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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8211 OF 2017**

1. Shri. Nazir Issamuddin Pirjade
 - 2 Shri. Rajendra Balu Pishte
 - 3 Shri. Bandu Balu Begade
- ... Petitioners

Versus

1. Kolhapur District Central Co-operative
Bank Ltd through its
Chairman/managing Director
 2. The Authorized Enquiry Officer and
Deputy Registrar, Co-operative
Societies, Kolhapur
- ... Respondents

**WITH
WRIT PETITION NO. 9670 OF 2017**

1. Shri. Deepak Shivaji Chougale
 - 2 Shri. Dinkar Dattatraya Kerle
- ... Petitioners

Versus

1. Kolhapur District Central Co-operative
Bank Ltd through its
Chairman/managing Director
 2. The Authorized Enquiry Officer and
Deputy Registrar, Co-operative
Societies, Kolhapur
- ... Respondents

**WITH
WRIT PETITION NO. 9669 OF 2017**

Late Shri Yashwant Ganu Kumbhar through
Legal heirs

- 1a. Smt. Vimal Yashwant Kumbhar
 - 1b. Shri. Vinayak Yashwant Kumbhar
 - 1c. Ms. Suvarna Yashwant Kumbhar
 - 1d. Sou.Kalpana Madhusudan Kumbhar
- ... Petitioners

Versus

- 1. Kolhapur District Central Co-operative
Bank Ltd through its
Chairman/managing Director
 - 2. The Authorized Enquiry Officer and
Deputy Registrar, Co-operative
Societies, Kolhapur
- ... Respondents

**WITH
WRIT PETITION NO. 16448 OF 2023**

- 1. Shri. Hindurao Devaba Mane
- ... Petitioners

Versus

- 1. Kolhapur District Central Co-operative
Bank Ltd through its
Chairman/managing Director
 - 2. The Authorized Enquiry Officer and
Deputy Registrar, Co-operative
Societies, Kolhapur
- ... Respondents

Mr. Prashant Bhavake for the Petitioner.

Mr. C. D. Mali, AGP for Respondent Nos. 2.

Mr. G. B. Naik for Respondent No. 1

CORAM : GAURI GODSE, J.

DATE : 17th JANUARY 2024

ORAL JUDGMENT

1. Heard. These petitions challenge the order dated 6th February 2015 passed by the learned Minister, Co-operation rejecting the appeal preferred by the petitioners along with other two employees of the bank challenging the inquiry report holding the petitioners responsible for misappropriation of funds.

2. Appellant no. 1 in the appeal before the State Government was working as a Branch Manager of Kagal branch-1 at the relevant time. Learned counsel for the petitioners pointed out that appellant no. 1 in the appeal had also challenged the inquiry report as well as the order dated 6th February 2015 by filing Writ Petition No. 6204 of 2016. He submitted that the said Writ Petition is allowed by this court [Coram: Sandeep V. Marne, J.] on 8th September 2023. He placed on record a copy of the said order.

3. Learned counsel for the petitioners submitted that the allegations against the petitioners were general in nature stating that they were

responsible for maintaining cash transactions and hence they were held responsible for the financial irregularities. He submitted that perusal of the inquiry report would show that there were no specific roles alleged against the petitioners and that there is no specific finding recorded against the petitioners holding them responsible for any financial irregularities.

4. He further submitted that in the impugned order, none of the submissions of the petitioners are taken into consideration, and only by relying upon the inquiry report the appeal has been dismissed.

5. Learned counsel for the petitioners also pointed out the order passed by the Hon'ble Minister on 1st June 2015 in the appeal preferred by certain other employees who were working as Chief Accountants / Cashiers at the relevant time, who were also held responsible for the financial irregularities. He submitted that based on the same inquiry report the said appeal was allowed by the Hon'ble Minister and the persons holding higher posts in the bank were exonerated. However, so far as petitioners who were working as clerk/ cashier/branch manager in the bank are held responsible by relying

upon the same inquiry report. He submitted that Petitioners in Writ Petition No. 8211 of 2017 were working as clerks in Kagal Branch No. 2, Petitioner No. 1 in Writ Petition No. 9670 of 2017 was working as Receiving Cashier in Kagal Branch No. 1 and Petitioner No. 2 was working as Cashier in Kagal Branch No. 2, Petitioner in Writ Petition No. 9669 of 2017 was working as Branch Manager in Kagal Branch No. 2 and Petitioner in Writ Petition No. 16448 of 2023 was working as Sub-Accountant.

6. He submitted that in the impugned order, none of the submissions are considered, and without there being any specific finding in the inquiry report against the petitioners they are held responsible for the financial irregularities. There is a direction issued for the recovery of amounts from the petitioners as apportioned by the inquiry officer. He submitted that the inquiry report runs over 400 pages, however, there is no finding recorded against the petitioners for holding them responsible for any misappropriation of the amount as well as the amount apportioned against them.

7. Learned counsel further submitted that the Branch Manager of

Kagal Branch No. 1 has been exonerated by this court by order dated 8th September 2023 by taking into consideration similar submissions as made by the petitioners in the common appeal that was preferred before the Hon'ble Minister. He thus submitted that the petitioners stood on a better footing who were working as clerk, cashier and one petitioner who was also working as Branch Manager who was similiary placed as the petitioner who is exonerated by this court. He therefore submits that even the present petitions be allowed on the similar grounds.

8. Learned counsel for the respondent bank as well as learned AGP does not dispute aforesaid submissions regarding the order passed by this court. The reasons recorded in paragraphs 7 to 11 of the said order dated 8th September 2023 passed by this court read as under :

"7. Having heard the submissions canvassed by the learned counsels for the parties, it is seen that the Respondent No.1 has initiated action under Section 88 of the Act of 1960 on account of financial irregularities committed in various branches of the Bank. Mr. Shah has contended that under Section 88 of the Act of 1960, the employee of a society cannot be held responsible

unless such an employee is associated with organization or management of the Society. He has contended that Petitioner was not associated with the organization or management of the Society. Mr. Shah has placed reliance on the judgment of Shriram Dhonduji Raut (supra) in which this Court held in paras- 6, 7 and 8 as under :

6. On a plain construction, this section empowers the Registrar to make an inquiry on the basis of an Auditor's report in respect of any misfeasance or breach of trust in relation to the funds of the society. This section also empowers the Registrar to make an order requiring to pay, repay or restore the money or property or any part thereof with interest at such rate as the Registrar may determine. But who does section 88 apply to? A plain reading of the section makes it clear that the Registrar is empowered to take this action in regard to "any person who has taken any part in the organisation or management of the society or any deceased, or past or present officer of the society". Therefore, whether section 88 was available in the present case depends on the answer to the question whether the petitioner was a person who has taken part in the organisation or management of the society or was an officer of the society. Now there seems to be no dispute about the fact that the petitioner was appointed on a salary of Rs.90/- per month and was placed incharge of the cloth section of the shop of the society at Shendurwafa. In the

dispute, the society has described the petitioner as Manager. However, a perusal of the appointment order shows that the petitioner was appointed as a Pramukh i.e. head or a person incharge of the cloth section. Therefore, the petitioner cannot be said to be a person who has taken part in the organisation or management of the society in the sense used in section 88 of the Act. This phrase contemplates a person who has taken part in organising the society itself i.e. in forming it or its management. There is an appreciable difference between a person having taken part in the organisation and management of the society and someone having taken part in the organisation and management of a shop belonging to or run by the society. Clearly the petitioner belongs to the latter category. On the principle that the greater includes the lesser, a person who has taken part in the management of the society may be considered to be a person who has taken part in the management of a shop, but the reverse is not true.

7. The next thing that requires consideration is whether the petitioner can be said to be an officer of the society. The word "officer" has been defined by the Act itself. Sub-section (20) of section 2 of the Act defines "officer" as follows:-

"(20) "officer" means a person elected or appointed by a society to any office of such society according to its bye-

laws; and includes a chairman, vice-chairman, president, vice-president, managing director, manager, secretary, treasurer, member of the committee and any other person elected or appointed under this Act, the rules or the bye-laws, to give directions in regard to the business of such society."

8. On application of the section, it is clear that the petitioner is not a person elected. He is a person who is appointed. But that still does not make him an officer as defined because the election or the appointment must be in order to "give directions in regard to the business of such society." There is nothing on record to show that the petitioner was empowered to give directions in regard to the business of the society. If anything, it appears that he was subject to the directions of the society having been appointed to be incharge of one of its shops at Shendurwafa.

8. In my view, the judgment in Shriram Raut (supra) cannot be cited in support of an absolute proposition that no employee of the Society can ever be held responsible under Section 88 of the Act of 1960. The judgment in Shriram Raut is rendered in the facts that case where the employee therein was posted as a Head in clothing section at one of the shops of the society. Considering the role of employee therein, this Court arrived at a conclusion that he was not a person who took part in organisation or management of the Society nor he was its officer.

Petitioner was admittedly holding the position of 'Branch Manager'. Definition of the term 'Officer' undoubtedly includes a Manager. As a Branch Manager, Petitioner was undeniably empowered to give directions with regard to business of the Society. It is therefore difficult to hold that Petitioner did not take any part in managing the business of the Society. In that view of the matter, the contention raised by Mr. Shah that in his capacity as an employee, Petitioner would be outside the purview of provisions of Section 88 of the Act of 1960 deserves to be repelled.

9. Coming to the next submission advanced by Mr. Shah about non-discussion of Petitioner's role, perusal of the order passed by Respondent No. 1 would indicate that though Respondent No.1 has passed detailed Order running into over 400 pages, there is absolutely no finding as to how Petitioner is responsible for any misappropriation and why the amount is apportioned against him. Though Respondent No. 1 has devoted pages after pages to record contents of replies and submissions advanced during the course of hearing, the sketchy findings recorded by him does not even refer to Petitioner's name. In my view, under the provisions of Section 88 of the Act of 1960, it was incumbent upon Respondent No.1 to record specific findings in respect of each of the employees as to how they were responsible for alleged misappropriation. Unless such a conclusion is reached, it was impermissible for Respondent No.1 to direct recovery of any amount under Section 88 of the Act of 1960. In my view therefore, the order of Respondent No.1 suffers

from the vice of non-application of mind and perversity and for absence of any findings qua the Petitioner, the same would be unsustainable.

10. *The order passed by the Minister does not make the case of the Respondents any better. The Hon'ble Minister has merely recorded the events that have occurred leading to institution of enquiry and passing of order by Respondent No.1. Though nine employees had preferred Appeal before the Hon'ble Minister, no attempt is made by the Hon'ble Minister to find out the exact role assigned to each of those employees by Respondent No.1 in the enquiry. The Appeals are rejected by recording general and vague findings. While deciding the Appeal, the Minister has not discussed the role of the Petitioner and why he could be found guilty of misappropriation of the amount assigned to him. Therefore, the order passed by the Minister also suffers from the vice of perversity.*

11. *Resultantly, I find the order passed by Respondent No.1 on 3 October 2013, as well as the order of the Minister, Co-operation dated 6 February 2015 to be indefensible. Both orders are accordingly set aside qua the Petitioner only. Any consequential action for recovery initiated against Petitioner also stands set aside. The Writ Petition is accordingly allowed and disposed of.*

9. The aforesaid reasons are also applicable to the petitioners' case as they are similarly placed. Learned counsel for respondent no.

1 was unable to point out any specific finding recorded against the petitioners in the inquiry report. Perusal of the impugned order does not indicate consideration of any of the submissions made on behalf of the petitioners. By the impugned order, the appeal filed by the petitioners along with other employees is dismissed only by relying upon the inquiry report.

10. I therefore find substance in the argument made on behalf of the petitioners, that the impugned order is passed without any application of mind and thus suffers from perversity and without any finding recorded against the petitioners. Hence the order is not sustainable so far as the petitioners are concerned.

11. In the absence of any specific role attributed to the petitioners and/or any specific finding in the inquiry report the petitioners cannot be held responsible for the irregularities. Thus, the order directing recovery of the amount as opined in the inquiry cannot be sustained.

12. For reasons recorded above the petitions are allowed by passing following order :

- (i) Judgement and Order dated 6th February 2015 passed by the Learned Minister for Co-operation, Marketing and Textile, Maharashtra State in Appeal bearing No. APP/2013/Pra.Kra.256/15-S is quashed and set aside qua the petitioners.
- (ii) The inquiry report and consequential order of Respondent No. 2 – Enquiry Officer dated 3rd October 2013 is quashed and set aside qua the petitioners.
- (iii) Any consequential action for recovery initiated against the petitioners also stands set aside.
- (iv) Writ Petitions are allowed in the above terms.

[GAURI GODSE, J.]