



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD) .Nos.7079 & 18754 of 2013

WEB COPY

W.P (MD) No.7079 of 2013

T.Rasu

... Petitioner

Vs

1.T-1686, Ambathumelnagaram Primary
Agricultural Co-operative Credit Society,
represented by its Special Officer,
Ambathumelnagaram,
Thiruvaiyaru Taluk,
Thanjavur District.

2.The Deputy Registrar of Co-operative Societies,
Ganapathy Nagar,
Medical College Road,
Thanjavur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the Principal District Judge/Co-operative Tribunal, Thanjavur, in C.M.A.No.32 of 2011, dated 28.02.2013, by confirming the order of the 2nd respondent in Na.Ka.No.2976/2008, Sa.Pa. Dated 11.03.2011 and quash the same and directing the respondents to disburse the petitioner's retirement benefits recovered from him.

For Petitioner	:	Mr.G.Karnan
For Respondents	:	Mr.M.Lingadurai Government Counsel

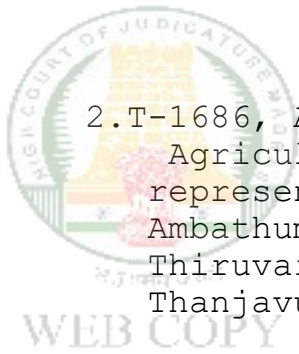
W.P. (MD) .No.18754 of 2013

T.Rasu

... Petitioner

Vs

1.The Joint Registrar of Co-operative Societies,
Ganapathy Nagar,
Medical College Road,
Thanjavur.



2.T-1686, Ambathumelnagaram Primary
Agricultural Co-operative Credit Society Ltd.,
represented by its Secretary,
Ambathumelnagaram,
Thiruvaiyaru Taluk,
Thanjavur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records on pertaining the impugned order in Na.Ka.7169/2013/Sa.Pa. Dated 11.10.2013 passed by the 1st respondent and quash the same and directing the 1st respondent to take on the file, the revision filed by the petitioner and disposed off the same on merits in accordance with law.

For Petitioner	:	Mr.G.Karnan
For Respondents	:	Mr.M.Lingadurai for R1 Government Counsel No Appearance for R2

COMMON ORDER

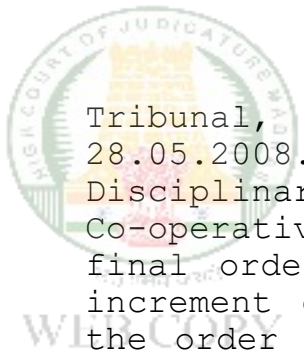
W.P.(MD).No.7079 of 2013 has been filed for issuance of Writ of Certiorarified Mandamus to quash the order of Principal District Judge/Co-operative Tribunal, Thanjavur in C.M.A.No.32 of 2011, dated 28.02.2013, confirming the order of second respondent, dated 11.03.2011 and to direct the respondents to disburse the petitioner's retirement benefits recovered from the petitioner.

W.P.(MD).No.18754 of 2013 is also filed by the same petitioner for issuance of a writ of Certiorarified Mandamus to quash the impugned order passed by the first respondent, dated 11.10.2013 and to direct the first respondent to take up the revision filed by the petitioner and dispose of the same on merits.

2.The brief facts that are necessary for the disposal of this writ petition are as follows:

2.1.The petitioner was appointed as the Secretary of the first respondent Society in the year 1976. The petitioner also retired from service on 31.01.2010. His service of course was extended till 04.05.2010.

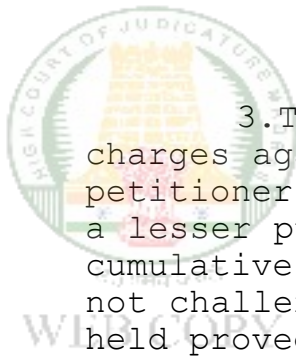
2.2.While he was in service as Secretary of the first respondent society, a show cause notice was issued by the second respondent, on 28.04.2008, under Section 87(1) of the Tamilnadu Co-operative Societies Act, 1983 (herein after referred as 'The Act'). It is submitted that the show cause notice was issued following the enquiry under Section 81 of the Tamilnadu Co-operative Societies Act. The petitioner challenged the show cause notice by filing C.M.A.No.24 of 2008 before the Principal District Court/Co-operative



Tribunal, Thanjavur, and obtained stay of further proceedings on 28.05.2008. C.M.A.No.24 of 2008 was dismissed on 11.11.2010. Disciplinary proceedings were initiated by the Joint Registrar of Co-operative Societies, Thanjavur Region. After holding enquiry, a final order was passed on 28.02.2009 by awarding a punishment of increment cut for five years with cumulative effect. Challenging the order of punishment, there was no revision or appeal has been filed and hence, the order has become final. It is to the notice that the serious charges of misappropriation and dereliction of duty to cause substantial loss to the society were held proved.

2.3.Simultaneously surcharge proceedings were initiated, pursuant to the enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act. A show cause notice was issued to the petitioner on 18.01.2011. The petitioner also gave his explanation, dated 31.01.2011, denying the charges and the alleged irregularities stated to have been committed by the petitioner. It is the case of the petitioner that a recovery order was passed without conducting any enquiry. As against the order of recovery, the petitioner preferred a revision before the Co-operative Tribunal/Principal District Court, Thanjavur, in C.M.A.No.32 of 2011. The appeal filed by the petitioner was also dismissed by the Tribunal. The petitioner challenging the order of Tribunal, confirming the order passed by the second respondent, filed the present writ petition in W.P.(MD).No.7079 of 2013.

2.4.After awarding the punishment of cut in increment for five years with cumulative effect to the petitioner, the Special Officer directed the petitioner to join duty. After the petitioner retired from service on 31.01.2010, the petitioner approached the respondents for disbursement of salary for entire period during which recovery proceedings and departmental proceedings were pending against him. However, the request for arrears of salary was rejected by the Secretary of the society, by an order, dated 28.07.2012, on the ground that the petitioner did not work for the period and therefore, there is no scope of disbursement of any salary to the petitioner. Challenging the said order, dated 28.07.2012, the petitioner filed a petition earlier in W.P.(MD).No.7006 of 2013. There was also a prayer in the writ petition for issuing a direction to the respondents to disburse the arrears of salary to the petitioner from April 2004 to February 2009. The said writ petition was dismissed on the ground of availability of alternative remedy. The petitioner was directed to approach the Revisional Authority under Section 153 of the Act. Thereafter, the petitioner filed a revision petition under Section 153 of the Act and the revision petition was also dismissed on the ground that the revision ought to have been filed within 90 days from the date of the order of second respondent. Challenging the impugned order passed by the first respondent, dated 11.10.2013, the second writ petition in W.P.(MD).No.18754 of 2013 is filed by the petitioner.



3.The petitioner has committed various irregularities and the charges against the petitioner were held proved earlier. Though the petitioner deserved the punishment of dismissal, it is not known why a lesser punishment of increment cut for a period of five years with cumulative effect was imposed to the petitioner. The petitioner has not challenged the punishment or the charges against him, which were held proved during the departmental proceedings.

4.Surcharge proceedings were later initiated, pursuant to the enquiry. After issuing show cause notice to the petitioner and getting the explanation from the petitioner to the show cause notice, the impugned order of recovery, dated 11.03.2011, was passed by the first respondent. As against the order of first respondent, the petitioner filed C.M.A.No.32 of 2011 and the same was also dismissed confirming the order of second respondent, dated 11.03.2011.

5.The petitioner is the Secretary of the first respondent society during the relevant period. The petitioner has suffered an order of punishment. The findings of the disciplinary authority while imposing the punishment is relevant. The disciplinary authority has specifically found that all the charges against the petitioner are proved. While imposing the punishment, every charge against the petitioner had been dealt with on the basis of evidence and materials available. The petitioner was found guilty of not only misappropriation, but also various other irregularities. After imposing the punishment of increment cut for a period of five years with cumulative effect, it is also open to the respondent to initiate surcharge proceedings as surcharge proceedings are independent in the sense that the cause of action for initiating recovery proceedings to make good the loss caused to the society is independent and required to protect the interest of society.

6.The grievance of the petitioner is that the Tribunal as well as the second respondent has passed impugned order without considering the fact that no enquiry was conducted in respect of the charge. It is contended that the order in C.M.A.No.32 of 2011 confirming the order of the second respondent is illegal. It is further contended that since there is no finding like willful negligence or dereliction of duty or huge loss caused to the society, the impugned order of recovery is not warranted. It is contended by the learned counsel appearing for the petitioner that the respondent have treated the petitioner as one who has misappropriated a large some of money from the society. It is further contended that the punishment of cut in increment for five years is phenomenal and the respondent cannot proceed to recover any amount on the same set of facts and allegations.

7.With regard to the writ petition in W.P.(MD).No.18754 of 2013, the learned counsel appearing for the petitioner submitted
<https://hcs.ecourt.gov.in/hcservices> respondent passed the impugned order, dated



11.10.2013, without considering the eligibility of the petitioner to kept salary for the period during which the petitioner was get away from service. It is further stated that the Revisional Authority also ought to have considered the matter on merits, rather than dismissing the petition on the ground that the appeal is time barred. Since the revision itself was filed after the disposal of the writ petition filed by the petitioner, the period taken by the petitioner to pursue his remedy by filing the writ petition ought to have excluded. The learned counsel appearing for the petitioner is right in his submission. Therefore, as far as the second writ petition is concerned, this Court is inclined to dispose of the matter on merits.

8. In both the writ petitions, the facts are not in dispute. As pointed out earlier, the counsel for petitioner submitted that the petitioner had already suffered an order of punishment and that the impugned order of recovery will amount to double punishment. Secondly, the learned counsel submitted that the impugned order is an order of recovery, which was without conducting any enquiry. It is also submitted by the learned counsel that the explanation given by the petitioner was also not considered. This Court carefully gone through the proceedings initiated earlier by the respondent against the petitioner for the irregularities and mis-conduct committed by the petitioner apart from the recovery proceedings.

9. It is seen that every charge framed against the petitioner had been proved. The punishment was also awarded to the petitioner. It is seen that the petitioner has committed various irregularities. Apart from un-authorized absence and other charges, a specific charge has been framed against the petitioner for misappropriation of a sum of Rs.1,28,326/-. It is stated that the petitioner received a sum of Rs.1,28,326/- from 13 members of the society towards repayment of loan and had misappropriated the funds without crediting the amount with corresponding entries in the books of accounts. Similar instances of financial irregularities were also held as proved. One of the allegation is that while receiving salary from Tamilnadu Co-operative Sales Society, the petitioner has also singed in the attendance register in the respondent primary Agricultural Co-operative Bank. Though the findings rendered by the disciplinary authority on the specific charges of mis-conduct would lead to the conclusion that in fact the petitioner has misappropriated huge money. Hence, the society has to initiate action for recovery of money by way of surcharge proceedings in the process of making the responsible Officer like the petitioner accountable.

10. The surcharges proceedings are independent as much as the object is to recover any amount that was either misappropriated by the Officer or Staff of the society or by way of compensating the loss caused to the society, as a result of dereliction of duty or negligence. When the petitioner himself has admitted the

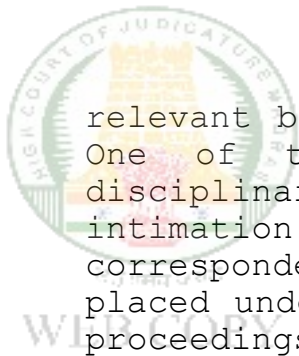


charges against him, it goes without saying that the petitioner has involved in financial irregularities and caused loss to the society. The petitioner has not given any valid reason why the recovery proceedings cannot be initiated against the petitioner for the loss caused to the society during his tenure as Secretary. The petitioner himself has not challenge the findings of the Disciplinary authority, holding the petitioner guilty of charges. The petitioner himself has admitted that he has disbursed a few crop loans without issuing receipts. For all the serious charges, like misappropriation, dereliction of duty etc., the petitioner was casual in responding to the charges even before this Court. Except stating that the petitioner's explanation was not considered, no materials produced before this Court to substantiate any irregularity or perversity in the order of the first or second respondent.

11.The first respondent has filed a counter affidavit in W.P. (MD).No.18754 of 2013. In the counter affidavit, it is stated that the Disciplinary proceedings against the petitioner came to end by 28.02.2009 and that the petitioner did not file any appeal or revision against the said order between 2009 and the date of retirement. The petitioner has nothing to defend by referring to any of his credentials. The petitioner has caused loss to the Co-operative Society under various heads. It is the responsibility of the petitioner to make good the loss if it is proved pursuant to an enquiry. Hence, this Court find no valid grounds to interfere with the order of recovery.

12.In the counter affidavit, it is specifically stated that the petitioner was absent from duty for a long period from 20.11.2005 to 06.03.2009. It is not the case of respondent that the petitioner was placed under suspension during that period. It is also stated by the respondent that the petitioner never care to inform the whereabouts of the petitioner, when he did not report for duty. The representation of the petitioner was therefore rejected on the specific ground that no salary can be claimed by the petitioner while he was absent and did not render any service. It is not in dispute that the petitioner was receiving the salary up to 19.11.2005. Question is whether the petitioner is entitled to salary from 20.11.2005 to 06.03.2009.

13.The case of the petitioner that the petitioner was prevented from doing work is not supported by any material or circumstances. The petitioner was never suspended by an order. The learned counsel appearing for the petitioner relied upon the proceedings, wherein, it was indicated that the petitioner was placed under suspension. However, a specific stand has been taken by the respondent through out that the petitioner was never in service. It is to be pointed out that one of the charge against the petitioner was that he was unauthorisedly absent from work. The



relevant before considering the case of this nature by this Court. One of the charges against the petitioner while initiating disciplinary proceedings is that the petitioner without any intimation did not report duty from 20.11.2005. From the correspondence, there is no indication that the petitioner was ever placed under suspension pending or in contemplation of disciplinary proceedings. It is not his contention that he was under suspension and that therefore, he could not report duty. The punishment given to the petitioner is very minor when compared to the charges that were proved against him.

14.It is in the background, this Court carefully examined the records, whether any lenience can be shown to the petitioner. The conduct of the petitioner is revealed from the charges and the findings by the disciplinary authority. In the whole enquiry proceedings, the petitioner's explanation was not on any substantial grounds. Having regard to the charges relating to the misappropriation of huge fund thereby causing loss to the society, this Court is unable to find any error or irregularity in the process of recovery to initiate surcharge proceedings and recovery proceedings. Similarly, the petitioner unable to convince this Court that he made himself available to serve the society during the period, for which he claim salary from the society. This Court is not convinced that the petitioner had any valid reason for not to reporting duty after he was directed to join duty. This Court is unable to find any merit, especially when the petitioner has not satisfactorily explained how he was prevented from work or why he did not come to work during the relevant period.

15.Hence, these writ petitions are dismissed for want of merits. However no order as to costs.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar(CS)

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 Principal District Judge/Co-operative Tribunal,
Thanjavur.

2.The Joint Registrar of Co-operative Societies,
Ganapathy Nagar,
Medical College Road,
Thanjavur.

3.The Deputy Registrar of Co-operative Societies,
Ganapathy Nagar,
Medical College Road,
Thanjavur.

4. The Secretary,
T-1686, Ambathumelnagaram Primary
Agricultural Co-operative Credit Society Ltd.,
Ambathumelnagaram,
Thiruvaiyaru Taluk,
Thanjavur District.

5.The Special Officer,
T-1686, Ambathumelnagaram Primary
Agricultural Co-operative Credit Society,
Ambathumelnagaram,
Thiruvaiyaru Taluk,
Thanjavur District.

+2 CC to M/s.G.KARNAN, Advocate (SR-26613,SR-26614[F] dated
18/08/2021)

+1 CC to M/s.The Special Government Pleader (SR-26773[F] dated
19/08/2021)

W.P. (MD) .Nos.7079 & 18754 of 2013

17.08.2021

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