



WEB COPY

W.P.No.6770



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.6770 of 2014

and

M.P.No.1 of 2014

C.Ilangovan (Former Secretary)

... Petitioner

Vs.

1. The Registrar Co.op (Housing),
Tamil Nadu Housing Board Building,
493, Anna Salai, Nandanam, Chennai – 600 035.

2. The Deputy Registrar (Housing),
Fairlands, Salem – 636 016.

3. Salem Ponnammappettai Co-operative Building Society Ltd S, 1400,
Represented by its President,
No.73/157, Cherry Road,
Salem – 636 007.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Ref. No.Rc.3812/ 2009/SF1 dated 28.6.2010 (Ex-A) and the order in Reference No.Na.Ka. No.8823/ 2010/Sapa1 dated 17.4.2013 (Ex-B) and quash the same and consequently direct the 3rd respondent to reinstate the petitioner with back wages and all other attendant benefits.

For Petitioner

: Mr.V.Stalin

For R1 & R2

: Mr.P.Ganesan,

Government Advocate

For R3

: Mr.L.P.Shanmuga Sundaram



ORDER

WEB COPY

While the petitioner was working as 'Secretary' in the Respondent No.3/ Society, he was subjected to disciplinary proceedings by placing him under suspension on 19.08.2008 and thereafter, a charge-memo dated 17.10.2008 was issued. In response to the same, the petitioner submitted an explanation denying the charges. Consequently, an Enquiry Officer was appointed and during pendency of the enquiry, two more charge-sheets were issued to the petitioner and finally, the petitioner sought for furnishing certain documents. But according to petitioner, the Respondent No.2, without furnishing any documents, proceeded to conduct an Ex-parte enquiry, resulting in issuing a show-cause notice and thereafter, the petitioner was dismissed from service by an order dated 13.04.2009. Aggrieved by the same, the petitioner preferred a Review Petition before the Respondent No.3 under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the Act, 1983' for short). The said Revision Petition was rejected by the Respondent No.1 by an order dated 28.06.2010 and thereafter, the petitioner filed a Review Application under Section 154 of the said Act, 1983 and the same was also rejected by the Respondent No.1 by an order dated 17.04.2013. It is aggrieved by the said orders dated 28.06.2010 and 17.04.2013, the petitioner approached this Court by filing



the present Writ Petition.

2. The learned counsel for the petitioner contended that the Respondent No.1, failed to exercise the jurisdiction conferred upon him and failed to consider any of the grounds raised by the petitioner and without considering any of the grounds raised in the Revision Petition, passed the cryptic order dated 28.06.2010, rejecting the appeal without application of mind. According to learned counsel for the petitioner, inspite of filing a Review Application under Section 154 of the Act, 1983, the Respondent No.1 failed to consider the grounds raised in the revision as well as in the Review Application. Hence, it is contended that it is a fit case for remanding the matter back to the Respondent No.1 for fresh consideration on merits.

3. On the other hand, the learned counsel appearing for the Respondent No.2 contended that the petitioner was dismissed from service in the year 2009 and the same was confirmed by the Respondent No.1 and there are also criminal proceedings as well as surcharge proceedings that are pending against the petitioner and therefore, remanding the matter back for fresh consideration at this stage would cause prejudice to the Respondent No.3 and no useful purpose would be served.



4. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

5. A perusal of the order dated 28.06.2010 passed by the Respondent No.1 shows that the petitioner has raised as many as 11 grounds in the Review Petition filed by him, which reads as under:-

- “1) Inquiry Officer did not examine any document or witnesses to prove the charges.*
- 2) It was an ex-parte enquiry and no documents were furnished to the petitioner despite repeated request.*
- 3) No subsistence allowance was paid to the applicant (the petitioner) which vitiates enquiry.*
- 4) Charge state that loss was caused to the society. However, no loss was caused to the society, since the loans were covered under mortgage and can be collected even now.*
- 5) 9 years delay in framing of the charges.*
- 6) Charge No.2 relates to issues of 11 bogus loans. But who created bogus documents, what was the nature of bogusness of the documents etc has not been examined.*
- 7) Charge memo states loss is Rs.83.77 lakhs but Criminal action was initiated only for Rs.48.76 lakhs.*
- 8) 11 bogus borrowers have been identified and charge sheeted for Criminal case as per Section 81 enquiry. Hence, criminality lies only on the 11 persons and not on the applicant.*
- 9) Applicant alone was victimized while other persons indicted under Section 81 enquiry are still working in the society.*
- 10) In almost all cases, legal action has been taken*



WEB COPY

W.P.No.6770



to recover the amount.

11) The punishment is disproportionate to the charges since the loans are collectable as the mortgage is not bogus.”

6. As against the said grounds raised by the petitioner, the Respondent

No.1 passed an order containing hardly one paragraph, which reads as under:-

“ The arguments of the petitioner and the respondents and the written counter affidavit of the respondent were considered. It was found that the charges framed against the petitioner stand proved. The respondent has followed all the procedure during the disciplinary proceedings and passed valid final order. Surcharge proceedings for Rs.83.77 lakhs against the petitioner and 9 others were pending in Deputy Registrar (Housing) Salem Court. The criminal case filed by Salem Wing of CCIW is also pending and is under trial. Hence, the revision petition of the petitioner is dismissed.”

7. A perusal of the order passed by the Respondent No.1, it is seen that the Respondent No.1 has not considered any of the grounds, which are raised by the petitioner in the Revision Petition, but on the other hand, simply proceeded to conclude the matter saying that all the charges that are framed against the petitioner stands proved.

8. The contention of the petitioner that he was not afforded proper opportunity before the Enquiry Officer and relevant documents sought for were not furnished etc., were not at all considered by the Respondent No.1. Under the



provisions of the Act, 1983, the only statutory remedy that is provided to the employees of the Society is under 153 of the Act and the Respondent No.1/Registrar is conferred with the powers to deal with the matters both on merits as well as under law. But, from the perusal of the order dated 28.06.2010, it is clear that the Respondent No.1 has not applied his mind, but proceeded to pass the impugned order in a mechanical manner and accepted the conclusions arrived at by the Respondent No.3 and confirmed the punishment of dismissal from service.

9. Admittedly, the criminal and surcharge proceedings that were initiated against the petitioner are pending as on the date of passing of the said order dated 28.06.2010 as well as on this date. Thus, the liability of the petitioner is not finalized either before the concerned criminal court or before the authorities under the Act, 1983. Under those circumstances, in all probabilities, the Respondent No.1, ought to have considered the Revision Petition filed by the petitioner in detail by duly dealing with the grounds raised in the Revision Petition filed by the petitioner. Unfortunately, inspite of the petitioner filing a review under Section 154 of the Act, 1983 seeking review of the order dated 28.06.2010, the said Review Petition is also dealt with in the very same manner.

10. In the circumstances, this Court is of the considered view that the



orders passed by the Respondent No.1 under Sections 153 and 154 of the Act, 1983 cannot be sustained under law and it is obligatory on the part of the Respondent No.1 to consider the Revision Petition filed by the petitioner on merits by duly affording an opportunity to the petitioner as well as the Respondent No.3. In the circumstances, the impugned orders in Reference. No.Rc.3812/2009/SF1 dated 28.06.2010 and ந.க.எண்.8823/2010/சுப1 dated 17.04.2013 are hereby set aside and the matter is remanded back to the Respondent No.1 for considering the Revision Petition filed under Section 153 of the Act, 1983 against the order of dismissal dated 13.04.2009 passed by the Respondent No.3 and to pass orders thereon in accordance with law. The Respondent No.1 is directed to consider the said Revision Petition and pass orders as directed above as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order by duly affording an opportunity to the petitioner as well as the Respondent No.3.

11. Accordingly, the Writ Petition is allowed. there shall be no order as to costs. Connected Miscellaneous Petitions, if any shall stands closed.

09.09.2024

skr

Index : Yes / No



W.P.No.6770



Speaking order / Non-speaking order
Neutral Citation : Yes / No

WEB COPY

To

1. The Registrar Co.op (Housing), Tamil Nadu Housing Board Building,
493, Anna Salai, Nandanam, Chennai – 600 035.

MUMMINENI SUDHEER KUMAR, J.

skr

2. The Deputy Registrar (Housing),
Fairlands, Salem – 636 016.
3. The President, Salem Ponnammappettai
Co-operative Building Society Ltd S, 1400,
No.73/157, Cherry Road,
Salem – 636 007.

W.P.No.6770 of 2014



WEB COPY

W.P.No.6770



09.09.2024