



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2022

C O R A M

THE HON'BLE MS.JUSTICE V.M.VELUMANI

W.P.No.8266 of 2021

and

W.M.P.Nos.8805 & 8806 of 2021

R.Ponnusamy

...Petitioner

Vs

1. The Deputy Director of Handloom and Textiles,
Kancheepuram,
Kancheepuram District.

2. The Managing Director,
Kanchipuram - Tiruvallur Silk Handloom
Weavers Cooperative Society Ltd., G.2054,
Gandhi Road, Kanchipuram,
Kanchipuram District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.1212/2020/D, dated 22.01.2021 and quash the same.

For Petitioner : Mr.C.Prakasam

For R1 : Mr.S.Prabhakaran
Government Advocate

For R2 : Mr.L.P.Shanmugasundaram

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.1212/2020/D, dated 22.01.2021 and quash the same.

2.Heard Mr.C.Prakasam, learned counsel for the petitioner; Mr.S.Prabhakaran, learned Government Advocate appearing for the 1st respondent and Mr.L.P.Shanmugasundaram, learned counsel



appearing for the 2nd respondent.

3. According to the petitioner, he was working as salesman in the 2nd respondent society from 29.04.1998 and he was suspended from the service in the year 2014. While so, the 1st respondent ordered enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act (hereinafter referred as 'the Act') for the alleged irregularities committed in the 2nd respondent society during the period from 2002 - 2003 to 2008 - 2009. Based on the said enquiry report, the 1st respondent has passed impugned order dated 22.01.2021, under Section 87 of the Act.

4. According to the learned counsel appearing for the petitioner the surcharge order passed by the 1st respondent is illegal and the same cannot be enforced especially, when the petitioner was dismissed from the service in the year 2014 and after seven years of the alleged irregularities.

5. Mr. S. Prabhakaran, learned Government Advocate appearing for the 1st respondent submitted that the impugned order is appealable before the Cooperative Tribunal. However, the petitioner without exhausting alternative effective remedy has directly approached this Court, Writ Petition is not maintainable and therefore, he prayed for dismissal of the Writ Petition.

6. From the materials on record it is seen that, enquiry under Section 81 of the Act was ordered on 05.04.2019 for the irregularities committed in the 2nd respondent society during the period of 2002 - 2003 to 2008 - 2009. Based on the said enquiry report dated 01.10.2019, the 1st respondent initiated surcharge proceedings and passed impugned order on 22.01.2021. As per the first proviso to Section 87 of the Act, surcharge proceedings cannot be initiated after the expiry of seven years from the date of action or omission. In the present case, both the enquiry under Section 81 of the Act as well as the surcharge proceedings were initiated after 17 years of alleged irregularities. In view of the same, the impugned order is liable to be set aside in as much as the surcharge order is passed after 17 years of the alleged irregularities. In certain cases, based on the facts and circumstances of the case, even if there is alternative remedy, the Writ Petition can be entertained and suitable orders on the claim of the petitioner can be passed.

7. In view of the above, the surcharge proceedings and the impugned order on the face of it is barred by limitation. Hence, as per the first proviso to 87 of the Act, the impugned order dated 22.01.2021 passed by the 1st respondent is set aside.



8. With the above observations, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Deputy Director of Handloom and Textiles,
Kancheepuram,
Kancheepuram District.
2. The Managing Director,
Kanchipuram - Tiruvallur Silk Handloom
Weavers Cooperative Society Ltd., G.2054,
Gandhi Road, Kanchipuram,
Kanchipuram District.

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.11782

+1cc to the Government Pleader, S.R.No.11975

W.P.No.8266 of 2021
and
W.M.P.Nos.8805 & 8806 of 2021

NRL(CO)
RGA(18/03/2022)