



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.2621 of 2013

and

M.P. (MD)No.2 of 2013

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Karunakaran

... Petitioner

vs.

1.The Registrar of Cooperative Societies,
Kilpakkam, Chennai - 10.

2.The Additional Registrar of Cooperative Societies,
(Marketing, Plan and Development),
Kilpakkam, Chennai - 10.

3.The Joint - Registrar of Cooperative Societies,
Santhanathapuram,
Pudukkottai.

4.The Special Officer,
M.M.Vennaalgudi Primary Agricultural, Co-
Operative Society Limited,
Vennaalgudi & Post, Alangudi Taluk,
Pudukkottai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to impugned order of the 1st respondent in Na.Ka.No.20300/ 2009/ Sa.Pa.1, dated 11.10.2012, confirming the order of the 3rd respondent in Na.Ka.No.4/2006 Po.Pa.Ni, dated 23.12.2008 and to quash the same and consequently to direct the respondents to reinstate the petitioner in service.

For Petitioner : Mr.V.Malaiyendran

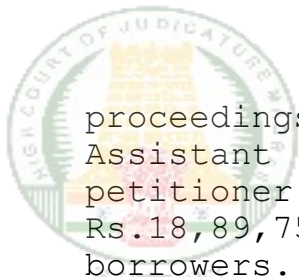
For Respondents : M/s.D.Farjana Ghoushia

Special Government Pleader

O R D E R

The petitioner has challenged the order of punishment, dated 23.12.2008 and was confirmed by the first respondent proceedings in 11.10.2012.

2. The petitioner was working as Secretary in the 4th respondent Society and he was placed under suspension on 24.04.2006, stating that an enquiry is contemplated for the irregularities found in the fourth respondent Society. An enquiry under Section 81 of Tamil Nadu Co-operative Societies Act, 1983, was ordered, vide proceedings, dated 05.04.2006. The Enquiry Officer concluded the



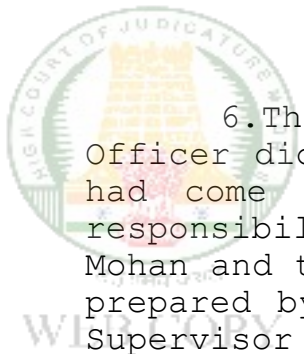
proceedings and presented his report stating that one Mohan, Assistant Secretary of the fourth respondent Society and the petitioner are responsible for the cash balance of omission of Rs.18,89,751.99/- which was collected from the 77 jewel loan borrowers.

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3.The contention of the petitioner is that the Enquiry Officer has not issued summons in time to appear. The enquiry was fixed on 04.07.2006, but the summon was served to the petitioner on 07.07.2006. The petitioner alleged there is no proper opportunity granted to the petitioner to defend the case. The Enquiry Officer submitted his report, dated 04.07.2006. The Enquiry Officer has enquired only 31 out of 77 accounts and has not enquired others. Even 31 borrowers were not examined in the presence of the petitioner. Their deposition was obtained in the absence of the petitioner. The petitioner was not granted adequate opportunity for cross examination. Thereafter, the third respondent issued charge memo, dated 11.07.2007, wherein 2 charges levelled against the petitioner. One charge was alleged misappropriation of Rs.1,89,751.99/- which was allegedly collected from the 77 jewel loan borrowers, while another one is relating to over writing in 14 jewel loan accounts.

4. With respect to second charge, it was found by the forensic that the tampering of records in 14 jewel loan accounts were made by one Mohan, Assistant Secretary and one Sakthivel. The report of the forensic has been submitted along with the charge sheet in C.C.No.17 to 43 of 2008, on the file Judicial Magistrate, Pudukkottai. The contention of the petitioner is that the respondents have not provided any documents and therefore, he could not submit proper explanation. The petitioner demanded documents, vide letter, dated 01.09.2006 and 03.06.2007, to provide jewel loan receipts from 18.03.2006 to 27.03.2006, jewel verification reports, etc. But the authority did not furnish any copies to the petitioner, but the authority directed the petitioner to inspect the available records at any time. When the petitioner approached the criminal investigation team, it was told, unless there is Court order, his claim cannot be considered. Hence, he could not peruse the records.

5.In the meanwhile, the Deputy Registrars of Co-operative Societies, Aranthangi sent two records, i.e., receipts and statement given to the Field Officer and other required records, which were considered to be important to submit explanation to the charge memo. Despite the petitioner's representations, copies of related documents were not supplied. The petitioner submitted explanation to the authority on 20.11.2007. Without considering the petitioner's letters the domestic enquiry was ordered on 22.11.2007. On 23.07.2008, a show cause notice along with a copy of the domestic enquiry, dated 29.02.2008, was served to the petitioner.



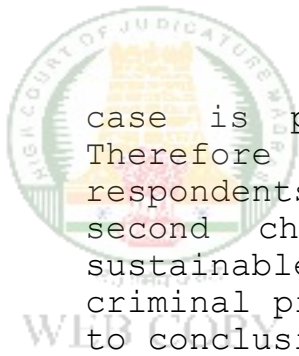
6.The contention of the petitioner is that the Enquiry Officer did not produce the documents and jewel loans documents but had come to the conclusion that the charges are proved. The responsibility to maintain jewel loan accounts was with the said Mohan and the Cashier is one Shakthivel and the jewel loans were not prepared by the petitioner. The petitioner was holding the post of Supervisor / Secretary and as such not at all entrusted with cash custody. The said Mohan has deposited Rs.9,38,000/- and the petitioner has not paid any amount.

7.The respondents 1, 2 and 3 have filed counter affidavit stating that adequate opportunity was granted to the petitioner. The total misappropriation amount is Rs.18,89,751.99/-. The Assistant Secretary remitted one portion of the amount. The remaining portion of the amount is still pending and the petitioner has not paying the said amount. As far as the issuance of notice is concerned, the respondents have stated in one occasion that the petitioner refused to receive the enquiry notice, which was be conducted in 30.06.2006. Since the society is dealing with the public money, the petitioner is responsible and the petitioner cannot state he has no liability as a Secretary of the Society.

8.Heard Mr.V.Malaiyendran, learned Counsel appearing for the petitioner and M/s.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents.

9.The contention of the petitioner is that the respondents have not given adequate opportunity. The enquiry was scheduled to be held on 04.07.2006. However, a summon was received by the petitioner on 07.07.2006, i.e., after the schedule date of enquiry. However the respondents submitted that subsequently the petitioner was granted opportunity. The petitioner alleged that the documents referred were not served on the petitioner. The petitioner vide letter, dated 01.09.2006 and 03.06.2007, sought the copies of some documents, especially to provide jewel loan receipts from 18.03.2006 to 27.03.2006, jewel verification reports, etc. But the authority did not furnish any copies to the petitioner, but the authority directed the petitioner to inspect the available records at any time. When the petitioner approached the criminal investigation team, it was told, unless there is Court order, his claim cannot be considered. Hence, he could not peruse the records. Therefore this Court holds that the respondents have not granted adequate opportunity to the petitioner to defend his case and there is violation of Natural Justice.

10. With respect to second charge, it was found by the forensic that the tampering of records in 14 jewel loan accounts were made by one Mohan, Assistant Secretary and one Sakthivel and the said report of the forensic has been submitted along with the charge sheet in criminal case in C.C.No.17 to 43 of 2008, on the file Judicial
<https://hmcassettomr.tce.in/hc/Services/>kkottai. The petitioner submitted that the criminal



case is pending and the next hearing date is on 10.03.2022. Therefore this Court is of the considered opinion that the respondents have not properly appreciated the evidence and the second charge fasten against the petitioner is not legally sustainable. However this observation will not prejudice the criminal proceedings and the Criminal Court shall independently come to conclusion.

11. The respondents submitted that the co-delinquent namely Mr. Mohan had deposited Rs.9,38,000/- and the petitioner has not paid any amount and he is liable to pay Rs.9,38,000/-. But the petitioner pleaded that he was the Secretary in the respondent society and is having only supervisor power and has not dealt with the financial transaction. Even the forensic report it has been stated that the said Mohan and the cashier Sakthivel are involved in altering the entries. The petitioner is penniless, he is unwell and could not eke out his livelihood. Moreover, it is seen that the petitioner has already attained superannuation in the year 2014 and now the petitioner is more than 65 years old. This Court has held supra that there is violation of Principles of Natural Justice and if so the case ought to be remitted back to conduct enquiry, but the petitioner has attained superannuation. This Court has held in several cases that once an employee had attained superannuation then, disciplinary proceedings cannot be proceeded with. Therefore to meet the ends of justice this Court is modifying the punishment as stoppage of increment for the period of three years without cumulative effect and the respondents are directed to implement the punishment and disburse the terminal benefits of the petitioner. However, the respondents are directed to retain Rs.1,50,000/- from the terminal benefits and the balance shall be paid to the petitioner.

12. As far as the surcharge proceedings is concerned the petitioner has filed a CRP against the surcharge proceedings and the same is pending. If there is any loss the respondents have power to collect the amount from the delinquent. Therefore, this Court is directing the respondents to keep the recovery proceedings in abeyance. The respondents shall decide about the recovery of amount after the disposal of the CRP and also decide about Rs.1,50,000/- which is directed to be retained supra.

13. With the above direction, the Writ Petition is disposed of. No costs.

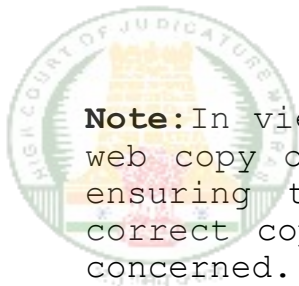
Sd/-

Assistant Registrar (CS-I)

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/ /2022

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.

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To

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- 2.The Additional Registrar of Co-Opeative Societies,
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Vennaalgudi & Post, Alangudi Taluk,
Pudukkottai District.

+1 CC to M/s.V.MALAIYENDRAN, Advocate (SR-6915[F]
dated 17/02/2022)

+1 CC to M/s.SPL GP (SR-6521[F] dated 16/02/2022)

W.P.(MD)No.2621 of 2013

15.02.2022

SRK(CO)

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