



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE **M.M. SUNDRESH**

AND

THE HONOURABLE MRS. JUSTICE **S. ANANTHI**

W.A. (MD) No. 674 of 2018

against

WP (MD) No. 15271 of 2016

A. Anthoni Dass

: Appellant/Petitioner

Vs.

1. The Principal Secretary to Government,
Co-operation, Food and Consumers Production Department,
Food and Consumers Production Department,
Chennai 600 009.

2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town, Chennai 10.

3. The Registrar of Co-operation Societies,
Kilpauk, Chennai 600 009.

4. The Joint Registrar of Co-operative Societies,
Tiruchirappalli 600 020.

5. The Deputy Registrar of Co-operative Societies,
Tiruchirappalli 600 020.

: Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 18.08.2016 made in W.P. (MD) No. 15271 of 2016.

Prayer in WP (MD). 15271 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the 1st respondent in G.O. (D) No. 51 Co-operation, Food and Consumer Protection Department dated 02.02.2016 and quash the same as illegal.

For Appellant : Mr. S. C. Herold Singh

For Respondents : M/s. B. Bhagavathi
Government Advocate



JUDGMENT

(Judgment of the Court was delivered by **M.M.SUNDRESH, J.**)

This appeal has been preferred by the appellant challenging the order of the learned Single Judge, who while upholding the impugned order, dismissed the writ petition filed.

2.The appellant herein was appointed as an Enquiry Officer and he conducted an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, over the illegality committed in the transactions of a Co-operative society. Charge against the appellant is that he could not complete the enquiry at the first instance and thereafter, extension of time was given. The said order of extension made it clear that the appellant will have to complete the enquiry, failing which, departmental proceedings would be initiated. The appellant filed a report stating that inasmuch as the misappropriation alleged involves a number of transactions pending more than 2 years, it could only be done by a committee appointed. Upon receiving the aforesaid report, departmental proceedings were initiated and a punishment of stoppage of increment was imposed for a period of one year with cumulative effect. The appeal filed also was dismissed. The learned Single Judge dismissed the writ petition, holding that the report being incomplete and perfunctory and the punishment cannot be interfered with.

3.The learned counsel appearing for the appellant placed reliance on the judgment of the Hon'ble Apex Court reported in **(2207) 4 SCC 566** in the case of **Inspector Prem Chand Vs., Government of NCT of Delhi and others** and submitted that mere negligence simpliciter cannot be termed as a misconduct. It is not as if the appellant gave a partial report. He has stated the reason for not proceeding further. This may be an error of judgment, but certainly not a ground for initiating action.

4.The learned Government Advocate appearing for the respondents submitted that inasmuch as enquiry was conducted, after framing charges, coupled with the admitted fact of not filing of the complete report, no interference is required in the order of the learned Single Judge.

5.In the report itself, the appellant has stated the reason for filing incomplete report. There is nothing to hold that the reasons are not correct. Merely because the time was extended for the conclusion of the enquiry, departmental proceedings cannot be initiated and concluded against an officer. Therefore, until and unless a specific finding is given that the enquiry has not been completed deliberately, the appellant cannot be made to suffer. Even otherwise, we do not find any wilful dereliction of duty by the appellant. There is no misconduct *per se*, which is involved, as it



may be an error of judgment. There is no dispute of fact with respect to the incomplete report. However, the issue is with respect to the disability of the enquiry officer in preparing the report, particularly, in the light of the issue involved.

6. Thus, in the light of the above discussions, we are constrained to hold that the impugned order passed cannot be sustained in the eye of law. In our considered view, the learned single judge is not correct in upholding the impugned orders.

7. In the light of the above discussions, the Writ Appeal stands allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

Rmk

To

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Co-operation, Food and Consumers Production Department,
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2. The Secretary,
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VOC Nagar, Park Town, Chennai 10.

3. The Registrar of Co-operation Societies,
Kilpauk, Chennai 600 009.

+1 CC to Mr. S. C. HEROLD SINGH, Advocate (SR-7431[F] dated 26/02/2021)

+1 CC to M/s. SPL GP (SR-7491[F] dated 26/02/2021)

W.A. (MD) No. 674 of 2018
25.02.2021

VB (19.03.2021) 3P 6C