



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2022

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THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD) Nos.7518 and 7824 of 2020
and W.M.P.(MD)Nos.7003, 7004, 7300 and 7302 of 2020

W.P.(MD).No.7518 of 2020

N.Natarajan

... Petitioner

Vs.

1.The Principal Secretary / Industries Commissioner
and Director of Industries and Commerce /
Registrar of Industrial Co-operatives,
Guindy, Chennai - 600 032.

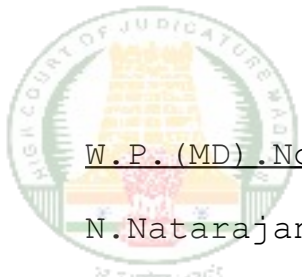
2.The Deputy Director / Enquiry Officer U/s.81,
Department of Industrial Co-operatives,
No.12, Alanthur Road, C.T.A.L. Complex,
Guindy, Chennai - 600 032.

3.The Assistant Director (IC) / Secretary / Surcharge Enquiry
Officer,
Chennai, Autorickshaw Drivers Industrial Co-operative Society
Limited,
No.258/849, Periyar E.V.R.High Road,
Kilpauk, Chennai - 600 010.

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings of the 1st respondent initiating second enquiry U/s 81 of Tamil Nadu Co-op. Societies Act as against the petitioner vide Proces.RC.No.2415/1CB/2016 dt. 26.11.2018, consequential second enquiry report filed by the 2nd respondent dt. 28.03.2019 and consequential impugned second surcharge order U/s 87 issued by the 3rd respondent dt. 11.03.2020 and quash the same insofar as the petitioner is concerned.

For Petitioner	: Mr.Gowrishankar for Mr.S.Karthikeyan
For Respondents	: Mr.Aswin Rajasimman for M/s.T.Lajapathi Roy for R1 Mr.G.Suriyanath, Additional Government Pleader for RR2 & 3



W.P. (MD).No.7824 of 2020

N.Natarajan

... Petitioner

Vs.

1.The Additional Director (Industrial Co-operative) / Managing Director,

The Tamil Nadu Industrial Co-operative Bank Limited,
No.36, Sough Canal Bank Road,
Raja Annamalaipuram,
Mandavelipakkam,
Chennai - 600 028.

2.The Branch Manager,

The Tamil Nadu Industrial Co-operative Bank Limited (Taico),
Karur, Karur District.

... Respondents

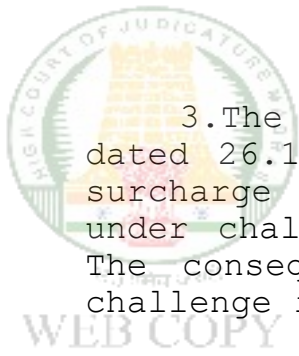
PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings of the 1st respondent vide proceedings in Paniyalar/El/Va.Pa/2019-2020, dated 01.07.2020 and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.Gowrishankar for Mr.S.Karthikeyan
For Respondents : Mr.Aswin Rajasimman for
M/s.T.Lajapathi Roy

COMMON ORDER

Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents.

2.The petitioner herein, who was in-charge as a Branch Manager in TAICO Bank, Tiruvotriyur Branch, Thiruvallur District, between 13.10.2014 and 18.12.2014, was subjected to an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act (herein after referred to as 'the Act') on 08.02.2016. Based on the Enquiry Report, dated 20.06.2016, the Disciplinary Authority had exonerated the petitioner from the charges through an order dated 19.02.2020. In the meantime, the first respondent herein had initiated proceedings under Section 87 of the Act on 14.11.2016 and based on the enquiry conducted, a report came to be filed on 02.01.2018. While that being so, the first respondent had initiated the second enquiry proceedings under Section 81 of the Act on 26.11.2018, even before the Disciplinary Authority had rendered his findings pursuant to the earlier enquiry conducted on 08.02.2016 under Section 81 of the Act. Subsequently, the third respondent herein had passed the surcharge order under Section 87 of the Act on 11.03.2020, in pursuance to the enquiry report, dated 02.01.2018. Consequently, the alleged loss was recovered from the petitioner through another order dated 01.07.2020.



3.The second enquiry proceedings under Section 81 of the Act, dated 26.11.2018, the Enquiry Report, dated 28.03.2019 as well as surcharge order under Section 87 of the Act, dated 11.03.2020, are under challenge in the writ petition in W.P.(MD).No.7518 of 2020. The consequential order of recovery, dated 01.07.2020, is under challenge in the writ petition in W.P.(MD).No.7824 of 2020.

4.The learned counsel for the petitioner submits that the respondents have no authority to proceed against the petitioner for the second time on the same cause of action. The learned counsel appearing for the respondent Bank submitted that since the petitioner has an alternate remedy of challenge against this order, these writ petitions suffer from merits.

5.Admittedly, the enquiry under Section 81 of the Act initiated on 08.02.2016 and 26.11.2018 are for the same cause of action, whereby, the petitioner herein was alleged to have approved seven jewel loans relating to spurious jewels, while he was in-charge as a Bank Manager in TAICO Bank, Tiruvotriyur Branch. Such action of the respondents in proceeding against the petitioner for the same cause of action for the second time is impermissible in law.

6.The Honourable Supreme Court in the case of ***Lt.Governor, Delhi and others Vs. HC Narinder Singh*** reported in ***(2004) 13 SCC 342***, has held that, two proposed actions, on the same cause of action, would amount to double jeopardy, which is impermissible. In line with the ruling of the Honourable Supreme Court in *HC Narinder Singh's case (Supra)*, the present impugned proceedings for the same cause of action, which arose when the first proceedings initiated on 08.02.2016 was issued, cannot be sustained.

7. There is yet another aspect to the case in hand. Even assuming that the present charges differ from the earlier proceedings, dated 08.02.2016, it could be seen that the cause of action, for which the present proceedings, dated 26.11.2018 has been issued in existence when the earlier proceedings, dated 08.02.2016 came to be issued. While that being so, if the second charge memo is even assumed to be different from the first charge memo, nothing prevented the respondents from implicating the petitioner with the present impugned charges, when the earlier disciplinary proceedings came to be initiated through the proceedings, dated 08.02.2016. In other words, the respondents are now conducting the disciplinary proceedings on a piece-meal basis, which impermissible.

8. I had an occasion to consider this aspect in the case of ***L.T.Palanisamy Vs. The Secretary to Government of Tamil Nadu, Agricultural Department and others***, in W.P.Nos.14071 and 24327 of 2014 and passed an order, dated 21.04.2022, by placing reliance on a decision of the Honourable Division Bench of this Court. The relevant portion of the order reads as follows:

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"9. At the time of issuance of the charge memo for the incident that took place in the year 2002-03, the alleged lapses for the year 2001-02 was very much available, which the respondents failed to invoke when the first charge memo in the year 2007 was issued. Such a piece meal enquiry was held to be impermissible by a Hon'ble Division Bench of this Court in the case of R. Rajkumar Vs. The Commissioner of Police, Trichy City, Trichy reported in 2014 (2) CTC 769. In the said judgment, the Hon'ble Division Bench had also taken into account the delay in initiating the disciplinary proceedings, as another factor for quashing the proceedings. The relevant portion of the order reads as follows:-

"12. We have perused the cause of action for the proceedings initiated by the Department in the first charge memo as well as the second charge memo, which is the complaint of the said A. Roche, who approached the officers of the Police Department for getting 'No Objection Certificate' to set up a fire cracker shop. The Charge Memo dated 07.04.2005 is based on the Complaint given by A. Roche dated 08.11.2001, wherein he stated that the Police Authorities including the Appellant were delaying the issuance of 'No Objection Certificate' and also demanded bribe. It is the case of the complainant that a sum of Rs.8000/- (Rupees Eight Thousand Only) was demanded by the Appellant through Loganathan, Grade I-Police Constable. The Department in this case chose to proceed against the Appellant on various misconducts which include the complaint of the said A. Roche dated 08.11.2001, but for some reason or other, did not choose to issue a Charge Memo in respect of the allegation relating to illegal gratification. On the first charge memo dated 07.04.2005, enquiry was conducted and punishment was imposed and the matter was put to rest then and there. Thereafter, the matter has been resurrected after more than seven years and the second charge memo is issued and this is also based on the complaint of the said A. Roche dated 08.11.2001. it is, therefore, clear that the basis for the first charge memo and the present charge memo is one and the same. It is another matter that the first charge contained other issues as well. The fact remains that on the



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plea of illegal gratification, the Department did not choose to proceed and further. In any event the criminal case with regard to the demand of illegal gratification ended in acquittal. The decisions of the Hon'ble Apex Court in Capt. M. Paul Anthony's case referred to supra and G.M. Tank's case, respectively, would clearly cover the issue on hand. Furthermore, the Division Bench of this Court has clearly held that the fresh proceedings on the basis of the same issue and on the same set of allegations and corresponding materials, is not sustainable. Therefore, the learned Single Judge was not correct in dismissing the Writ Petition overlooking this legal plea.

13. The impugned proceedings is liable to be interfered with for the following reasons:

i) Comparison of two charge memos clearly reveals that both the charges are framed based on the same complaint dated 08.11.2001 given by the Complainant -A. Roche.

ii) The materials forming basis of the second charge memo was also available at the time of framing the first charge memo.

iii) The Respondent cannot conduct the Departmental enquiry in a peace meal manner, according to their whims and fancies.

iv) The delay in framing charges will definitely cause prejudice to the Appellant, as he has put forth his defence during the first enquiry and also in the trial before the Criminal Court.

v) Pending Writ Appeal, the Appellant was acquitted by a Competent Criminal Court after full fledged trial. But acquittal in Criminal proceedings is not a bar for the Department to initiate Departmental proceedings on the same set of facts. But, in the present case, the acquittal in Criminal case has to be considered in favour of the Appellant, as he has faced domestic enquiry on earlier occasion and suffered punishment and the issue raised in the present charge memo was given by seven years ago.

vi) If the present charge memo is not quashed, the appellant will be forced to another enquiry on the basis of the complaint dated 08.11.2001 and on the same set of facts and materials."

10. In the light of the aforesaid pronouncements in Anant R. Kulkarni's case (supra), the circumstances and the manner in which the



charges came to be framed against the petitioners are weighed. Apart from the delay in initiating the departmental proceedings, the charges have also been found to be vague and unspecified, which is contrary to the procedure contemplated under the Rules. Moreover, when the Hon'ble Division Bench of this Court has held that the disciplinary proceedings cannot be held in piecemeal manner, splitting the charges for the year 2002-2003 and then for the year 2001-2002, is impermissible."

9.The aforesaid extract is self explanatory. Thus, when the law does not permit the respondents to conduct disciplinary proceedings in installments, for the cause of action that existed even when the first disciplinary proceedings was initiated, the present impugned proceedings cannot be sustained. Since I have now held that the second proceedings initiated by the respondents under Section 81 of the Act is unsustainable in law, the consequential recovery order dated 01.07.2020 is deemed to be illegal.

10.The learned Standing Counsel for the respondents has raised a ground that in view of the alternate remedy against the impugned orders, the writ petition cannot be sustainable. I am not in agreement with such submission. When the impugned proceedings is apparently un-sustainable in law, the petitioner need not be subjected to the arduous task of approaching the Appellate Authority.

11.The Honourable Supreme Court in the case of **Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal** held as follows:

19. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."



12.At this juncture, the learned counsel for the petitioner submitted that since they are of the view that the jewel appraiser may be involved in the present case or directly liable for the loss occurred to the Bank, they may be granted liberty to proceed against these jewel appraiser.

13. For all the foregoing reasons, the impugned impugned proceedings of the 1st respondent initiating second enquiry U/s 81 of Tamil Nadu Co-op. Societies Act as against the petitioner vide Proces.RC.No.2415/1CB/2016 dt. 26.11.2018, consequential second enquiry report filed by the 2nd respondent dt. 28.03.2019 and consequential impugned second surcharge order U/s 87 issued by the 3rd respondent dt. 11.03.2020 and the impugned proceedings of the 1st respondent vide proceedings in Paniyalar/E1/Va.Pa/2019-2020, dated 01.07.2020 are quashed. Consequently, there shall be a direction to the Additional Director (Industrial Co-operative)/Managing Director of Tamil Nadu Industrial Co-operative Bank Limited, to forthwith refund the salaries recovered from the petitioner, pursuant to the impugned order dated 01.07.2020, within a period of four weeks from the date of receipt of a copy of this order. The respondent bank are at liberty to proceed against the actual persons, who may liable for the loss that is alleged to have occurred to the Bank.

14.Accordingly, both the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Admn.I)

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Sub Assistant Registrar(CS)

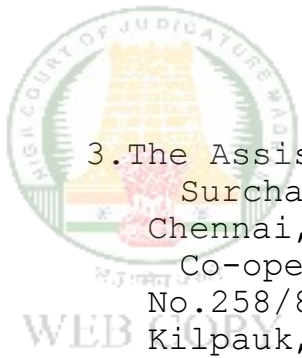
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To

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and Director of Industries and Commerce /
Registrar of Industrial Co-operatives,
Guindy, Chennai - 600 032.

2.The Deputy Director / Enquiry Officer U/s.81,
Department of Industrial Co-operatives,
No.12, Alanthur Road, C.T.A.L. Complex,
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4.The Additional Director (Industrial Co-operative) /
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+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-26027[F] dated
16/06/2022)

+1 CC to M/s.S. KARTHIKEYAN, Advocate (SR-26212[F] dated 16/06/2022
)

+1 CC to M/s.SPL.GP. (SR-26413[F] dated 17/06/2022)

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15.06.2022

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