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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-06-2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.18809 of 2014

And

MP Nos.2 and 3 of 2014

P.Vengatachalam

...Petitioner

vs.

1. The Joint Registrar of Cooperative Societies,
Krishnan Region/Revisional Authority,
24/43, 4th Street, Joint Road,
Cooperative Colony,
Krishnagiri - 635 001.

2. Kaarappattu Primary Agricultural Cooperative
Credit Society Ltd., S978, Represented by
its Special Officer,
Kaarappattu Post,
Uthangarai Taluk,
Krishnagiri District.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceedings dated 25.10.2010 and confirmed by the first respondent/ revisional authority in his proceedings Na.Ka.466/2011 Sa.Pa. Dated 25.03.2013 and quash the same and reinstate the petitioner into service with all service and monetary benefits.

For Petitioner : Mr.M.Thangaraju

For Respondent-1 : Ms.S.Anitha,
Special Government Pleader.

For Respondent-2 : Mr.M.S.Palaniswamy

O R D E R

The order of dismissal from service issued by the second respondent-Cooperative Society dated 25.10.2010, confirmed by the order of Revisional Authority in proceedings dated 25.03.2013, are under challenge in the present writ petition.



2. The writ petitioner was appointed as Clerk on 28.11.1990 in the second respondent-Cooperative Society. With reference to grant of loan to the members of the second respondent-Society, charges were framed against the writ petitioner in proceedings dated 24.01.2009. The writ petitioner was placed under suspension on 09.01.2009. Nine charges were framed against the writ petitioner. The allegations are regarding grant of irregular loans and causing financial loss to the second respondent-Cooperative Society. The excess loan than that of the eligibility were sanctioned and disbursed to the members and therefore, the second respondent-Cooperative Society sustained financial loss. The writ petitioner submitted his explanations denying the charges.

3. The Domestic Enquiry Officer was appointed in proceedings dated 12.05.2009. The writ petitioner participated in the process of enquiry and defended his case. The Enquiry Officer submitted his report on 29.09.2009 holding that the charges against the writ petitioner are held proved. The enquiry report of the Enquiry Officer was accepted by the Disciplinary Authority and the order of dismissal from service was issued in proceedings dated 25.10.2010 after issuing the second show cause notice along with the copy of the domestic enquiry report.

4. The petitioner had defended his case in the enquiry proceedings. The petitioner thereafter filed revision under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983 before the first respondent, who in turn also rejected the revision in proceedings dated 25.03.2013 and the review filed under Section 154 of the Act, was also rejected on 25.06.2013. Thus, the petitioner is constrained to move the present writ petition.

5. The main ground raised by the petitioner is that the loan amount has been waived by the Government by way of a policy decision and once the loan had been waived, there is no financial loss to the second respondent-Cooperative society and therefore, the order of dismissal is to be set aside. It is further contended that the petitioner is not liable for any such irregularity in grant of loan and loans were granted according to the eligibility of the individual members and the second respondent-Cooperative Society had not proved the charges before the Enquiry Officer and the explanations and the documents produced by the writ petitioner were not considered by the Competent Authority.

6. The learned counsel appearing on behalf of the second respondent-Cooperative Society disputed the said contentions raised on behalf of the petitioner by stating that the allegations are serious in nature. The charges are relating to



sanctioning of loan to the members in excess than that of the eligibility of the respective members, which caused financial loss.

7.The learned counsel for the second respondent-Cooperative Society further contended that the charges were framed against the Secretary, Assistant Secretary and the writ petitioner-Clerk and all the three were dismissed from service as the financial implications were huge during the relevant point of time. That apart, based on the statutory enquiry conducted under Section 81 of the Tamil Nadu Cooperative Societies Act 1983 and based on the report, criminal case was registered against all the three officials of the second respondent-Cooperative Society and also against the President and the Board of Directors. That apart, surcharge proceedings were also initiated against all the officials and the elected members of the second respondent-Cooperative Society. This being the factum, the petitioner cannot be exonerated merely because of the loan amount that has been waived by the Government by way of policy decision.

8.The Government announced a policy decision to waive the loan granted by the Cooperative Societies and such a policy decision announced by the Government would not exonerate the delinquent officials from the charges. The delinquency committed were enquired into by following the procedures as contemplated and therefore, the petitioner cannot now plead that the loan amount has been paid by the Government and hence the petitioner should be exonerated from the allegations. It is further contended that the facts were adjudicated elaborately both before the Enquiry Officer and before the Revisional Authority and such facts which reached finality deserve no further consideration in the hands of this Court in the present writ petition.

9.The learned Special Government Pleader appearing on behalf of the first respondent made a submission that the allegations are serious in nature and the charges are held proved against the writ petitioner. The procedures as contemplated were followed by the second respondent-Cooperative Society. Considering those facts and circumstances, the Revisional Authority also confirmed the order of dismissal passed by the second respondent-Cooperative Society and therefore, the writ petition is to be rejected.

10.The power of judicial review under Article 226 of the Constitution of India is to be exercised only if there is violation of procedures as contemplated under law and to scrutinise the processes through which a decision is taken by the Competent Authority, but not the decision itself. Undoubtedly, if the quantum of punishment imposed is



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disproportionate to the gravity of the charges or shocking to the conscience, then also the High Court can interfere with the punishment. As far as the facts are concerned, if it is adjudicated elaborately and if there is no substantial ground to interfere with the finding of facts, then the scope of judicial review is undoubtedly limited.

11. In the present case, the facts are not in dispute between the parties. The Secretary, Assistant Secretary and the writ petitioner, who was holding the post of Clerk, were subjected to departmental disciplinary proceedings and after enquiry, they were dismissed from service. Criminal proceedings and surcharge proceedings were also initiated against all the employees and against the elected members of the second respondent-Cooperative Society. Regarding the procedures followed, the charge memo was issued, the petitioner submitted his explanations and not satisfied with the explanation, the Disciplinary Authority appointed an Enquiry Officer, who in turn conducted the enquiry. The writ petitioner had participated in the process of enquiry and defended his case.

12. The Enquiry Officer submitted his report holding that all the 9 charges are held against the charged officials. Based on the enquiry report, second show cause notice was issued enclosing the copy of the enquiry report and the writ petitioner submitted his objections and thereafter the order of dismissal was issued by the Disciplinary Authority. Thus, there is no violation in respect of procedures followed by the Disciplinary Authority and regarding the facts also, the petitioner has not raised any ground except by stating that the Government has granted waiver of loan amount and therefore, the charges became lapsed and the petitioner is to be exonerated. In other words, the learned counsel for the petitioner reiterated that once the financial loss is rectified by way of a policy by the Government, the petitioner is not liable for any such financial loss and therefore, the order of dismissal is to be set aside.

13. This Court is of the considered opinion that the waiver of loan was a policy introduced by the Government of Tamil Nadu in respect of all Cooperative Societies across the State of Tamil Nadu. Such waiver of loan by way of a policy by the Government would not be a ground to grant exoneration of the employees, who have committed certain illegalities and irregularities in the affairs of the second respondent-Cooperative Society. All such misconducts, irregularities and illegalities have to be enquired into and in the present case, the enquiry had already been conducted and the writ petitioner was dismissed from service along with other officials, namely, Secretary and Assistant Secretary of the second respondent-Cooperative Society. Thus, the waiver of loan by the Government



would not be a bar for the Management to continue the departmental disciplinary proceedings for the misconduct, illegality, irregularity or financial losses to the second respondent-Cooperative Society.

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14. The High Court cannot re-adjudicate the facts as the disputed facts were adjudicated both before the Disciplinary Authority and the Revisional Authority. Even in the review, the facts are not disputed and reached finality. Such facts, which were established before the Original Authority and the Revisional Authority need not be re-adjudicated in the present writ petition.

15. As far as the quantum of punishment is concerned, the allegations are serious in nature. There are several loan transactions where the authorities found that excess loan has been granted over and above the eligibility thereby causing huge financial loss to the second respondent-Cooperative Society and further the charges were held proved against the writ petitioner and other officials of the Cooperative Society. Thus, this Court do not find any excessive imposition of punishment or disproportionality or otherwise. This being the factum, this Court do not find any acceptable ground for the purpose of interfering with the orders passed by the respondents.

16. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Joint Registrar of Cooperative Societies,
Krishnan Region/Revisional Authority,
24/43, 4th Street, Joint Road,
Cooperative Colony,
Krishnagiri - 635 001.



2. The Special Officer,
Kaarappattu Primary Agricultural Cooperative
Credit Society Ltd., S978,
Kaarappattu Post,
Uthangarai Taluk, Krishnagiri District.

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+1cc to Mr.M.Thangaraju, Advocate, S.R.No.38038
+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.37347
+1cc to the Government Pleader, S.R.No.37665

WP 18809 of 2014

GJ(CO)
RGA(06/07/2022)