



W.A.(MD) No.434 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A.(MD) No.434 of 2018
and
C.M.P.(MD) No.2597 of 2018**

M.Seetharaman

... Appellant

-VS-

- 1.The Joint Registrar of
Co-operative Societies
Sivagangai Zone
Sivagangai District
- 2.The Special Officer
NN.380-A, Velankudi Primary
Agricultural Cooperative
Credit Society
A.Velankudi Taluk
Sivagangai District

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 06.02.2018, passed in W.P.(MD) No.4967 of 2010, on the file of this Court.



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For Appellant : Mr.A.Thirumurthy

For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader

J U D G M E N T

[Judgment of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The order dated 06.02.2018, passed by the learned Single Judge in W.P.(MD) No.4967 of 2010, is under challenge in this writ petition.

2. The appellant / writ petitioner was appointed as Secretary in the second respondent / Co-operative Society. On account of certain allegations, he was placed under suspension by the second respondent vide proceedings, dated 12.12.2003. Challenging the order of suspension, the appellant filed a writ petition in W.P.(MD) No.3711 of 2004, wherein, on 15.12.2004, this Court had granted an order of interim stay. In the meanwhile, the second respondent / Special Officer issued a charge-memo, dated 30.06.2004 by framing charges against the appellant. Subsequently, during the pendency of the disciplinary proceedings, the order of suspension was revoked by the order of this Court in the above said W.P.(MD) No.3711 of 2004. Pursuant to the same, the appellant was re-instated in service on



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30.05.2006. The disciplinary proceedings initiated against the appellant was ended with punishment of stoppage of increment for three years without cumulative effect. Subsequently, on 17.10.2008, another charge-memo was issued against the appellant. He submitted his explanations and a domestic enquiry was conducted and the Enquiry Officer submitted his report on 16.02.2009 holding that all the charges were proved. The second show-cause notice was issued on 22.04.2009 and the appellant had submitted his explanation / objections on the enquiry report, on 29.04.2009. Final order in the disciplinary proceedings was passed on 20.07.2009 by the second respondent imposing punishment of stoppage of increment for three years without cumulative effect. Accordingly, the disciplinary proceedings initiated against the appellant was concluded. This apart, a criminal case was registered against the appellant by a Criminal Crime Investigation Wing, Sivagangai, in Crime No.2 of 2009 under Sections 408 and 477-A I.P.C., and he was arrested and kept in judicial custody for 43 days and he was placed under suspension, pursuant to the registration of the criminal case and subsequently, he was released on bail. A third charge-memo was issued by the second respondent framing two charges. Under these circumstances, the second suspension order was also revoked. The appellant was again re-instated in service. In these circumstances, the second respondent sent a



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communication to the first respondent for initiating *suo moto* revision against the appellant under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter called as the 'Act'). The appellant challenged the same on the ground of limitation, as the first respondent has no power to initiate *suo moto* revision under Section 153 of the Act, after lapse of 90 days.

3. Learned Single Judge, finding that the Cooperative Societies and its management are not considered as “State” within the meaning of Article 12 of the Constitution of India and as against the order passed under the provisions of the Tamil Nadu Cooperative Societies Act, the aggrieved person has to exhaust the remedies available under the provisions of the Act and no writ would lie in the view of the legal principles laid down by the Larger Bench of this Court in the case of ***Marappan vs. The Deputy Registrar of Cooperative Societies, Namakkal***, reported in **2006 (4) CTC 689**, dismissed the writ petition by order dated 06.02.2018. Challenging the same, the present writ appeal.

4. Learned counsel for the appellant would submit that the first respondent has no power to initiate *suo moto* revision under Section 153 of the Act, after a lapse of 90 days. As per the proviso to Section 153 of the Act,



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every application to the Registrar or the Government for the exercise of the powers under Section 153, shall be preferred within ninety days from the date on which the proceedings, decision or order to which the application relates was communicated to the applicant. However, in the case on hand, the *suo moto* revision has been initiated after lapse of ninety days. He would further submit that the *suo moto* revision was initiated on the ground that no proper action was taken against the appellant by the erstwhile Special Officer of the respondent – Cooperative Society. However, subsequent to the initiation of *suo moto* revision, the Deputy Registrar, Karaikudi, by his proceedings dated 16.05.2024, has directed the appellant to pay a sum of Rs.28,44,654/- and pay interest at the rate of 18% per annum for the total loss to the tune of Rs.40,24,654/- from the date of loss caused to the Society till the date of payment and attached the immovable properties belonging to the relatives of the appellant. He would further submit that criminal proceedings are also pending in C.C.No.40 of 2010, before the learned Judicial Magistrate No.II, Sivagangai.

5. Per contra, learned Additional Government Pleader appearing for the respondents, on instructions, would submit that the Joint Registrar of Cooperative Societies has got every power to initiate *suo moto* revision under



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Section 153 of the Act and there is no limitation for the same and thereby, there is no infirmity in respect of the order passed by the second respondent. He would further submit that the real intention of the legislature is to be ascertained by carefully attending to the whole scope of the statute and in this case, the *suo moto* revision was initiated by the Joint Registrar of Cooperative Societies finding that there was a collusion between the appellant and the erstwhile Special Officer of the second respondent – Cooperative Society in concluding the disciplinary proceedings initiated against the appellant and that huge sums of the Society's money was misappropriated. In support of his contentions, he has placed reliance upon the decisions of this Court in ***S.V.K.Sahasramam vs. Deputy Registrar of Co-op. Societies***, reported in ***(2008) 8 MLJ 231*** and ***K.Murugan vs. The Deputy Registrar of Co-operative Societies***, reported in ***2011 (3) CTC 689***.

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

7. The short point arising in the case on hand is whether the *suo moto* revision initiated by the Joint Registrar of Cooperative Societies after lapse of ninety days is maintainable or not.



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8. Learned counsel for the appellant strenuously contended that the first respondent has no vested power under Section 153 of the Act to initiate *suo moto* revision against the appellant after lapse of ninety days.

9. At this stage it would be relevant to refer the proviso to Section 153 of the Act, which reads as under:

“Every application to the Registrar or the Government for the exercise of the powers under this section shall be preferred within ninety days from the date on which the proceedings, decision or order to which the application relates was communicated to the applicant.”

10. According to the second respondent, the erstwhile Special Officer had committed certain irregularities and there was a collusion and connivance between the appellant and the erstwhile Special Officer in deciding and concluding the disciplinary proceedings initiated against the appellant. Therefore, the second respondent, who is the present Special Officer, made a recommendation to the first respondent to initiate *suo moto* revision against the appellant and after satisfying that there are some irregularities as alleged by the present Special Officer, the first respondent has initiated *suo moto*



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revision against the appellant. Since it is a *suo moto* revision and not based on any application of any aggrieved person, the above proviso to Section 153 of the Act is not applicable to the case of the appellant.

11. The Division Bench of this Court in **S.V.K.Sahasraman's** case (cited supra), while interpreting Section 81 of the Act has considered whether the period of limitation as prescribed under Section 81(4) of the Act is mandatory or not and held as follows:

“12.We, therefore, affirm the order of the learned single Judge in this case. We are of the view that in a case where there are allegations of embezzlement and misappropriation of public funds, the members of general public who have been cheated have no control over those who hold the enquiry in respect of the time limit. To hold that such an enquiry which has been continued beyond the time limit is bad would cause great injustice.

13.Therefore, if such enquiry is continued beyond the time limit mentioned in the relevant statute, the said time cannot be held to be mandatory in view of the principles laid down in Montreal Street Railway Company vs. Normandin [AIR 1917 Privy Council 142], which has been affirmed by the Supreme Court.”



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12. In view of the above legal principles, we do not find any infirmity or irregularity in the order passed by the learned Single Judge, thereby this writ appeal is liable to be dismissed.

13. Accordingly, the writ appeal stands dismissed. However, the appellant is at liberty to submit his explanation before the authority concerned and in that event, the authority concerned shall consider the same and pass orders on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

[A.D.J.C., J.] [K.R.S., J.]

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NCC : Yes / No
Index : Yes / No
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