



Writ Appeal No.1144 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
02.07.2024

PRONOUNCED ON
08.08.2024

CORAM

**THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR, ACTING CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.1144 of 2022
and C.M.P.No.7142 of 2022**

PT-2 Perambalur District Consumer
Co-operative Wholesale Stores Ltd.,
Represented by its Managing Director,
No.5 , K.R.Complex,
Thuraimangalam 621 220,
Perambalur

... Appellant

Vs

- 1.The Principal Secretary,
Co-operation, Food and Consumer
Protection Department,
Government of Tamil Nadu,
Fort St.George,
Chennai – 600 009.
- 2.The Joint Registrar of Co-op Societies,
Perambalur Region,
Perambalur District.
- 3.The Co-operative Sub-Registrar/
Special Officer,
PR.2, Perambalur District Consumer,
Co-operative Wholesale Stores Ltd.,



Writ Appeal No.1144 of 2022

No.5, K.R.Complex,
Thuraimangalam 621 220,
Perambalur.

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4.M.Kalyana Sundaram

... Respondents

PRAYER:- Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 15.12.2021 made in W.P.No.40037 of 2016 and pass such further order.

For Appellant : Mr.M.S.Palaniswamy

For Respondents : Mr.S.Ravikumar for RR1 to 3
Special Government Pleader

: Mr.R.Jeyaram for R4

JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra-Court appeal has been preferred as against the order of the learned Single Judge where the punishment imposed against the fourth respondent had been set aside with all service and terminal benefits as if the fourth respondent was never discharged from his services.

2. Heard Mr.M.S.Palaniswamy, learned counsel for the appellant, Mr.S.Ravikumar, learned Special Government Pleader appearing on behalf



Writ Appeal No.1144 of 2022

of the respondents 1 to 3 and Mr.R.Jeyaram, learned counsel appearing on behalf of the fourth respondent.

3. Mr.M.S.Palaniswamy, learned counsel appearing for the appellant would submit that the proceedings under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to the "Act") were directed to be initiated by the Deputy Registrar of Co-operative Societies, Perambalur with regard to the irregularities committed in preparation and distribution of sweets for Diwali and also for the illegal and irregular appointments made in the appellant Stores. Pursuant to the said direction, a Report had also been submitted to the Department on 31.10.2007. The Inspection Officer had recommended to take disciplinary proceedings, surcharge proceedings and criminal prosecution against the named persons involved in the irregularities. Based upon the said Report, disciplinary proceedings were initiated against the fourth respondent and four other employees. As against the fourth respondent, the charges framed against him were found to be true and he had been dismissed from service. A surcharge proceedings had also been initiated against the fourth respondent which also ended up against him.



Writ Appeal No.1144 of 2022

4. He would submit that the contention of the fourth respondent was that he had been proceeded, as if he had been the Superintendent of the appellant/ Society at that relevant point of time, whereas, he was only an Assistant at the relevant point of time and that he had followed the dictates of his superiors namely the Superintendent and the Special Officer. In that context, he would submit that at the time of taking a decision to sell the sweets, it is true that the fourth respondent was an Assistant, but within two days, the then Superintendent was relieved from service on the basis of his request for Voluntary Retirement and thereafter, the fourth respondent had been posted as Superintendent. Only during the tenure of the fourth respondent as Superintendent, the raw materials of the sweets were procured and prepared and the sale had occurred. If it is the case of the fourth respondent that only pursuant to the earlier decision, he had proceeded to purchase the raw materials and prepared the sweets, the entire cause of loss had occurred only for the improper maintenance of the sweets, which had rendered the sweets to go waste. That apart, certain purchasers have been found to be a false purchasers and it is the fourth respondent who was responsible for purchase of raw materials at that relevant point of time and not the earlier Superintendent who had voluntarily retired from service prior



Writ Appeal No.1144 of 2022

to such purchase of raw materials and sale of sweets. As regards to the illegal appointments made, it was during the tenure of the fourth respondent as Superintendent and therefore, he also cannot feign ignorance of such appointments being made to the Society by which the Society had incurred an expenditure of about Rs.29,00,000/- (Rupees Twenty Nine Lakhs only) for such illegal appointment. He would submit that the learned Single Judge had wholly misdirected himself by holding that the fourth respondent was only an Assistant at that relevant point of time and therefore, he cannot be held to be liable for the losses that had been caused to the Society. The learned Single Judge had wholly erred in failing to note that the loss had occurred only during the tenure of the fourth respondent as a Superintendent of the Society.

5. He would also contend that the learned Single Judge had held that the enquiry under Section 82 of the Act was in violation of the Rule 104 (6) (a) of the Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter referred to as 'Rules, 1988') and therefore, the said enquiry Report itself was legally unsustainable. The learned Single Judge had misdirected himself in holding that the time period prescribed under Sub Rule 4 of Rule 104 of the



Rules, 1988 is only for the purpose of concluding the enquiry and not for filing the Report. Hence, he would seek interference of the order passed by the learned Single Judge.

6. Mr.S.Ravikumar, learned Special Government Pleader appearing for the respondents 1 to 3 had concurred to the submissions made by the learned counsel for the appellant and would also seek this Court to set aside the order impugned before us.

7. Countering the submissions of the appellant as well as the learned Special Government Pleader, R.Jeyaram, learned counsel for the fourth respondent would submit that the fourth respondent had raised two issues namely the delay in filing the Investigation Officer's Report which is a violation of Rule 104 (6) (a) of the Rules, 1988 and when such a Report is opposed to the mandate of the Rules, the Authority ought not to have proceeded against the fourth respondent based upon such a Report, which is also opposed to law. Further, he would submit that during the relevant point of time, the fourth respondent was not holding the post of Superintendent and was only an Assistant. However, the charges have been framed as if the



Writ Appeal No.1144 of 2022

fourth respondent is the Superintendent and even the Enquiry Officer had only proceeded on the basis that the fourth respondent was a Superintendent.

8. As regards to his first contention, he would heavily rely upon Rule 104 (6) (a) of the Rules, 1988 and would contend that a Report had to be filed by the Enquiry Officer within the prescribed time, however, not exceeding 10 days from the date of completion of the enquiry or inspection or investigation. In this Case, he would submit that the enquiry had commenced on 25.06.2007 and had completed on 24.10.2007, but, however, a Report had been filed only on 27.02.2009. Therefore, the said Report had been filed beyond the prescribed time limit of 10 days and hence, such a Report cannot be the basis for any proceedings whatsoever against the fourth respondent. He would contend that the period prescribed under Rule 104 Sub Rule 4 and Sub Rule 5 of Rules, 1988 deals with the extension of time only for conducting the enquiry and not for filing the Report and therefore, to rely upon the aforesaid Rule to file a Report in the extended period cannot be countenanced. These aspects had neither been looked upon by the Enquiry Officer or the Disciplinary Authority, the Appellant



Writ Appeal No.1144 of 2022

Authority and therefore, the learned Single Judge was right in concluding that such a Report is legally unsustainable.

9. As regards to the second issue, he would contend that the appellant was working only as an Assistant at that relevant point of time holding the post of an Assistant. The fourth respondent cannot be proceeded with as it is not within the appellant's power either to take a decision to prepare and sell the sweets and also make appointments for which acts, he had been proceeded with. He would submit that it was one Sugumar was the Superintendent, one Kesavan was the Manager and K.Rajagopal was the Special Officer and it was only under the dictate of the Special Officer, the Superintendent and the Manager, directed the fourth respondent who was an Assistant had prepared the minutes for taking a decision to prepare and sell sweets.

10. When that being so, the charges were framed against him as if he was Superintendent of the Appellant Society during the relevant point of time and he had played a vital role in authorising the preparation and sale of sweets and also involved in purchase of raw materials for preparation of the



Writ Appeal No.1144 of 2022

sweets. He would submit that the Enquiry Officer had wholly misdirected himself by concluding that the fourth respondent was the Superintendent and therefore, he is liable to be proceeded with. The findings of the Enquiry Officer was also on the basis that the fourth respondent was a Superintendent. Even assuming that the Report of the Enquiry Officer is correct, it would only conclude that the person who was holding the post of Superintendent at that relevant point of time alone could be found to have committed the delinquency and not the fourth respondent, who was only an Assistant at that relevant point of time.

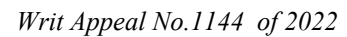
11. He would further contend that no proceedings had been initiated against the then Superintendent or also against the Special Officer for the said delinquencies and in that context, the appellant ought not to have proceeded only against the fourth respondent, who was an Assistant at that relevant point of time. Hence, he would submit that there is no infirmity in the order of the learned Single Judge which requires any interference by this Court.

12. In reply, Mr.S.Ravikumar, learned Special Government Pleader



Writ Appeal No.1144 of 2022

for the respondents 1 to 3 would submit that there is no delay in filing the Report by the Inspection Officer under the provisions of Section 82 of the Act. He would submit that the Investigation Officer under Section 82 of the Act had submitted its Report on 31.10.2007 and not 27.02.2009 as claimed by the fourth respondent. He would submit that the Deputy Registrar of Co-operative Societies by his proceedings dated 25.06.2007 had directed the investigation under Section 82 of the Act as per the provisions of Rule 104 of the Rules. He would submit that the maximum time granted for completion of the enquiry under Section 82 of the Act is 6 months. In the present case, the enquiry was ordered on 25.06.2007 and the date for completion of the enquiry would expire on 24.09.2007. He would submit that an extension was granted for one month to complete the enquiry on or before 24.10.2007 on the request of the Enquiry Officer and the Enquiry Officer had submitted his Report on 31.10.2007 which is well within 10 days period provided under Rule 104 (6)(a) of Rules, 1988. Therefore, he would submit that the learned Single Judge had wholly erred in holding that the report had been given by the Enquiry Officer much after the time prescribed under Rule 104 (6)(a) Rules, 1988 and therefore, such Report is legally unsustainable. As regards to the position that the fourth respondent



had held in the appellant Society as a Superintendent, he would reiterate the submissions made by the learned counsel for the appellant.

13. As regards the submission of the learned counsel for the fourth respondent, regarding his allegation that the fourth respondent alone had been singled out and neither the Superintendent, Sugumar nor the Special Officer, Rajagopal were departmentally proceeded. The learned Special Government Pleader would submit that since, the superintendent Sugumar had been permitted to voluntarily retire from service much before the proceedings initiated under Section 82 of the Act, he could not be legally proceeded with and as regards to the Special Officer, Rajagopal, he would contend that the charges were framed against him for the said delinquencies, but, however, the same had been kept in abeyance since, he had already been dismissed from service for a different set of charges. Hence, he would submit that the fourth respondent cannot be heard to say that he had been singled out.

14. We have considered the rival submissions made by the learned
counsels appearing on either side and perused the materials available on



Writ Appeal No.1144 of 2022

record.

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15. The three fold submissions made by the fourth respondent/delinquent Officer against the proceedings initiated is that a Report which allegedly filed belatedly was the basis of the disciplinary proceedings and therefore, the initiation of the disciplinary proceedings on a legally unsustainable Report would have to be held to be a non-est proceedings. The second contention of the fourth respondent was that the enquiry Report has been proceeded as if he was the Superintendent at the time of the proposal being sanctioned and when the proposal was sanctioned, the fourth respondent was not a Superintendent and when he had become the Superintendent, he had simply carried out the decision that was already taken by the Society. Thirdly, his submission was that the entire disciplinary proceedings was wholly arbitrary as he has been only proceeded with and that the Superintendent Sugumar and the Special Officer Rajagopal have not been proceeded with.

16. With regard to the first submission, it had been contended by the learned Special Government Pleader, that originally an enquiry under Section 82 of the Act was ordered by the Deputy Registrar in his



Writ Appeal No.1144 of 2022

proceedings dated 25.06.2007 and that the time period for completion of the enquiry by taking the initial period at three months would end on 25.09.2007. He had also submitted that the Enquiry Officer had sought for an extension of time of one month to complete the enquiry which was also recommended by the Deputy Registrar and approved by the Registrar. The said extension is squarely covered under Rule 104 (4) & (5) of Rules, 1988. It is also to be noted that Proviso to Sub Rule 5 of Rule 104 had mandated that such extension of time shall not exceed six months in aggregate. It is to be seen that the Enquiry Officer had only sought for an extension of time for a period of one month which has also been sanctioned as evidenced by the records produced by the learned Special Government Pleader. Therefore, the Enquiry Officer had completed his enquiry within the period of four months and had also submitted a Report on 31.10.2007 which is also well within the time prescribed under Rule 104 (6) (a) of the Rules, 1988. In such factual scenario, the contention of the learned counsel for the fourth respondent would have to fail and the order of the learned Single Judge holding that such a Report as legally unsustainable would have to be set aside.

17. Secondly, the contention of the fourth respondent is that he was



Writ Appeal No.1144 of 2022

only an Assistant when the proposal was sanctioned. He has not disputed that he had been promoted as Superintendent within a short span of time due to the voluntary retirement of the then Superintendent. He had also not disputed that only after him taking the charge as Superintendent, the purchase were made for preparation of sweets and the sweets were sold. The charge against the fourth respondent is that they had prepared some fake bills to boost the purchase and had also not taken care in selling the sweets which led to them being destroyed. These charges have been made against him only during his tenure as a Superintendent. It may be true that the sanction for the act of approving the proposal, he may not be held responsible. But for the action of preparation of fake bills and also not taking care of proper selling of sweets, the fourth respondent would have to be necessarily held responsible. The fourth respondent had not produced any material evidence to take us to a different conclusion. The Enquiry Officer under the disciplinary proceedings had in clear terms found that the fourth respondent is guilty which has also been affirmed by the Appellate and Revisional Authority. This Court sitting under Article 226 of the Constitution cannot go into the facts of the case and reappreciate the same until or unless the said findings of the Enquiry Officer is perverse. As we



Writ Appeal No.1144 of 2022

have already held that the Enquiry Officer in his Report had given the details on which he had come to a conclusion that the delinquency has been proved, we do not wish to interfere with the same. The learned Single Judge had proceeded on the basis that the entire charges have been wrongly framed against the fourth respondent as he had never held the post of Superintendent which is wholly misconcieved and therefore, liable to be interefered with.

18. Now turning to the third contention that the fourth respondent alone had been singled out and the persons who are responsible for taking a decision had been left scot-free; it could be seen from the records produced before us, that the said Superintendent Sugumar had already been vouluntarily retired from services very much before the proceedings under Section 82 of the Act had been initiated and therefore, as rightly pointed out by the learned Special Government Pleader that he could not be proceeded with departmentaly as there is no relationship of employer and employee on the date when the Report was filed by the Investigation Officer. Further, with regard to the Special Officer Rajagopal, it has been brought on record that a charge has also been framed against him and that in view of the fact



Writ Appeal No.1144 of 2022

that he had already been dismissed from service for a different set of charges, the same has been kept in abeyance. It is also further noted that various other Officials have also been proceeded with for the same set of charges and have also been imposed with a punishment. Therefore, the claim of the fourth respondent that he had been singled out and the entire disciplinary action is arbitrary, is wholly unfounded, therefore, do not warrant any consideration by us.

19. With the aforesaid reasons, we are inclined to set aside the order passed by the learned single Judge, dated 15.12.2021 made in W.P.No.40037 of 2016 and accordingly, the same is set aside and the Writ Appeal is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.,J., .A.C.J.)

(K.B., J.)

08.08.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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Writ Appeal No.1144 of 2022

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Writ Appeal No.1144 of 2022

THE HON'BLE ACTING CHIEF JUSTICE
and
K.KUMARESH BABU.,J.

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A Pre-delivery Judgment made in
Writ Appeal No.1144 of 2022
and C.M.P.No.7142 of 2022 of 2022

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