



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.5559 of 2015

and

M.P. (md)Nos.2 & 3 of 2015

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A.Thavamaniraj

... Petitioner

vs

1. The Registrar of Co-operative Societies,
O/o. The Registrar of Co-operative Societies,
Kilpauk,
Chennai - 10.
 2. The Joint Registrar of Co-operative Societies,
O/o. The Joint Registrar of Co-operative Societies,
Madurai Region,
Chokkikulam, Madurai - 2
 3. The Deputy Registrar of Co-operative Societies,
O/o.The Deputy Registrar of Co-operative Societies,
41-42, Krishnayar Tank Road,
Madurai - 1.
 4. The Deputy Registrar of Co-operative Societies,
Door No-15-J.R.R.Nagar,
Vaigai Dam Road,
Thenkarai, Periyakulam.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order made in Na.Ka.9137/2010 Pa Tho, dated 21.03.2015 passed by the second respondent and quash the same.

For Petitioner : Mr.P.R.Prithvi Raj

For Respondents : Mr.J.k.Jayaselan
Government Advocate (Civil side)



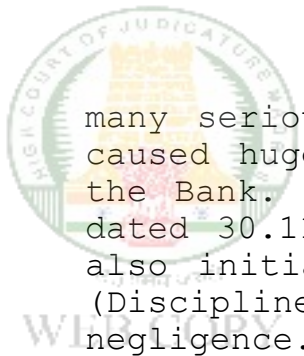
O R D E R

The petitioner is seeking to quash the impugned order, dated 21.03.2015.

2. The petitioner was appointed as Senior Inspector of Cooperative Societies in the year 1977 and was promoted as Cooperative Sub Registrar in the year 1992. A Charge Memo, dated 07.04.2006 was issued alleging that while the petitioner was working as a Special Officer Additional Charge of Kochadai Cooperative Primary Agricultural Cooperative Society, the petitioner disbursed loans contrary with the By-laws of the society. The petitioner objected that original copy of the charge memo was not issued and therefore he did not submit any explanation. An Enquiry Officer was appointed, wherein, the report states the charges are not proved. The disciplinary authority deviated from the report and imposed the punishment of stoppage of increment for two years with cumulative effect, vide proceedings, dated 09.09.2010. The contention of the petitioner is that he was not issued any notice when the disciplinary authority has deviated from the findings of the Enquiry Officer. The petitioner has preferred an appeal and the first respondent, vide order, dated 01.04.2011 set aside the punishment on the ground that the disciplinary authority while differing with the views of the enquiry officer, has not issued any notice seeking explanation from the petitioner. Thereafter, the second respondent, vide proceedings, dated 26.07.2013 appointed another enquiry officer. Aggrieved over the same, the petitioner has filed a writ petition in W.P.(MD)No.17823 of 2014, with the direction to conclude the departmental proceedings on the basis of the first enquiry report and this Court, vide order, dated 10.11.2014 held that the disciplinary authority is entitled to differ with the first enquiry report, but while doing so, it was made clear that the show cause notice should be issued to the petitioner and therefore, the petitioner was directed to submit an explanation.

3. As per the order of the Court, the second respondent has issued the show cause notice dated 06.01.2015 and the petitioner has submitted his objections on 28.01.2015. The second respondent without considering the objections and without offering any personal enquiry has passed the impugned order, dated 21.03.2015 whereby a sum of Rs.3540/- (Rupees Three Thousand Five Hundred and Forty only) was reduced from the basic pay of the petitioner for the period from 01.04.2015 to 30.04.2015. The contention of the petitioner is that again while issuing this order, the respondent has not granted any opportunity to the petitioner to defend his case. Based on the petitioner's explanation this order came to be passed.

4. The second respondent has filed a counter affidavit stating that as per the sub-clause (3) of Section 88 read with Sub-Section (2) of section 89, the Special Officers have powers to exercise all or any of the functions of the Board. The petitioner has committed



many serious irregularities in issuing various types of loans and caused huge financial deficiency to the tune of Rs.72,92,864/- to the Bank. Hence a surcharge order in proceedings S.C.No.1/2006-07, dated 30.11.2007 was issued. Further disciplinary proceedings was also initiated under Rule 17 (b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, for the petitioner's gross willful negligence. Hence the punishment of reduction of pay was imposed as punishment. The petitioner has rushed to the High Court without exhausting the remedies available to him before the first respondent by way of Appeal under Rule 20 of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

5. Apart from the surcharge and disciplinary proceedings, the Criminal Case was also initiated for committing serious irregularities in collusion with the Secretary of the Bank, in the Deposit Amount of the members, thereby causing huge financial deficiency to the tune of Rs. 1,15,97,500/-. Hence the Criminal Case in C.C.No.24 to 27, dated 19.05.2011 was filed on the file of Judicial Magistrate Court III, Madurai and the case is still pending. Again a surcharge order in third respondent proceeding in S.C.No.1 of 2006-07 dated 30.11.2007 was issued for the financial deficiency. The petitioner with gross willful negligence and supine indifference has issued various types of loans numbering as much as 273 loans in violation of the By-laws of the Bank, without following the procedures, thereby causing a huge financial loss and has narrated the types of loans in para 11 of the counter affidavit.

"11. With regard to para 6 of the affidavit it is submitted that, the petitioner during his tenure as the Special Officer of the Bank with a Gross willful Negligence and supine indifference had issued various types of loans numbering as much as 273 loans in violation of the Byelaws of the Bank, without following the procedures, thereby causing a huge financial Deficiency of Rs.72,92,864/- as follows".

a)	<i>Consumer Loans issued to the members who were not residing in the area of operation of the Bank</i>	<i>Rs.4,32,595</i>
b)	<i>Consumer Loans issued in violation of the Byelaws.</i>	<i>Rs.19,72,667</i>
c)	<i>Medium Term Loans issued in the form of NFS Loans, for which there was no provision in the Byelaw</i>	<i>Rs.20,84,189</i>
d)	<i>Non Farming Sector Loans issued in violation of the Byelaws.</i>	<i>Rs.28,03,413</i>
	<i>TOTAL</i>	<i>Rs.72,92,864</i>



6. Therefore, the punishment imposed on the petitioner is legally valid and sustainable in law. Hence prayed to dismiss the writ petition.

7. The petitioner has filed a rejoinder affidavit and has stated that there is no financial loss to the society as stated by the second respondent. The petitioner contended that the loans were disbursed on the recommendation of the Secretary of the Society and the same has not been disbursed at his own motion. Moreover and post dated cheques were collected from the loanees. Further proceedings were initiated in accordance with the provisions of the by-laws and the loan amounts were recovered. The petitioner has preferred a statutory appeal in CMA (CS) No. 06 of 2008 on the file of the Principal District Court, Madurai and the same was allowed in favour of the petitioner by setting aside the surcharge order, vide Judgment and Decree, dated 03.03.2017 against which the respondents have not preferred any Civil Revision Petition. The petitioner has denied the averment stated in Para 3 of the counter affidavit as false and has stated that there is no financial deficiency in the deposit amount of the members to the tune of Rs.1,15,97,500/-. Infact the surcharge proceedings were initiated by the said alleged misappropriation against all including the petitioner for the said sum of Rs.1,11,73,800/-. The petitioner has preferred a statutory appeal in CMA (CS) No.18 of 2009 on the file of the Principle District Court, Madurai and the same was allowed by setting aside the surcharge order in Judgment and Decree dated 29.06.2015 in favour of the petitioner.

8. The contention of the petitioner is that alleged amount on the said surcharge was recovered from the Secretary of the Society. Subsequently, aggrieved by the order, the third respondent has preferred a Revision Petition before the Honourable High Court in CRP (MD)No.974 of 2016 and the CRP was referred to Lok Adalat on 09.03.2019. Therefore, the petitioner has prayed to allow the writ petition.

9. Heard Mr.P.R.Prithvi Raj, learned Counsel appearing for the petitioner and Mr.J.k.Jayaselan, learned Government Advocate appearing for the respondents

10. The petitioner alleged that the impugned Charge Memo was initiated based on the enquiry report under Section 81 of the Co-operative Societies Act. While dealing with section 81 enquiry report in the CMA (CS) No.06 of 2008, the Lower Court has held that the impugned enquiry report under Section 81 itself is not valid since the enquiry report was not submitted within three months and has also held that the surcharge proceedings under Section 87 was not completed within six months. As per section 87 of the Act, a surcharge order passed beyond the maximum period of six months cannot be taken as legally valid surcharge proceedings. It is also



been recorded in the CMA(CS) judgment the borrowers have already cleared the dues and there is no amount due to the Bank. The Lower Court has also recorded the memorandum showing the settled amount and this fact was not disputed by the respondent Bank. Finally the Court has held as under:

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35. Since the enquiry report was submitted beyond the prescribed three months period and since copy of the Enquiry Report u/s 81 of the Act was not served on the appellants and since the Enquiry Officer did not enquiry the borrowers concerned and since the surcharge proceedings was not completed within the maximum period of 6 months and since there is no allegation of willful negligence on the part of the appellants and since there is no allegation of any misappropriation and considering the consequential events of repayment of amounts in question, it is decided that the surcharge proceedings is liable to be set aside.

36. In the result, the surcharge order passed by the Deputy Registrar of Cooperative Societies, Madurai in Surcharge No.1/2006-07 dated 30.11.2007 in respect of the appellant herein is hereby set aside and the civil miscellaneous appeal is allowed. No costs.

11. The Lower Court has recorded all the reasons and has set aside the surcharge proceedings against the petitioner. Since the surcharge proceedings are set aside the petitioner is claiming the disciplinary proceedings also to be set aside. On perusal of the entire records, it is seen that the petitioner is right in stating that when the Charge Memo was issued as early as 07.04.2006, the said Charge Memo was without any particulars or mentioning of any rules and that was rightly set aside by the Appellate Authority. Thereafter, a second show cause notice was issued on 06.01.2015 and the petitioner has submitted his objection on 28.01.2015. There is no record to state that enquiry was conducted by the respondents. In the impugned order the reference in S.No.8 it has been stated that a personal hearing was conducted and the statement of the petitioner was recorded. The enquiry was not conducted as per the established procedures, the documents were not produced or marked. No witnesses were examined.

12. This is the second round of litigation among the parties. Therefore, this Court is not inclined to remit back again to the respondents to grant opportunity to the petitioner and this will be futile exercise. It is also seen that the petitioner was 57 years at the time filing the writ petition in the year 2015 and he has attained superannuation. The petitioner is now 63 years old. Therefore, this Court based on the orders passed in the surcharge proceedings as well as on the violation of principle of natural



justice, this Court is setting aside the impugned order of punishment and direct the authorities to pay all the terminal benefits.

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

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Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

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.

To

1. The Registrar of Co-operative Societies,
O/o. The Registrar of Co-operative Societies,
Kilpauk, Chennai - 10.
2. The Joint Registrar of Co-operative Societies,
O/o. The Joint Registrar of Co-operative Societies,
Madurai Region, Chokkikulam, Madurai - 2
3. The Deputy Registrar of Co-operative Societies,
O/o. The Deputy Registrar of Co-operative Societies,
41-42, Krishnayar Tank Road, Madurai - 1.
4. The Deputy Registrar of Co-operative Societies,
Door No-15-J.R.R.Nagar,
Vaigai Dam Road,
Thenkarai, Periyakulam.

+1 CC to M/s.D.SADIA RAJA, Advocate (SR-4349[F] dated 04/02/2022)

+1 CC to M/s.SPL.GP (SR-4556[F] dated 07/02/2022)

W.P. (MD)No.5559 of 2015

03.02.2022

RD(23.03.2022) 6P 7C