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W.P.No.9843 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.9843 of 2024
and W.M.P.Nos.10863 and 10864 of 2024

V.Kannan

... Petitioner

-Vs-

1. The Deputy Registrar of
Cooperative Societies (Credit),
Chennai.
2. The Inspection Officer,
under Section 82 of the TNCS Act/
Cooperative Sub Registrar / Legal,
XC.214, Metropolitan Transport
Corporation Employees Cooperative
Credit Society Ltd.,
Pallavan Salai, Chennai – 2.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the order passed by the first respondent in Na.Ka.4307/2023/sa.pa4 dated 18.10.2023 quash the same.

For Petitioner : Mr.M.S.Palaniswamy
For Respondents : Mr.P.Ganesan
Government Advocate



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ORDER

This writ petition has been filed challenging the notice issued by the first respondent dated 18.10.2023, thereby appointed an Executive Sub-Registrar/Deputy Registrar (Loan) as Enquiry Officer to conduct an enquiry under Section 82 of the Tamil Nadu Co-operative Societies Act.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioner was appointed as an Office Assistant and his service was regularized by an order dated 09.02.2007. Thereafter, the petitioner was promoted to the post of Assistant and became the Secretary of the Society on 07.11.2019. While being so, audit was conducted under Section 80 of the Tamil Nadu Co-operative Societies Act (hereinafter called as “the Act”) and submitted a report on 12.10.2022, thereby noting down the defects that the Society has wrongly given one additional increment to the employees of the Society and recommended to recover the excess increment paid to the employees for Rs.3,72,930/-. As far as the petitioner's share is concerned, it comes to the tune of Rs.1,41,357/-. After notice of the audit objection, the petitioner remitted the



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said amount on 29.11.2022. In the meanwhile, the first respondent ordered enquiry under Section 82 of the Act and appointed the second respondent to conduct enquiry based on the audit objections. Now, the second respondent issued summons dated 13.12.2023 directing the petitioner to appear for the enquiry on 22.12.2023 and it is pending.

4. The learned counsel for the petitioner would submit that the first respondent has no jurisdiction to order for enquiry related to service condition. Now it was ordered to conduct enquiry to examine the petitioner's promotion and payment of salary. The service condition of the employee of the co-operative societies covered under the special by-laws of the Society. The statutory authorities do not have such power to order for inspection that too under Section 82 of the Act to examine the petitioner's promotion and payment of salary.

5. It is relevant to extract the provisions under Section 82 of the Tamil Nadu Co-operative Societies Act as follows:-

“ 82. Inspection and investigation. __ (1) The Registrar may, of his own motion, or on the application of a creditor of a registered society inspect or investigate or direct any person authorised by him in this behalf by general or special



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order in writing to inspect the affairs of the registered society in general or to investigate into any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to that society or into any particular aspect of the working of that society and the Registrar or the person so authorised shall have all the powers of the Registrar when holding an inquiry under section 81.”

Thus, it is clear that the first respondent failed to satisfy the requirements of Section 82 of the Act to order inspection under Section 82 of the Act.

6. A perusal of the counter filed by the first respondent and the submissions made by the learned Government Advocate appearing for the first respondent revealed that Section 82(1) of the Act empowers the first respondent to direct Inspection Officer to inspect the affairs of the registered Society in general as well as into any particular aspect of the working of the Society. Further, it prescribes that the Registrar may, of his own motion, or on the application of a creditor of a registered society inspect or investigate or direct any person authorised by him in this behalf by general or special order in writing to inspect the affairs of the registered society in general or to investigate into any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to that society. That apart, it is only recommendatory in nature and it cannot be the subject matter of challenge.



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7. He also relied upon the Judgment of the Hon'ble Division Bench of the Madurai Bench of this Court in WA (MD).Nos. 377 and 378 of 2023 dated 05.04.2023 held as follows:-

“ 5. This Court has repeatedly held that Section 81 report is only a fact finding enquiry and further steps have to be taken based on such an enquiry. The writ Court has given the opportunity to the petitioners to raise all grounds when subsequent enquiry is initiated. We have also considered the said provision in W.A.(MD).No.345 of 2023 in Arumuga Nainaar v.The Registrar of Cooperative Societies and others, wherein, we have affirmed the view of the writ Court. Hence, we do not find any reason to entertain these writ appeals. The writ appeals fail and the same are dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.”

8. It is relevant to rely upon G.O.(2D).No.108, Cooperation, Food and Consumer Protection Department dated 31.08.2005 which deals with Delegation of powers of Co-operative Societies. Accordingly, the Deputy Registrar of Cooperative Societies has no power in respect of service matter. The Joint Registrar is empowered with said powers. This issue was already dealt with by this Court in W.P.No.2628 of 2015, wherein it was held as follows:-

“ 6. In this regard, the Government issued G.O.(2D).No.108, Cooperation, Food and Consumer Protection Department dated 31.08.2005, delegating the powers of the Registrar of Cooperative Societies under the Act. As per the delegation of



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powers notified under the provisions of the Tamil Nadu Cooperative Societies Act, 1983, the Deputy Registrar of Cooperative Societies is not empowered to exercise the powers in respect of service matters of the employees working in the Cooperative Societies. The said power has been delegated to the Joint Registrar of Cooperative Societies.”

9. In view of the above, the first respondent is not vested with the power to deal with service matters of the employers of the Cooperative Societies, since it has not jurisdiction. If at all there is any irregularities in respect of service conditions, the concerned Society is empowered to take appropriate action.

10. Therefore, the impugned order cannot be sustained and is liable to be quashed. Accordingly, the order passed by the first respondent in Na.Ka.4307/2023/sa.pa4 dated 18.10.2023, is hereby quashed. The concerned Society of the petitioner is at liberty to take appropriate action as against the petitioner in the manner known to law.



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11. Accordingly, this writ petition stands allowed. Consequently, connected Miscellaneous petitions are closed. No costs.

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Internet: Yes

Index : Yes/No

Neutral Citation: Yes/No

Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J,



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To

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Cooperative Societies (Credit),
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