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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.27488 of 2019
and W.M.P.No.26973 of 2019

K.Natarajan

..Petitioner

Vs.

1.The Deputy Registrar of Cooperative Societies,
Vellore.

2.C.2511, Edakrishnapuram Primary Agricultural
Co-operative Credit Society Ltd.,
Edakrishnapuram,
Katpadi Taluk,
Vellore District.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the common judgment and decree dated 23.04.2019 in C.T.A.No.17/2016 by the Hon'ble Principal District Judge, (Special Tribunal for Co-operative Cases) Vellore, Vellore District and consequential order of the Surcharge Enquiry Officer in Surcharge No.4/2014-2015 dated 16.12.2015 on the file of the Deputy Registrar of Cooperative Societies/Arbitrator, Vellore, Vellore District, quash the same.

For Petitioner : Mr.K.Venkatesan

For Respondents : Mr.U.Baranidharan (for R1)
Additional Government
Pleader (Co-operatives)
Mr.L.P.Shanmugasundaram (For R2)

O R D E R

(The matter is heard through "Video-conferencing/hybrid" mode)

This Writ Petition is filed calling for the records of the common judgment and decree dated 23.04.2019 in



C.T.A.No.17/2016 by the learned Principal District Judge, (Special Tribunal for Co-operative Cases) Vellore, Vellore District and consequential order of the Surcharge Enquiry Officer in Surcharge No.4/2014-2015 dated 16.12.2015 on the file of the Deputy Registrar of Cooperative Societies/Arbitrator, Vellore, Vellore District, quash the same.

2.The petitioner was appointed as a Sales Man by order dated 25.02.1983 by President of the 2nd respondent Society. According to the petitioner, at the time of admission, after verifying all his certificates with regard to educational qualification, he was appointed. Subsequently, by the proceedings bearing Rc.No.6220/2007B1 dated September 2007, the Joint Registrar of Cooperative Societies regularized the service of the petitioner. The petitioner was promoted as Senior Clerk on 01.03.1999. He discharged his duty without any blemish. While so, based on some false complaint, an investigation under Section 82 of the Tamil Nadu Cooperative Societies Act (hereinafter referred to as, 'the Act') was ordered. The Investigating Officer gave a report that the petitioner produced a forged X Standard certificate for his promotion and directed to initiate proceedings under Section 87 of the Act. Based on the said report, the 1st respondent initiated surcharge proceedings under Section 87 of the Act. The petitioner gave his explanation and statement that he has not produced any forged certificate, he has produced only his original SSLC book at the time of appointment, he studied XI Standard and there was no public examination held during that time and only schools conducted X Standard exam and petitioner was promoted to XI Standard. The petitioner also stated that inspection report was not furnished to him and the alleged forged X Standard certificate was not produced in the surcharge proceedings. According to the petitioner, only school authority can give a report whether certificate with regard to his educational qualification is genuine or forged. The 1st respondent passed an order holding that the petitioner got promotion by furnishing forged certificate. The X Standard certificate produced by the petitioner was held to be forged by the Joint Director, Directorate of Examination and the same was proved during inspection under Section 82 of the Act and due to that, there was a loss to the tune of Rs.6,54,878/- to the Society. The petitioner and the retired Secretary K.Balaraman, are responsible for the loss and directed the petitioner and said Secretary to pay the said amount to the Society.



3.Challenging the said order passed by the 1st respondent, the petitioner filed C.T.A.No.17 of 2016 before the Principal District Judge, (Special Tribunal for Co-operative Cases), Vellore. The Principal District Judge, by the judgment dated 23.04.2019, dismissed the appeal.

4.Against the said judgment dated 23.04.2019, made in C.T.A.No.17 of 2016 and surcharge order of the 1st respondent dated 16.12.2015, the petitioner has come out with the present Writ Petition.

5.The learned counsel appearing for the petitioner submitted that the petitioner has produced SSLC certificate showing that he studied old XI Standard and during that time, X Standard exam was conducted only by the school and he was promoted to XI Standard by the school. There was no public examination conducted by the Directorate of Controller of Examination for X Standard. The X Standard certificate relied on by the Inspection Officer does not belong to the petitioner. Without furnishing the inspection report conducted under Section 82 of the Act and without producing the alleged forged certificate in the surcharge proceedings, the 1st respondent has passed order under Section 87 of the Act, which is not valid. At the time of promotion, the petitioner has not produced any certificate. He was promoted only based on the certificates produced by him at the time of his appointment. After promotion, the petitioner has discharged his duties as Senior Clerk. He has not misappropriated or mis-represented any funds of the Society. The surcharge proceedings and order of the 1st respondent are in violation of natural justice. The learned Principal District Judge, (Special Tribunal for Co-operative Cases), Vellore failed to consider the case of the petitioner and dismissed the appeal, without giving any reason and prayed for setting aside the surcharge order and judgment passed in C.T.A.No.17 of 2016.

6.Mr.U.Baranidharan, learned Additional Government Pleader (Co-Operatives) appearing for the 1st respondent submitted that the petitioner produced forged certificate and got promotion and caused loss to the Society to the tune of Rs.6,54,878/-. The Joint Director, Directorate of Examination has certified that the certificate of the petitioner is forged one. The 1st respondent gave full opportunity to the petitioner by conducting surcharge proceedings. The principles of natural justice were followed and order passed under Section 87 of the Act is valid and legal. The learned Principal District Judge considered all the materials placed before the Tribunal and



dismissed the appeal. There is no error in the order and judgment in C.T.A.No.17 of 2016 and prayed for dismissal of the Writ Petition.

7. Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader (Co-Operatives) appearing for the 1st respondent as well as the learned counsel appearing for the 2nd respondent and perused the entire materials available on record.

8. The petitioner is challenging the order dated 16.12.2015 passed by the 1st respondent under Section 87 of the Act as well as the judgment of the Principal District Judge dated 23.04.2019 made in C.T.A.No.17 of 2016. The learned counsel appearing for the petitioner raised various grounds, but mainly contended that the petitioner was not given proper opportunity and principles of natural justice was violated. From the materials on record, it is seen that the surcharge proceedings were initiated based on the inspection conducted under Section 82 of the Act. The petitioner, in his explanation as well as statement before the 1st respondent, who conducted surcharge proceedings, stated that inspection report conducted under Section 82 of the Act was not furnished to him. He has also taken a stand that alleged forged X Standard certificate was not produced in surcharge proceedings. In spite of such a stand taken by the petitioner, the respondents have not furnished copy of the inspection report as well as the alleged forged certificate. It is repeatedly held by this Court in number of cases that when surcharge proceedings is based on an audit report or enquiry under Section 81 or Inspection under Section 82 or Inspection of goods under Section 83 of the Act, the respondent must furnish the said report to the person or persons against whom the surcharge proceedings is initiated. It has been held by this Court that failure to furnish such document vitiates entire proceedings as the said person is unable to submit his explanation to the charges leveled against him and put forth his defense effectively. It has also been held that whether the person seeks such a report or not, the Enquiry Officer and Society must furnish the report to the person against whom the surcharge proceedings is initiated. In this case, the petitioner has specifically mentioned in the explanation as well as in the statement given before the 1st respondent about non-furnishing of inspection report. The 1st respondent failed to consider the same and passed impugned order in surcharge proceedings.



9.A reading of the said order reveal that the 1st respondent, after extracting case of the 2nd respondent as well as statement of the petitioner, passed the order without giving any reason for such a conclusion. In addition to that, the forged X Standard certificate was not produced before the 1st respondent in the surcharge proceedings and no witness was examined to prove that certificate is forged one. When the petitioner's case is that he produced only school leaving certificate (SSLC) for studying XI Standard and there was no public examination conducted for X Standard during that time, the 1st respondent, without any evidence alleged that the petitioner has produced X Standard certificate which proved to be a forged one. The contention of the petitioner that he did not produce any certificates seeking promotion to the post of Senior Clerk was not considered. According to the petitioner, he produced his educational certificate at the time of appointment and authorities after verification of said certificates, had appointed him. The Joint Registrar of the Co-Operative Societies, by proceedings dated September 2007, approved his appointment after satisfying with the educational qualification of the petitioner. Further, after being promoted as Senior Clerk, the petitioner worked as Senior Clerk and he was paid salary payable for the post of Senior Clerk. It is not the case of the respondents that without working as Senior Clerk, the petitioner was paid salary of Senior Clerk.

10.From the materials on record, it is seen that it is not the case of the respondents that the petitioner misrepresented or misappropriated the funds and fraudulently retained the funds of the Society or committed breach of trust and was wilfully negligent in causing loss to the Society. The respondents have not proved that only when the petitioner produced the X Standard certificate and sought for promotion as Senior Clerk, he was promoted as Senior Clerk on misrepresentation. Further, the Principal District Judge (Special Tribunal for Co-operative Cases), Vellore failed to consider various contentions raised by the petitioner and without giving any reason, dismissed the appeal filed by the petitioner. In view of failure on the part of the respondents to furnish inspection report based on which the surcharge proceedings was initiated and non-production of alleged forged X Standard certificate before the 1st respondent, the order of the 1st respondent dated 16.12.2015 and judgment of the Principal District Judge (Special Tribunal for Co-operative Cases), Vellore dated 23.04.2019 made in C.T.A.No.17 of 2016 are liable to be set aside and are hereby set aside.



In the result, the Writ Petition is allowed. No costs.
Consequently, connected Miscellaneous Petition is closed.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Deputy Registrar of Cooperative Societies,
Vellore.

2.C.2511, Edakrishnapuram Primary Agricultural
Co-operative Credit Society Ltd.,
Edakrishnapuram,
Katpadi Taluk,
Vellore District.

+1 CC to Mr.R.Anbalagan, Advocate sr 10940.
+1 CC to The Government Pleader sr 11609.

W.P.No.27488 of 2019

KK(CO)
SP(09/03/2022)