were also facing criminal prosecution. One of the contentions raised by the learned Counsel for the petitioner is that the criminal case was registered against the petitioner and others and the petitioner alone was targeted by initiating departmental proceedings. When the allegations against the petitioner was that she misappropriated a huge amount with the connivance of other employees of the second respondent Society, the learned Counsel for the petitioner submitted that failure to implicate the others in the departmental proceedings is illegal and arbitrary.

8.A detailed counter affidavit has been filed by the first respondent as well as the second respondent independently. The findings against the petitioner on all the three charges are specific in nature and this Court exercising its jurisdiction under Article 226 of Constitution of India has limited power of judicial review, when there is an application of mind and proper reasons are

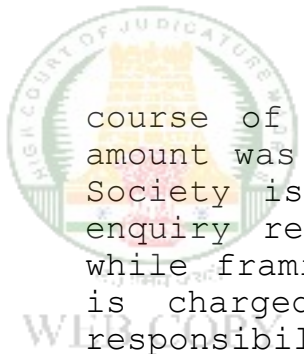


working as Assistant Secretary of the second respondent Society and she is the highest paid Officer of the second respondent Society. Though a Special Officer or the elected body are also expected to perform their duties, the findings of the second respondent Society against the petitioner regarding the charges are unassailable. The responsibility of the petitioner, as Assistant Secretary, was considered. Without the active involvement of the petitioner, such a huge amount could not have been misappropriated. It is established beyond reasonable doubt that there was a huge loss to the second respondent on account of the misappropriation. The character and attitude of the petitioner in making attempts to drag on the proceedings is evident. The petitioner's claim for subsistence allowance is of-course justified. However, under the guise of delay in payment of subsistence allowance or non payment of subsistence allowance, the petitioner has made several attempts to stall the departmental proceedings. The fact that the sums stated to have been misappropriated and thereby a huge loss has been caused to the Society is not disputed.

9. None of the submissions of the learned Counsel for the petitioner are appealing to this Court, having regard to the peculiar facts and circumstances of the case. First of all, the enquiry against the petitioner is in relation to grave charges against the petitioner. More than a crore of Rupees has been physically siphoned off from the second respondent Society during the petitioner's tenure. Misappropriation of such amount with reference to the period is also specified in the charges. The role of the petitioner, as Assistant Secretary, and the irregularities committed by her were also specifically mentioned in the charge memo. It is to be noted that the petitioner is the Chief of staff of the Society and was engaged for remuneration.

10. It is not in dispute that the petitioner received the charge memo, but, did not submit her explanation, even after issuance of few notices. In all the representations, the prime contention of the petitioner was that she should be paid subsistence allowance during the enquiry. Even though the petitioner wanted the enquiry report to be served on her before proceeding with the enquiry, this Court is unable to appreciate the contention of the petitioner. Even though an enquiry under Section 81 of the Act was conducted and the report is available, failure to furnish the enquiry report in this case is not a serious irregularity. It is only pursuant to the inspection, an enquiry was directed under Section 81 of the Act. It was, thereafter, the enquiry was conducted and after scrutiny of the documents maintained by the second respondent Society in the course of business, it was found that more than a crore of rupees had been misappropriated by the petitioner probably in connivance with the other staff of the Society.

11. The enquiry under Section 81 of the Act is relevant to point out the irregularities committed by the petitioner in the

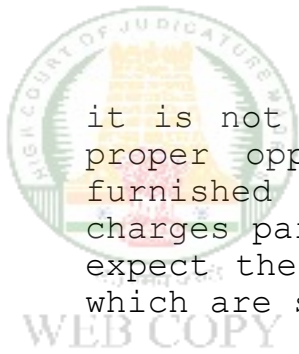


course of business transactions. When it was found that a huge amount was misappropriated by the petitioner, the second respondent Society is expected to proceed further by framing charges. The enquiry report, as such, was not relied upon by the respondents while framing charges against the petitioner. When the petitioner is charged for her omission and commission while holding the responsibility in the second respondent Society, the petitioner cannot sustain her contention purely on the ground that the enquiry report was not furnished to her. The Enquiry Officer is stated to have issued notices on several occasions to the petitioner. There was change of Enquiry Officer and the second Enquiry Officer also issued several notices to the petitioner for her appearance to defend herself with reference to the charges framed by the second respondent Society. For unknown reasons, the petitioner opted not to appear before the Enquiry Officer, despite several notices being issued to her. The enquiry Officer, in such circumstances, has no other option but to proceed with the enquiry on the basis of materials available on record.

12.The failure to participate in the enquiry by the petitioner leads us to presume that the petitioner had no defence or explanation for the charges against her. The petitioner, of-course, had occasion to approach this Court for getting subsistence allowance and she managed to get the allowance after getting orders from this Court. It is not the case that the petitioner was not at all paid subsistence allowance. It is to be noted that the petitioner was also reinstated into service on 18.06.2008.

13.The learned Counsel for the petitioner relied upon the representations of the petitioner, dated 24.03.2007 and 16.05.2007. In the first representation, the petitioner wanted reinstatement, as the petitioner was under suspension for a long time. In the second representation, the petitioner wanted the enquiry to be postponed till the criminal case is decided in one way or other. In the latter representation, the petitioner raised several factual issues. It is her case that the signature found in the documents produced by the second respondent Society were forged and that her subordinates had misappropriated the amounts by forging the signature of the petitioner. Having stated in the representation, the petitioner ought to have participated in the enquiry and made an attempt to prove that the documents relied upon by the second respondent Society were forged. However, the petitioner cannot challenge the report of the Enquiry Officer on the ground that she was not given copies of documents relied upon by the second respondent Society or that the enquiry is vitiated.

14.This Court, after going through the records, is fully satisfied that the petitioner was given a fair opportunity at every stage of departmental proceedings. It is the petitioner, who voluntarily abstained from participating in the enquiry for unknown reasons and she opted not to appear before the Enquiry Officer,



it is not open to the petitioner to allege that she was not given proper opportunity. Even assuming that the documents were not furnished to the petitioner, unless the petitioner denying the charges participate in the enquiry to establish her case, she cannot expect the Enquiry Officer on his own to supply all the documents, which are supplied by the management.

15.The learned Counsel for the petitioner relied upon the judgment of the Honourable Supreme Court in the case of **State of India and others vs D.C.Aggarwal and another**, reported in **1993 (1) SCC 13**, wherein, the Honourable Supreme Court has held that the order of the Disciplinary Officer in that case was vitiated on the ground of mechanical exercise of powers, non supply of enquiry report and relying upon materials, which were not only irrelevant, but could not have been looked into. This judgment has no application to the facts in this case.

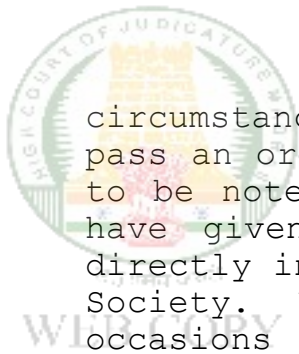
16.The learned Counsel for the petitioner relied upon the judgment of the Honourable Supreme Court in the case of **Committee of Management, Kisan Degree College vs Shambhu Saran Pandey**, reported in **1995 (1) SCC 404**, for the proposition that the enquiry against the delinquent will be vitiated, if no opportunity is given to the delinquent at least for inspection of documents.

17.The learned Counsel for the petitioner also relied upon another judgment of the Honourable Supreme Court in the case of **State of Uttar Pradesh vs Shatrughan Lal and another**, reported in **1998 (6) SCC 651**, for the proposition that the supply of copies is also necessary, where, witnesses make statements, which had intended to be put against him in regular enquiry.

18.The learned Counsel for the petitioner relied upon another judgment of Honourable Supreme Court in the case of **Ratnesh Kumar Choudhary vs Indiragandhi Insituate of Medical Sciences, Patna**, reported in **(2015) 15 SCC 151**, wherein, it is stated that the conduct of enquiry without framing charges or without supply of necessary documents to the delinquent employee violates the principles of natural justice.

19.None of the judgments/precedents relied upon by the petitioner are relevant in this case, where, facts of the case are different and the petitioner was given full opportunity in the course of the enquiry.

20.In the counter affidavit filed by the second respondent, it is stated that the second show cause notice was issued to the petitioner along with the enquiry report, dated 15.03.2008. Though explanation was called for from the petitioner, it is stated that the petitioner did not come forward to submit her explanation in response to the second show cause notice. In the said



circumstances, the second respondent, had no other option, but to pass an order by relying upon the report of Enquiry Officer. It is to be noted that the petitioner, at one point of time, appears to have given up probably due to the reason that she is involved directly in misappropriating a huge sums from the second respondent Society. While the petitioner has approached this Court on several occasions challenging the order of suspension and pursued for revocation of the order of suspension, it is quit surprising to note that the petitioner did not participate in the enquiry.

21.After this length of time, the petitioner's main grievance that she was not given the documents cannot be accepted. Atleast, the petitioner could have approached this Court, if she thought that she would be put to a precarious position to get along with the enquiry without the records. Having failed to approach this Court or the Enquiry Officer at the relevant point of time, this Court is unable to find any justification for the petitioner to abstain from the enquiry proceedings and to allege that the enquiry is vitiated for violation of principles of natural justice. When the Enquiry Officer and the second respondent had given reasonable opportunity to the petitioner, it is for the petitioner, who failed to avail the opportunity to suffer, if the proceedings were concluded based on the records available. This Court is of the view that the enquiry proceedings were commenced and completed without giving any room for any irregularity or illegality. This Court finds no merit in any of the submissions made by the learned Counsel for the petitioner, having regard to the peculiar facts and circumstances of the case. In view of the fact that findings of the Enquiry Officer are well grounded, this Court has no reason to differ from the Enquiry Officer, especially, when the petitioner did not participate in the enquiry. The second respondent has applied his mind apart from considering all the materials and documents. The order of the second respondent is supported by reasons and no perversity is pointed out in the order.

22.For all the above reasons, this Court is unable to find any irregularity or illegality in the order of the first respondent or the second respondent. Hence, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.D II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

1.The Joint Registrar of Cooperative Societies,
Virudhunagar,
Virudhunagar District.

2.The Special Officer,
O.508, Mamsapuram Primary Agricultural
Cooperative & Credit Society,
Mamsapuram,
Virudhunagar District.

+1 CC to M/s.VEERA ASOCIATES, Advocate (SR-25954[F] dated
11/08/2021)

+1 CC to M/s.J.PAREKH KUMAR, Advocate (SR-26024[F] dated 11/08/2021
)

+1 CC to M/s.The Special Government Pleader (SR-25869[F] dated
11/08/2021)

W.P. (MD) No.5882 of 2013
10.08.2021

RS (24.08.2021) 9P 6C