



WA(MD).No.369 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.08.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.369 of 2015

The Management at
Manakavilai Primary Agricultural
Co-operative Bank Limited
Manalikkarai Post
Kanyakumari District

... Appellant

Vs.

1.N.Paulraj

2.The Co-operative Tribunal Judge
(District Judge)
Co-operative Tribunal at Nagercoil
Kanyakumari District

3.The Deputy Registrar of Co-operative Societies
Thuckalay Region
Thuckalay Post
Kanyakumari District

... Respondents



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PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent to allow the appeal and set aside the order of the learned Judge of this Court in W.P(MD).No.4068 of 2006 dated 06.11.2014.

For Appellant :Mr.T.Amjadkhan

For Respondents :No appearance

JUDGMENT

(Judgment of the Court was delivered by **R.VIJAYAKUMAR, J.**)

The third respondent in the writ petition is the appellant herein. The first respondent in the writ appeal is the writ petitioner who had challenged the surcharge order passed under Section 87 of Tamil Nadu Co-operative Societies Act before the writ Court and the writ Court was pleased to allow the writ petition. Challenging the same, the Co-operative Bank has filed the present appeal.

2.The writ petitioner was originally appointed as a salesman in the Co-operative Bank on 01.09.1973 and he was promoted as a Clerk. While he was functioning as a Clerk, he was directed to be an



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in-charge cashier in the place of a regular Cashier for the period between 01.12.1993 to 12.03.1995. During the said period, certain allegations were made against the writ petitioner which resulted in issuance of a show cause notice on 24.03.1999 for an enquiry under Section 87. In the said notice, along with the writ petitioner six other employees were also implicated. In the enquiry notice, six allegations of financial loss were made against all the seven employees. The writ petitioner had submitted his explanation and an order came to be passed on 03.09.1999.

3.As per the said Surcharge Order, the writ petitioner was found guilty of the charges 2 and 3. The writ petitioner had challenged the said order in CMA(CS).No.8 of 2001 before the Co-operative Tribunal, Nagercoil. The learned District Judge after considering the submissions made on either side was pleased to dismiss the said appeal on 16.12.2003 confirming the surcharge order. Challenging the said order, the writ petitioner had filed W.P(MD).No.4068 of 2005.

4.The writ Court had allowed the writ petition on 06.11.2014 on the following grounds:



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(i) No documents have been produced on the side of the management to establish the fact that the writ petitioner was assigned with duties and responsibilities of a Cashier.

(ii) Despite a request made by the writ petitioner, a copy of Section 81 enquiry report was not furnished to him.

(iii) The surcharge award reveals that the petitioner has not played any role in causing loss to the Society.

5. Challenging the said order, the present writ appeal has been filed by the Management.

6. The learned counsel appearing for the appellant/Co-operative Bank contended that the writ petitioner has admitted in his counter that he was performing the duties of a Cashier in the Cash Counter. The award clearly reveals about the involvement of the writ petitioner in signing various documents which had resulted in causing loss to the Society. Therefore, the award clearly shows the role played by the writ petitioner in creating fake jewel loan accounts and misappropriation of the amounts credited towards the jewel loan accounts.



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7. He had further contended that the writ petitioner had submitted his explanation to the surcharge notice on 05.06.1999 and only after summons were issued for enquiry, he sought for a copy of Section 81 enquiry report. Though such a request was accepted, the petitioner has not chosen to peruse the said report. Hence, the writ Court was not right in allowing the writ petition on the ground that the petitioner was not furnished with a copy of Section 81 enquiry report. Hence, he prayed for allowing the writ appeal.

8. Though the first respondent/writ petitioner has been served, there is no representation.

9. We have given anxious consideration to the submissions made on the side of the appellant and perused the material records.

10. The writ petitioner had received a notice under Section 87 of the Tamil Nadu Co-operative Societies Act on 24.03.1999 seeking his explanation with regard to six charges relating to financial loss to the Society. He had submitted his explanation on 06.06.1999 admitting that he was instructed to function as an in-charge Cashier for the period



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between 01.12.1993 to 12.03.1995. He had further contended that he was only taking care of the Cash Counter and all other functions of the Cashier was taken care of other employees and hence, he is not responsible for any discrepancy or any illegality in the ledgers.

11. The award under Section 87 of the Tamil Nadu Co-operative Societies Act reveals that the writ petitioner had not only handled the Cash Counter, but also signed the Jewellery Stock Register. He had also signed the Registers relating to disbursement of jewel loans. The authorities had further found that the amount that were credited by the members, to the loan account, were not brought into the ledger and the same have been misappropriated. Therefore, it is clear that the petitioner was performing of all the functions of a Cashier including the maintenance of ledgers relating to the disbursal of the jewel loan and remittance of amount into the jewel loan account.

12. As rightly contended by the learned counsel appearing for the appellant, the Original Authority had acceded to the request of the



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writ petitioner and granted permission to peruse Section 81 enquiry report. The writ Court has also recorded a finding in Paragraph No.7 of the order that the writ petitioner was given an opportunity to peruse the documents and he had not availed the same due to his ill health. Therefore, it is clear that the Original Authority cannot be found fault with for not furnishing a copy of the enquiry report and hence, on the said ground, the surcharge order cannot be set aside.

13.The writ petitioner had contended in his reply to the notice under Section 87 of the Act that he was not assigned with any duty other than handling of the Cash Counter. However, it could be seen from the surcharge order that the petitioner had signed in various ledgers especially in the Jewel Stock Registers which are not connected with Cash Counter duty. The findings of the surcharge order relating to the signature of the delinquent in various ledgers have not been disputed in the writ petition. Therefore, the Writ Court was not right in arriving at a finding that the delinquent had no role to play in causing loss to the Society.



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14.In view of the above said deliberations, we find that the Writ Court was not right in setting aside the surcharge award. The order passed by the Writ Court is set aside and the Writ Appeal is allowed. No costs.

[A.S.M.J.] & [R.V.J.]
22.08.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes
msa

To

The Deputy Registrar of Co-operative Societies
Thuckalay Region
Thuckalay Post
Kanyakumari District



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AND
R.VIJAYAKUMAR, J.

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Judgment made in
W.A.(MD)No.369 of 2015

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