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W.P.No.18738 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.03.2024

Pronounced on : 05.04.2024

CORAM:

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

W.P.No.18738 of 2022 and
WMP.Nos.18123 & 18125 of 2022

P.Krishnamurthy

... Petitioner

Vs.

1.The Secretary to Government,
Micro, Small and Medium Enterprises,
(EII(2) Department, Secretariat,
Chennai 600 009

2.The Secretary to Government/
Industries Commissioner and
Director of Industries and Commerce,
SIDCO Building, Guindy,
Chennai 600 032

3.Deputy Secretary,
Tamilnadu Public Service Commission,
TNPSC Road,
Chennai 600 003

4.Additional Director(District Industries Centre),
O/o. The Industries Commissioner and
Director of Industries and Commerce,
SIDCO Building, Guindy,
Chennai 600 032

5.District Registrar/Deputy Director(IC),
O/o. The Deputy Director of Industries and Commerce,
CTAL Building, Guindy,
Chennai 600 032

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of



W.P.No.18738 of 2022

India praying to issue a Writ of Certiorarified Mandamus Calling for the entire records pertaining to initiating the Disciplinary Proceedings under Rule 17 (b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules 1955 by the 2nd Respondent under the Charge memo RC No.1955 by the 2nd Resondent under the Charge memo RC No. 16979 / EG3 / 2018 dated 29.07.2019 culminating to the penalty imposed by the 1st Respondent in proceedings in G.O. (2D) No 6 Micro, Small and Medium Enterprises (E.II(2)) Department dated 14.06.2022 and to quash the same and consequently to direct the Respondents to conduct a fresh enquiry by giving opportunity of personal hearing under sec. 81 of Tamil Nadu Civil Servants (Discipline and Appeal) Rules.

For Petitioner : Mr.S.Doraisamy

For Respondents

For R1, 2, 4 & 5 : Mrs.R.L.Karthika,
Government Advocate

For R3 : Mr.R.Bharanidharan,
Standing Counsel

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 14.06.2022 thereby imposed punishment of removal from service on the petitioner.



W.P.No.18738 of 2022

WEB COPY

2. The petitioner had joined in the Government Service in the year 1986 as Assistant Supervisor of Industrial Cooperative Societies. Subsequently, he was promoted to the post of Supervisor of Industrial Cooperative Societies, Assistant Director and Deputy Director. Besides, he was appointed as Secretary in the Rahumania Autorickshaw Driver Industrial Cooperative Society (hereinafter called as Society), Chennai. He assumed charges of the said Society on 16.07.2009 and had worked till 05.03.2011. While being so, enquiry was ordered under Section 81 of Tamilnadu Cooperative Societies Act on account of overdues, certain irregularities and illegalities in respect of official aspects of Cooperative Societies. Pursuant to the statutory enquiry, the enquiry Officer conducted enquiry and submitted report. In view of the enquiry report, surcharge proceedings have been initiated by the proceedings dated 28.11.2017. Once again, enquiry was ordered to be conducted under Section 81 of Cooperative Societies Act by the proceedings dated 12.12.2017 by appointing another enquiry officer. After completion of the enquiry, report dated 16.05.2018 was filed. In pursuant to the enquiry



W.P.No.18738 of 2022

WEB COPY

report, surcharge proceedings was ordered to be initiated as contemplated under Section 87 of the Tamilnadu Cooperative Societies Act. Based on the enquiry report submitted by the enquiry officer, departmental proceedings has been initiated as against the petitioner and he was issued charge memo under Rule 17(b) of the Tamilnadu Civil Service (Discipline and Appeal) Rules dated 29.07.2019. The petitioner submitted explanation and without satisfying with the same, conducted disciplinary enquiry. Enquiry Officer submitted report, in pursuant to which once again the petitioner was served with second show cause notice and dismissed the petitioner from service.

3. The learned counsel appearing for the petitioner submitted that the petitioner was appointed as Secretary of Rahumania Autorickshaw Drivers Industrial Cooperative Society, Chennai on 09.07.2009 and he had taken charge only on 16.07.2009. The Selection Committee under the Chairmanship of the District Collector, Chennai was constituted to select the eligible beneficiaries among auto drivers. Accordingly, the Selection Committee had selected 162 auto drivers. It



W.P.No.18738 of 2022

was communicated by the District Collector, in which 98 members were disbursed loan as per the resolution resolved. Therefore, the petitioner's role was very limited in selecting the beneficiaries. After receiving quotation from M/s.Khivraj and Company and accordingly autos were purchased and delivered to beneficiaries. Thereafter, the petitioner was relieved from the Society as on 30.03.2011.

3.1 He further submitted that when the first enquiry report was very much in force under Section 81 of the Tamilnadu Cooperative Societies Act, there was absolutely no need to conduct another enquiry appointing another enquiry officer. Only based on the second enquiry report, the disciplinary proceedings has been initiated as against the petitioner. In fact, as against the surcharge proceedings, the petitioner filed appeal and the same was rejected and filed civil revision petition before this Court and it is pending. The petitioner submitted detailed explanation on receipt of the charge memo consisting 9 charges. The first charge itself was that one, Zainulabudeen was inducted as a member of the Society as per Rule 23(g) of the Tamilnadu Cooperative Societies



W.P.No.18738 of 2022

Act, 1983. However, he had no basic qualification to become a member.

He was inducted as member as on 22.06.2009 whereas the petitioner had taken charge of the society only on 16.07.2009. Insofar as selection of the beneficiaries, under the head of District Collector, Selection Committee was constituted and Selection Committee only had selected the beneficiaries. The petitioner never involved in the selection process. The petitioner was not given opportunity of hearing during the second enquiry conducted under Section 81 of the Tamilnadu Cooperative Societies Act. Further, no loss caused to the society so far and the punishment imposed on the petitioner is disproportionate to the charges.

3.2 In support of his contention, the learned counsel appearing for the petitioner relied upon the judgment in the case of *Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and others* reported in (2013) 4 SCC 465, in which the Hon'ble Supreme Court of India relied upon the judgment of the Constitution Bench in the case of *M.P. Vs. Chintaman Sadashiva Waishampayan* reported in *AIR 1961 SC 1623*, wherein it is held that the rules of natural justice require that a party must



W.P.No.18738 of 2022

be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice.

4. Heard, the learned counsel appearing on either side.

5. On perusal of the counter filed by the second respondent and on submissions of Mrs.R.L.Karthika, the learned Government Advocate, this Court find that the petitioner had committed the following irregularities:

1. That as Secretary, Rahumania Auto Industrial Co-operative Society Ltd, he has appointed the member Thiru. Jainulabideen, who is not having the basic qualification to become a member of the society as per Rule 23(g) of Tamil Nadu Co-operatives Societies Act, 1983.



W.P.No.18738 of 2022

2. *He has failed to maintain the proper list of beneficiaries and admission book of the beneficiaries.*

3. *He has involved in damaging and tampering of records and minute books of the society.*

4. *Procedural lapses in releasing of autos and not signing in the HP agreement.*

5. *TVS Autos were purchased against the will and wish of the members of the society.*

6. *Autos allotted without proper entries so as not to be able to seize as well as to identify the whereabouts of the autos.*

7. *Financial loss caused by way of seizing the defaulted autos and realloiting the same and selling the same without proper scrutiny.*

8. *That by his above act, he has misused his official position for his personal gain.*

9. *Thus, he has failed to maintain absolute integrity and devotion to his legitimate duty and thus violated Rule 20 of Government Servants' Conduct Rules.*

5.1 Therefore, the petitioner was served with charge memo.

Though the petitioner submitted explanation and the same was not satisfied and as such, an enquiry officer was appointed to conduct



W.P.No.18738 of 2022

disciplinary enquiry. On perusal of enquiry report, revealed that the petitioner was given opportunity of hearing. Though the petitioner sought for several adjournments and the same were considered and he was given full opportunity of hearing to participate in the disciplinary enquiry. After enquiry, the enquiry officer submitted its report. Therefore, this Court finds no violation of principles of nature justice and as such, the judgments relied upon by the learned counsel for the petitioner are not applicable to the case on hand.

6. Further, on perusal of enquiry report, the petitioner was served with second show cause notice. The petitioner submitted explanation. On receipt of the entire records, the first respondent imposed punishment of dismissal from service by the proceedings dated 14.06.2022. On perusal of the order of dismissal also revealed that the first respondent considered all the explanations submitted by the petitioner and rightly held against the petitioner. As far as the first charge is concerned, the learned counsel for the petitioner had taken specific stand that the petitioner had taken charge of the Rahumania



W.P.No.18738 of 2022

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Autorickshaw Drivers Industrial Cooperative Society only on 16.07.2009. He was appointed as Secretary of the said Society only on 09.07.2009. On perusal of records, it is revealed as only on 16.07.2009. Further revealed that as per minute book resolution No.3, the said Zainulabudin was admitted as member only by the petitioner. Society was registered on 22.06.2009 and immediately, the petitioner had assumed the charges of the Society. Therefore, the petitioner only had directly involved in the activities of the Society from the inception. In fact, the letter dated 22.06.2009 enclosing the Form No.I for registration of Cooperative Society, was addressed only by the petitioner to the Deputy Director (Industrial Cooperatives).

7. Insofar as the enquiry under Section 81 of the Cooperative Society is concerned, initially one Muthukrishnan, Supervisor of Industrial Cooperatives was appointed as Enquiry Officer to enquire about the financial conditions / mismanagements of the Society. He conducted enquiry and submitted report dated 20.03.2015. On receipt of the same, Deputy Registrar incharge failed to initiate any further action.



W.P.No.18738 of 2022

WEB COPY

His successive District Registrar by the proceedings dated 19.05.2016 ordered for surcharge proceedings as contemplated under Section 87 of the Tamilnadu Cooperative Societies Act. However, in the meanwhile, another person had assumed office of the District Registrar who came to understand about the gravity of the above irregularities and large scale financial irregularities. The first enquiry report was incomplete. Considering the financial loss caused to the Society due to the irregularities committed by way of re-allotment and auction of the seized auto, were not noticed by the first Enquiry Officer and fresh enquiry was ordered under Section 81 of the Tamilnadu Cooperative Societies Act, 1983 by the proceedings dated 12.12.2017. Enquiry officer conducted detailed enquiry after giving opportunity of hearing to all the persons and submitted report thereby recommended to initiate disciplinary action as against the petitioner who had committed various irregularities during his tenure as Secretary of the Society. Therefore, it cannot be said that the first enquiry was not completed and it was incomplete. As such, another person was appointed as Enquiry Officer to complete the enquiry. Hence, this Court finds no fault on the enquiry report submitted under Section 81



W.P.No.18738 of 2022

8. Insofar as the other grounds raised by the learned counsel for the petitioner in respect of judicial review of disciplinary proceedings, the court cannot act as an appellate forum over all findings of the disciplinary authority. Further, the Court cannot re-appreciate the evidence on the basis of which, the finding of misconduct has been arrived at in the course of disciplinary enquiry. This Court can look into whether the rules of natural justice have been complied with; the finding of misconduct is based on some evidence; the statutory rules governing the conduct of the disciplinary enquiry have been observed; whether the findings of the disciplinary authority suffers from perversity; and the penalty is disproportionate to the proven misconduct. Therefore, this Court find no fault with the order passed by the first respondent. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of *Indian Oil Corporation Vs. Ajitkumar Singh and another* reported in *2023 Live Law (SC) 478*, in which the Hon'ble Supreme Court of India held that judicial review cannot be



W.P.No.18738 of 2022

exercised to re-appreciate the evidence in departmental enquiry proceedings. The Constitutional Court, while exercising its power of judicial review, cannot decide the case as if it is the first stage of the case, as if enquiry is still being conducted and enquiry report being prepared. The evidence cannot be re-appreciated at the stage of judicial review in a disciplinary proceedings as if conviction in a criminal trial is being re-examined by the next higher court.

9. As stated supra, this Court finds no grounds to interfere with the order passed by the disciplinary authority i.e. the first respondent herein. That apart, in pursuant to the enquiry report submitted under Section 81 of the Tamilnadu Cooperative Societies Act, a criminal case has been registered as against the petitioner in crime No.1 of 2020 for the offence under Section 408, 409, 468, 471, 477A, 120(b), 420 and 34 of IPC on the file of the Inspector of Police, Commercial Crime Investigation Wing, Chennai in which the petitioner is arrayed as the first accused. Further, insofar as the loss occurred to the society and the surcharge proceedings had been initiated under Section 87 of the



W.P.No.18738 of 2022

WEB COPY

Tamilnadu Cooperative Societies Act as against the petitioner thereby ordered to recover the loss caused by the petitioner. It was challenged by the petitioner before the Cooperative Tribunal cum Chief Small Causes Court, Chennai in CMA Nos.8 & 10 of 2019 and the appeals were dismissed by an order dated 08.11.2022. Though civil revision petition is pending before this Court as against the said order, it would not help the petitioner in any manner to disprove the decision taken by the first respondent.

10. In view of the above, this writ petition is devoid of merits and liable to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

05.04.2024

Neutral Citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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W.P.No.18738 of 2022

WEB COPY

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Micro, Small and Medium Enterprises,
(EII(2) Department, Secretariat,
Chennai 600 009
- 2.The Secretary to Government/
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- 3.Deputy Secretary,
Tamilnadu Public Service Commission,
TNPSC Road,
Chennai 600 003
- 4.Additional Director(District Industries Centre),
O/o. The Industries Commissioner and
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W.P.No.18738 of 2022

G.K.ILANTHIRAIYAN, J.

lok

W.P.No.18738 of 2022



WEB COPY



W.P.No.18738 of 2022

05.04.2024