



W.P.No.13881 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.13881 of 2015

and

M.P.No.1 of 2015

G.Vigneswararaju

.... Petitioner

vs

1. The Joint Registrar of Co-operative Society,
Salem,
Salem District.
2. The Deputy Registrar of Cooperative Societies,
Attur,
Salem District.
3. The Special Officer,
5564, Illupanatham Primary agricultural
Co-operative Society,
Illupanatahma,
Gangavalli Taluk,
Salem District.

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the records pertaining to 3rd respondent order bearing no.Nil dated 21.05.2009 and the order of the 1st respondent bearing No.7590/2010 dated 20.03.2013 and quash the same and



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consequently direct the 1st respondent to reinstate the petitioner in service with all consequential benefits including attendant benefits and backwages.

For Petitioner : Mr.P.Ramesh

For Respondents : Mr.J.C.Durairaj,
Additional Government Pleader
for R1 and R2
Mr.S.Arumugam for R3

O R D E R

This writ petition has been filed by the petitioner challenging the order dated 21.05.2009, dismissing the petitioner from service and the order dated 20.03.2013 dismissing the revision petition filed by the petitioner and to direct the 1st respondent to reinstate the petitioner in service with all consequential benefits including attendant benefits and backwages.

2. (i) The case of the petitioner is that while he was working as Assistant Secretary of No.5564, Eluppantham Primary Agricultural Co-operative Credit Society Ltd./1st respondent Management, he was issued with an order of suspension, by proceedings dated 31.07.2008, alleging that he had committed certain irregularities in the said Society. Followed by the suspension order, the respondent/ Special Officer framed six charges as per charge memo dated 12.12.2008 viz., (i) that the petitioner has abetted the



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Secretary and the Cashier of the said Society in their act of misappropriation of Rs.5,40,000/-; (ii) that the petitioner has abetted the misappropriation by omitting the entries of receipts of Fixed Deposit in the Day Book; iii) that the petitioner has abetted the misappropriation by debiting loan against Deposit without issuing loans and the deposit receipt; (iv) that the petitioner has concealed the misappropriation of Rs.5,00,000/- and thus, has written the Day book; (v) that the petitioner has failed to make entries in the Day book in respect of SB account No.1133 but made entries in the pass book; and (vi) that the petitioner has written the Day book without noting the fact that the deposit loans have been issued twice on the same deposit receipt.

(ii) The petitioner submitted his reply denying the above charges. An enquiry was conducted and the enquiry officer submitted his report on 23.03.2009 stating that all the charges were proved. The petitioner submitted a detailed representation to the 3rd respondent on 2.4.2009 as against the enquiry officer's report. The 3rd respondent, vide proceedings dated 4.5.2009, called for explanation for the second show cause notice. The petitioner submitted his representation dated 18.05.2009 requesting the 3rd respondent to grant 15 days time for submitting his explanation. However, without granting time, an order of dismissal was passed on



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21.05.2009 by the 3rd respondent.

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(iii) The petitioner filed a writ petition in W.P.No.11939/2009 challenging the order of removal dated 21.05.2009 passed by the 3rd respondent. On 11.09.2009, this Court, allowed the writ petition by setting aside the order of punishment and directed the 3rd respondent to issue notice giving sufficient time to the petitioner to give his explanation and thereafter, pass appropriate order. On 13.01.2010, the 3rd respondent issued show cause notice calling for explanation. On 28.02.2010, the petitioner submitted a detailed explanation denying the charges. Again, on 07.04.2010, the 3rd respondent passed the order of dismissal, without considering the petitioner's representation. Against the same, the petitioner filed revision before the 1st respondent. The 1st respondent rejected the revision on 20.03.2013, upholding the punishment of removal from service. Challenging the order of dismissal from service and the order passed in the revision, this writ petition has been filed.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the 1st and 2nd respondents and the learned counsel appearing for the 3rd respondent.

4. (i) Learned counsel for the petitioner would submit that the 3rd



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respondent has passed the impugned order of dismissal without jurisdiction and authority to pass the said order. The 1st respondent has failed to follow the provisions of section 77 of the Tamil Nadu Co-operative Societies Act, 1983. In the absence of any direction from the Registrar of Co-operative Societies, the 3rd respondent cannot pass the order of dismissal and it is violative of the mandatory provisions of law laid down under section 77 of the said Act.

(ii) Learned counsel for the petitioner would further submit that the 1st and 3rd respondents had forced the petitioner to give confession statement. The Secretary and the cashier were responsible for the misappropriation of Rs.5,40,000/- and without sufficient proof, the respondent has come to the conclusion that the petitioner had abetted the Secretary and the Cashier for the misappropriation. The petitioner is no way connected with the offence. None of the records produced in the enquiry or the evidence recorded discloses that the petitioner had knowledge about the criminal act committed by the Secretary and the Cashier of the society.

(iii) Learned counsel would further submit that the charges of the management relates to the misappropriation of amount remitted by the depositors/Borrowers by not accounting in the books of accounts, but the



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depositors were never examined in the enquiry. Further, the Inquiry under section 81 of the said Act, reveals that 23 members who deposited amount in FD in which the misappropriation is said to have occurred had deposed that they never applied for Deposit Loans and hence, the charge that the amount received from members not brought into the accounts will vitiate automatically and this shows that the petitioner is nothing to do with the alleged misappropriation committed by the Secretary and the Cashier. Since the petitioner wrote the account books, it cannot be concluded that he abetted the offence committed by the actual offenders.

(iv) Learned counsel would further submit that the entire misappropriated amount has been refunded to the Society by the Secretary and the Cashier. The petitioner did not refund any amount and there is no evidence to prove that the petitioner has abetted for misappropriation. Therefore, the enquiry proceedings as well as the resultant dismissal order are not well considered orders.

5. Per contra, the learned counsel appearing for the respondents 1 and 2, apart from reiterating the contentions made in the counter affidavit, would submit that the petitioner along with others was involved in misappropriation to the tune of Rs.5,40,000/-. The goodwill of the Society



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has suffered to a great extent because of the same and the society has also suffered monetarily. All the charges against the petitioner had been proved after a detailed enquiry. The impugned order passed by the third respondent and the order passed by the first respondent are proper and there is no necessity to quash the same and the petitioner cannot be reinstated in service and he is not entitled for any reliefs. Therefore, he would pray to dismiss the writ petition.

6. This Court, considered the submissions made on either side and perused the materials available on record.

7. The main contention of the petitioner is that the allegation of abettment is not properly proved by the respondents. It is true that the standard of proof that is required in disciplinary proceedings is different from that required in criminal proceedings inasmuch as it is not necessary to prove the charges beyond all reasonable doubt. Nevertheless, it is necessary to establish the charges on a preponderance of probability. In other words, there should be sufficient evidence to conclude that the probability that the charges are true is greater than the probability that the charges are untrue. In the instant case, the petitioner was not at all entrusted with the administration and supervision of the Society. It was entrusted to the Special



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Officer and the Secretary of the said Society and the petitioner was writing the account books based on the receipts and payments sanctioned by the Special Officer and the Secretary, besides the cashier, who makes entries and make payments under the authority of the Special Officer and the Secretary.

8. It is contention of the petitioner that without providing sufficient opportunity to defend the charges, he was dismissed from service and thus, the petitioner filed writ petition in W.P.No.11939 of 2009, in which, this Court, directed the respondent to issue notice giving sufficient time to reply and to pass appropriate orders. Consequently, the 3rd respondent issued notice dated 13.1.2010 and the petitioner filed his reply dated 28.02.2010 stating that the charges are not at all proved against him and the enquiry report is perverse, but without properly considering the reply filed by the petitioner, again the respondent had passed the dismissal order dated 7.4.2010 on the same ground, on which, the 1st dismissal order dated 21.05.2009 was passed solely based on the enquiry report dated 23.03.2009 submitted by the 2nd respondent. Moreover, it is contended by the learned counsel for the petitioner that Secretary and the Cashier has refunded the entire misappropriated amount and the same has not been denied by the



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learned counsel for the respondents. There is no ingredient of abettment proved on record as against the petitioner. When an inference of proof that a fact in dispute has been held established, there must be some material facts or circumstances on record from which such an inference could be drawn. In the instant case, there is neither documentary nor oral evidence to show that the petitioner colluded with the Secretary and Cashier and intentionally failed to maintain accounts properly so as to aid and abet the misappropriation of the amount of Rs.5,40,000/-. In the absence of the said evidence, it is not possible to conclude that the petitioner has abetted the Secretary and Cashier to commit misappropriation. An additional factor is that the Secretary and Cashier had admitted the misappropriation of amount and they have also refunded the entire amount.

9. For the reasons stated above, this Court is of the opinion that the impugned order suffers from errors apparent on the face of the record and are liable to be interfered with. Consequently, the order of dismissal from service of the petitioner, is set aside. The respondents are directed to reinstate the petitioner into service with all consequential benefits including attendant benefis and backwages.



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10. In the result, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking/Non-speaking order
vsi

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