IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.325 OF 2016

Rangnath s/o Anantrao Kulkarni
Age: 69 years, Occu: Retired,
R/o Umarkheda, Post Mantha,
Tq. Mantha, Dist. Jalna … Petitioner

Versus

1. The State of Maharashtra
Through Department of Marketing,
Mantralaya, Mumbai-32.

2. The Minister,
Co-operation, Marketing & Textile,
Mantralaya, Mumbai-32.

3. The Director of Marketing,
Maharashtra State,
Central Building, Pune.

4. The Joint Director of Marketing,
Maharashtra State, 3rd Floor,
Central Annex Building,
Pune-411 001.

5. The District Deputy Registrar,
Co-operative Societies,
Administrative Building,
Jalna, Dist. Jalna

6. Agricultural Produce Market Committee,
Mantha, Tq. Mantha,
Dist. Jalna.
Through its I/c Secretary.

7. Yeshwant Harikrishna Kulkarni,
Age: 50 years, Occu: Agril.,
R/o Umarkhed, Post. Mantha,
Tq. Mantha, Dist. Jalna …Respondents

…..

Mr. B.N. Patil, Advocate for Petitioner,
Ms. M.L. Sangit, AGP for Respondents/State
Mr. S.G. Kawade, Advocate for Respondent No.6

…..

CORAM : MANJUSHA DESHPANDE, J.

DATE : 25th FEBRUARY, 2025

ORDER :

1. Petitioner in the present writ petition has challenged the order dated 04/11/2015, passed by respondent No.2 Minister of Cooperation and Textile, in Appeal No.03/2015, whereby the appeal filed by petitioner has been dismissed and order dated 29/12/2014 passed by respondent No.3 Director of Marketing, Maharashtra State, Pune as well as the directions issued by respondent No.5 District Deputy Registrar, Cooperative Societies, Jalna, dated 24/04/2012, in exercise of powers under Section 40(e) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short "the said Act"), have been maintained.

2. Learned advocate for petitioner submits that petitioner was appointed as a clerk-cum-peon in respondent No.6 Market Committee in the year 1968. Due to his hard work and sincere service he was promoted from time to time. Petitioner was promoted as a Secretary of respondent No.6 Market Committee in the year 2004. He was rendering his services as Secretary to the satisfaction of Managing Committee, therefore, when he was about to retire on attaining the age of superannuation on 30/09/2005, respondent No.6 passed resolution dated 27/08/2005 granting

extension to the services of petitioner as a Secretary and the proposal was forwarded to respondent No.2 for necessary approval. Service of petitioner was continued even after his date of retirement in view of resolution passed by respondent No.6, approval of which was awaited. Petitioner was informed that since his approval for extension of services has been refused, he stood retired on 16/01/2006. After his retirement, respondent No.6 has paid all the Monetary benefits to petitioner since he had retired without any stigma during his services.

3. Respondent No.7 who is resident of the same village where petitioner is residing, who is also from brotherhood of petitioner, was interested in getting plot in the Market Committee. When he was not successful in his attempt to get it allotted, he bore grudge against petitioner on the ground that, though petitioner was employee of respondent No.6, he was of no help to him. Therefore, respondent No.7 filed complaint with respondent No.3 against petitioner on 02/07/2009, after almost three years of retirement of the petitioner. Since respondent No.7 did not receive any response from respondent No.3, he filed Writ Petition No.5288/2009, before this Court which was decided on 08/09/2011, with a direction to respondent No.5 District Deputy Registrar, Cooperative Societies, Jalna, to forward the representation to respondent No.3 Director of Marketing, Maharashtra State, Pune. Respondent No.3 was further

directed to pass appropriate orders on the application of respondent No.7 and dispose it within three months from the date of receipt of representation. In view of the directions of this Court, respondent No.4 Joint Director of Marketing was appointed to conduct inquiry vide order dated 28/12/2011 in respect of allegations made by respondent No.7 in his complaint dated 02/07/2009. Respondent No.4 along with respondent No.5, Special Auditor, Cooperative Societies, Jalna and other employees visited the A.P.M.C., Mantha. In presence of these authorities inquiry was conducted in respect of allegations made in the complaint and report of the inquiry was forwarded to respondent No.5 by respondent No.3 vide communication dated 19/03/2012 for taking appropriate action.

4. It is submitted by learned advocate for petitioner that though the subject matter of the inquiry was the allegations against the petitioner he was neither intimated about the allegations nor about inquiry conducted in respect of allegations made against him. No notice was given to the petitioner calling upon his explanation with regard to allegations made against him. He was not extended any opportunity of being heard. The entire inquiry was conducted behind the back of petitioner, thereby causing flagrant violation of principles of natural justice. It is his contention that neither respondent No.3 nor respondent No.4 are appointing authority of petitioner, or the disciplinary authorities. Therefore, they could not

have conducted any inquiry against petitioner. The inquiry of petitioner by respondent Nos.3 and 4 is *per se* illegal since it is without jurisdiction. It is submitted that the inquiry conducted on the complaint of respondent No.7 is without any statutory force. Since the inquiry conducted by respondent No.4 is without jurisdiction and also in violation of principle of natural justice the same is vitiated. The copy of inquiry report, prepared behind the back of petitioner was not supplied to petitioner, though it proposed penal action against him His explanation for proposed penal action was not called by respondent Nos.3 and 4. The copy of report was merely forwarded through respondent No.3 to respondent No.5. The respondent No.5 has passed an order against petitioner on 24/04/2012, without issuing any notice or any opportunity of being heard.

5. The respondent No.5 District Deputy Registrar has issued directions on the basis of each of the findings recorded by respondent No.4 in the inquiry report. It is held that petitioner has committed illegalities and irregularities in the affairs of respondent No.6 APMC. Hence, legal action is recommended against him. It is contended that though petitioner has filed appeal before respondent No.3 Director of Marketing, he has dismissed it by passing a cryptic order, by observing that allegations made in the inquiry are found to be correct and hence, directions have been

issued by respondent No.5 District Deputy Register, which does not deserve any interference.

6. Against the order passed by respondent No.3, petitioner has approached respondent No.2 Minister under Section 43 of the said Act. However, the appeal filed by petitioner has been rejected by the Minister holding that from the inquiry report and the documents placed on record *prima facie,* there appears substance in the allegations made against the petitioner. Therefore, the directions have been rightly issued in exercise of powers under Section 40(e), to respondent No.6 APMC, for making improvement in their management and rectifying the defects. Though it is observed that it was necessary to grant opportunity of hearing to petitioner, however, it held that Section 40(e) of the said Act, does not contemplate any opportunity of being heard. Therefore, the appeal has been rejected by respondent No.2 Minister. It is held that only in circumstances wherein injunction is required to be granted in exercise of Section 40(e) of the said Act, the opportunity of hearing would be required. In the present case, there is no question of injunction being granted, therefore, it is not necessary to give any opportunity of hearing to petitioner.

7. It is the contention of learned advocate for petitioner that there was no occasion for respondent Nos.3, 4 and 5 to conduct inquiry against petitioner after his retirement on 16/01/2006. When

he retired there was no inquiry pending against him he has honourably retired and has also received retiremental benefits from the employer respondent No.6 APMC. Respondent No.6 has not filed any complaint against petitioner, therefore, respondent Nos.3 and 4 could not have conducted any inquiry against him. Respondent Nos.3 and 4 while conducting an inquiry for the charges levelled against him, have violated principles of natural justice. Even while issuing directions respondent No.3 has not issued any show-cause-notice or any intimation to the petitioner calling upon his explanation. If at all any recovery is to be made from petitioner, the employer of petitioner i.e. respondent No.6 APMC is the only authority that can pass an order of recovery, that too after calling upon his explanation.

8. Learned advocate for petitioner relies on Chapter V of the said Act, wherein the category of officers and servants in the market committee along with their status and penalties has been provided. According to him, if at all any penalty was required to be imposed on the petitioner, APMC should have resorted to Rule 102 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules (for short the 'said Rules'). Rule 102 provides nature of penalties to be imposed on the servants and officers of APMC for good and sufficient reasons. Since petitioner is an employee of respondent No.6 APMC, respondent Nos.3 to 5 are not

empowered to propose penal action against him.

9. According to learned advocate for petitioner Section 40(e) of the said Act, does not contemplate recommending penalties against employee of an APMC. He has further drawn my attention to Section 41 of the said Act, which provides that officer who is investigating into the affairs of Market Committee under Section 40 or the State Government examining the proceedings of such Committee under Section 43 shall have the power to summon and enforce the attendance of officers or members of the Market Committee and to compel them to give evidence and to produce documents by the same means and as far as possible in the same manner as provided in the case of Civil Court.

10. So far as Sub-section (e) of Section 40 is concerned, the Director has been empowered to issue prohibitory orders regarding anything which is about to be done or is being done and should not be done. The order passed by respondent No.5 cannot be said to be an order passed in exercise with the powers under Section 40(e) of the said Act. Therefore, it is obvious that the order passed by respondent No.5 which is confirmed by respondent No.2, is an arbitrary order issued without jurisdiction.

11. The State has filed reply affidavit on behalf of respondent Nos. 1 to 5. Learned AGP contends that on the basis of

complaint which has been filed by respondent No.7, which was directed to be decided by this Court in Writ Petition No.5288/2009, respondent No.3 has directed respondent No.4 by delegating his powers to inquire about allegations made by respondent No.7. Accordingly respondent No.4 has conducted the inquiry by inspecting accounts and affairs of respondent No.6 APMC. It is contended that there is no mandate to issue any notice for inquiry under Section 40 of the said Act.

12. Therefore, no intimation or notice was issued to petitioner while conducting inquiry. Respondent No.5 has considered the report submitted by the respondent No.4 and has passed an order on 24/04/2012. Considering the serious illegalities committed by the petitioner including that of manipulation in record, allotment of plots without permission of respondent No.3 during his extended term after retirement while he was in possession of the record of respondent No.6 APMC. The directions issued by respondent No.5 are perfectly legal and valid.

13. The order passed by respondent No.5 dated 24/04/2012 has been challenged by petitioner before respondent No.3 and after granting opportunity of hearing to all the parties respondent No.3 has recorded the illegalities committed and proved during the inquiry. In view of the findings recorded by respondent No.3 the appeal filed by petitioner has been rejected vide order dated

29/12/2014. Respondent No.3 as well as respondent No.5 have considered each and every aspect of the inquiry report and have passed detailed order. It is held that even after retirement the petitioner has illegally continued to hold charge of Secretary of respondent No.6 APMC, Mantha, and during the extended term has manipulated the record of APMC and has allotted plots without any resolution or permission. On this background even the appeal before respondent No.2 has been rejected. Hence, according to her, the order passed by respondent No.5 is confirmed by respondent No.2, it does not deserve any interference and the writ petition deserves to be dismissed.

14. Respondent No.6 APMC has also filed reply stating that orders passed by the respective authorities are appropriate and the same does not deserve any interference. However, during the course of argument, when the query was made to learned advocate for respondent No.6, that whether they have complied with the directions issued by respondent No.5, it is submitted that neither they have initiated any legal action nor they have made any recovery as per the directions of respondent No.5.

15. I have heard the respective parties and after going through the orders and documents placed on record, it is evident that petitioner who was working as Secretary of APMC, was about to retire on 30/09/2005 upon attaining age of superannuation.

Respondent No.6 APMC has passed resolution granting extension to the services of petitioner and the proposal was forwarded to respondent No.2 for necessary approval. In the meanwhile, respondent No.6 has asked petitioner to continue to discharge his duties pending his approval. Therefore, he has continued to discharge his duties. In the meanwhile, respondent No.6 APMC was informed that the approval for continuation of petitioner has been refused, therefore, he stood retired on 16/01/2006. At the time of his retirement there was no inquiry pending against him. There was no blot in his service with respondent No.6. After three years of his retirement, respondent No.7 who was in his brotherhood, has filed complaint against petitioner in which, pursuant to the orders of this Court, inquiry was initiated against petitioner, purportedly in exercise of Section 40(e) of the said Act.

16. Section 40 of the said Act reads thus:-

*"**40. Inspection, inquiry, submission of statements, etc.***
The Director or any officer authorised by him by general or special order in this behalf, may,––
(a) inspect or cause to be inspected the accounts and offices of a Market Committee;
(b) hold inquiry into the affairs of a Market Committee;
(c) call for any return, statement, accounts or report which he may think fit to require such Committee to furnish;
(d) require a Committee to take into consideration,––
(i) any objection which appears to him to exist to the doing of anything which is about to be done or is being done by or on behalf of such Committee; or
(ii) any information he is able to furnish and which appears to him to
necessitate the doing of a certain thing by such Committee,

and to make a written reply to him within a reasonable time stating its reasons for doing, or not doing such thing;
(e) direct that anything which is about to be done or is being done should not be done, pending consideration of the reply and anything which should be done but is not being done within such time as he may direct."

17. It is claimed by respondent No.5 that inquiry is in exercise of Section 40(e) of the said Act. Upon perusal of Section 40(e) it is evident that it does not contemplate any inquiry against an employee or any punitive action against him. The entire exercise of conducting inquiry is directed against petitioner. Section 40 does not contemplate inquiry against employee of respondent No.6 APMC. The procedure for conducting inquiry is provided under Rule 117 of the said Rules, which reads thus:

*"**117. Manner of enquiry and inspection***

(1) An order, authorising inquiry or inspection under section 40 shall, among other things, contain the following :-

(a) the name of the person authorised to conduct the enquiry or inspection;

(b) the name of the Market Committee whose affairs are to be enquired into or whose accounts and records are to be inspected;

(c) the specific point or points on which enquiry or inspection is to be made, the period within which the enquiry or inspection is to be completed and report submitted to the Director;

(d) any other matter relating to the enquiry or inspection.

(2) If the enquiry or inspection cannot be completed within the period specified in the order referred to in sub-rule (1), the person conducting the enquiry or inspection shall submit

an interim report stating the reason for not completing their enquiry or inspection in time and the Director, if he is satisfied, may grant such extension of time for the completion of the enquiry or inspection as he may deem necessary or he may withdraw the enquiry or inspection from the person to whom it is entrusted and hold the enquiry or inspection himself or entrust it to such other person as he deems fit.

(3) On receipt of the order referred to in sub-rule (1), the person authorised to conduct the enquiry or inspection shall proceed to examine the relevant books of accounts and other documents in possession of the Market Committee or any of its officers, members, agents or servants and obtain such information or explanation from any such officers, members, agents or servants of the Market Committee in regard to the transactions and working of the Market Committee as he deems necessary for the conduct of such enquiry or inspection.

(4) The person authorised to conduct the enquiry or inspection shall submit the report to the Director, on all the points mentioned in the order referred to in sub-rule (1). The report shall contain his findings and the reasons therefor supported by such documentary or other evidence as recorded by him during the course of his enquiry or inspection. The Director shall pass such orders thereon as may be considered just after giving a reasonable opportunity of being heard to the concerned persons including the members of the Market Committee."

18. From the title of Rule 117 itself it is explicit that it is a Rule providing manner of conducting inquiry and inspection contemplated under Section 40 of the said Act. In Rule 117(1) the

modalities to be followed while conducting inquiry has been provided and sub-Rule (a) therein provides the name of person authorised to conduct inquiry or inspection. Rule 17(1)(b) provides name of Market Committee whose affairs are to be inquired into, Rule 17(1)(c) provides the specific points or point on which inquiry or inspection is to be made and the period within which the enquiry or inspection is to be completed and report has to be submitted to the Director. Rule 117(3) provides that the person authorised to conduct enquiry or inspection shall proceed to examine the relevant books of accounts and other documents in possession of the Market Committee or any of its officers, members, agents or servants and obtain such information or explanation from any such officers, members, agents or servants of the Market Committee in regard to the transactions and working of the Market Committee as he deems necessary for the conduct of such enquiry or inspection. Rule 117(4) provides that the person who is authorised to conduct enquiry shall submit the report to Director on all the points referred to him and also his findings and reasons therefor supported by the documentary or any other evidence as recorded by him during the course of enquiry. It is further provided that Director shall pass orders thereon as may be considered just after giving reasonable opportunity of being heard to the concerned persons including the members of the Market Committee.

19. In present case when the inquiry was conducted respondent No.4 Joint Director of Marketing who was authorized to conduct inquiry has submitted report of the inquiry to respondent No.3 Director of Marketing and respondent No.5 District Deputy Registrar after having gone through the inquiry report has held that it necessary to issue directions in exercise of his powers under Section 40(e) of the said Act. Accordingly he has issued directions. In the order it is stated that though inquiry was conducted in respect of charges referred in the report from Sr. Nos.1 to 9, however, it is recommended that it is necessary to issue directions in respect of charges from Sr. Nos. 2 to 8 only.

20. On minute perusal of the directions issued, it nowhere reflects that before issuing directions in exercise of powers under Section 40(e) any opportunity of hearing has been given to petitioner. As referred herein above Rule 117(4) provides that Director shall pass such orders on receiving inquiry report as may be necessary after giving reasonable opportunity of being heard to the concerned person including Members of the Market Committee. In the present case, neither Market Committee nor the petitioner has been afforded any opportunity of being heard against the charges levelled against petitioner in the inquiry. In spite of specific provisions provided in the rules the Minister has observed that inquiry under Section 40(e) does not contemplate any opportunity

of being heard, therefore, the directions issued by respondent No.5 District Deputy Registrar does not warrant any interference. These findings recorded by the Minister are contrary to the procedure as has been provided in Rule 117(4) of the said Rule.

21. Even in the reply affidavit filed on behalf of respondent Nos. 1 to 5/State it is stated that respondent No.4, has rightly followed the directions issued by this Court and completed inquiry within prescribed period and as per the statute. The respondent No.5 before issuing any directions as against petitioner or even for that matter respondent No.6 should have granted reasonable opportunity of being heard. The respondent No.5 has not followed the procedure prescribed under Rule 117(4) of the said Rule.

22. As far as contention of petitioner that no opportunity of being heard was given to him is concerned, learned advocate for respondent No.6 contended that petitioner has been granted opportunity during the hearing of appeal filed by petitioner before respondent No.3. Rule 117(4) does not contemplate hearing him in an appeal filed by him against the order but prior to passing of order. Sub-Rule (4) contemplates that before any order is passed on the basis of inquiry a person is required to be given opportunity of hearing, in order to enable him to explain why proposed action should not be taken against him. In any enactment whenever there is proposed action contemplated to be taken against an individual

or body persons, opportunity of being heard is required to be extended. The APMC Act and APMC Rules are no exception to the Rule. Hence, a provision has been made in Rule 117(4) to provide reasonable opportunity of being heard to the person against whom the action is contemplated.

23. Perusal of inquiry report discloses that following charges are levelled against the petitioner :-

1. Petitioner has prepared lay out of the plots of respondent No.6 APMC in his own capacity as a Secretary.
2. Petitioner stood retire on 30/09/2005 and in spite of that he has drawn salary and other benefits for the post of Secretary from 01/10/2005 to 17/01/2006.
3. Even after his retirement, petitioner retained the record of respondent No.6 APMC unofficially and without any power.
4. Even after his retirement, petitioner has retained record of respondent No.6 and has given extension of lease and distributed and sold various plots of respondent No.6
5. Interpolation of record by making false entries and false signature on proceeding book, etc.
6. Without any authorization of the Managing Committee open land as well as reserved land of APMC has been granted on lease
7. Petitioner has made entry in the salary register maintained for disbursement of salary about disbursement made to the employees without actually disbursing the same.
8. Petitioner while discharging his function as Secretary and after his retirement the in-charge Secretary Balasaheb Kulkarni has caused financial loss and damage to the property of APMC.
9. Audit of APMC was not conducted till the date of inquiry

24. From the report it appears that Yashwant Kulkarni who has filed the application, is called upon during the inquiry on

19/01/2012 and he was inquired as to whether any issue is remained to be inquired during the inquiry. From the above charges, it can be gathered that charge Nos.1, 2, 3, 4, 5, 7 and 8 specifically alleges against petitioner. Therefore, it was necessary to call upon the petitioner to show cause against allegations which were made against him in the report.

25. One more aspect which needs to be considered is that recovery is proposed from petitioner. While making such recommendations in the inquiry as well as directions issued by respondent No.5, both the authorities have failed to appreciate that petitioner had already stood retired when the inquiry was initiated and it is settled position of law that recovery against retired employee cannot be initiated. The decisions of Hon’ble Supreme Court in case of ***State Of Punjab and Others Vs. Rafiq Masih (White Washer)*** reported in ***AIR 2015 SC 696*** as well as ***Syed Abdul Qadir Vs. State of Bihar*** reported in ***(2009) 3 SCC 475*** are the land mark judgments which have been further followed and still holds root.

26. Rules 100 to 107 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967, are relevant rules which govern the service conditions of employees of APMC. Officers and Servants have been categorized under Rule 100, which provides three categories viz. (i) officers, (ii) superior

servants, (iii) inferior servants.

27. The petitioner who was working as Secretary comes under the category of officers and the appointing authority of Secretary is APMC. Penalties which are to be imposed on the servants of APMC are provided under Rule 102 which reads thus:-

> "***102. Penalties-***
> *The following penalties may, for good and sufficient reasons, be imposed upon any officer or servant of a Market Committee, namely :-*
>
> *(i) censure,*
>
> *(ii) withholding of increments or promotions including stoppage at an efficiency bar,*
>
> *(iii) reduction to a lower post or a time scale or to a lower stage in a time-scale,*
>
> *(iv) recovery from pay of the whole or part of any pecuniary loss caused to Market Committee by negligence or breach of orders,*
>
> *(v) suspension,*
>
> *(vi) removal from the service of the Market Committee which does not disqualify him from future employment, or*
>
> *(vii) dismissal from the service of the Market Committee which ordinarily disqualifies him from further employment,*
>
> *(viii) withdrawal of privileges, if any."*

28. If at all any recovery is required to be ordered against an employee it will have to be under clause (iv) of the penalties. Respondent No.6 APMC being employer of petitioner is empowered to conduct inquiry and thereafter impose penalty of recovery. Though it is claimed that the order is passed in exercise of powers under Section 40(e), the scope of Section 40(e) is totally different

from what has been done in present case. In fact, Section 40 empowers Director or any officer authorised by him to inspect and hold inquiry into the affairs of Committee and also issue directions for rectifying the defects which are found during the inquiry and call for information which appears to him, that necessitates the doing of certain thing by such Committee. Hence, the inquiry against the petitioner conducted in exercise of powers under Section 40(e) cannot be sustained.

29. All the charges levelled against petitioner which can be found in the inquiry report, pertain to discharge of his function as a Secretary in respondent No.6 while he was in service. Therefore, respondent Nos.4 and 5 cannot conduct inquiry against petitioner under Section 40(e) of the said Act, behind his back, without issuing any notice or even supplying him the copy of inquiry report. Considering that the subject matter of inquiry was charges against the petitioner, it was more the reason to issue notice to him calling upon his explanation. No notice has been issued to him before conducting inquiry or even before passing the order and issuing directions vide order dated 24/04/2012 by respondent No.5. Legal action is directed to be taken against petitioner and along with that recovery is recommended to be made from him pursuant to the objections which have been found in the audit report.

30. Respondent No.3 Director of Marketing has rejected

appeal filed by petitioner by passing a cryptic order dated 29/12/2014, holding that irregularities have been committed by petitioner during his extended services after his retirement and he has committed various illegalities which were subject matter of the inquiry. Considering that the allegations are of serious nature, the order and directions issued by respondent No.5 District Deputy Registrar does not deserve to be interfered with. The respondent No.3 has passed the order without application of his mind and without recording any reasons.

31. When the matter was taken before respondent No.2 Minister in Appeal No.03/2015, the Minister has observed that considering that inquiry was conducted under Section 40(e) against petitioner wherein he is found guilty of various charges and those charges are of serious nature, the order passed against him by respondent No.5 does not deserve any interference. As far as the question of opportunity of being heard before passing any order is concerned, it is observed that Section 40(e) does not contemplate any such opportunity of being heard. Only in case any order of injunction is required to be issued against person, in such circumstances the opportunity of submitting written statement can be afforded to an incumbent against whom order is passed. It is observed that in view of illegalities and irregularities which are *prima facie* found in the inquiry report, respondent No.5 has given

directions for taking corrective measures to respondent No.6 APMC. Therefore, there is no interference warranted in the orders which are assailed in the appeal. By making above observations appeal has been dismissed by respondent No.2 Minister by confirming the order passed by respondent No.3 Director of Marketing as well as directions issued by respondent No.5 District Deputy Registrar.

32. Although it is claimed that, the inquiry is conducted in respect of affairs of respondent No.6 APMC and directions are also issued for correction of the affairs of APMC under Section 40(e). Upon going through the inquiry report and directions issued by the District Deputy Registrar dated 24/04/2012 it is apparent that the charges are regarding irregularities and illegalities purportedly committed by petitioner during discharge of his duties as a Secretary of APMC. Therefore, by no stretch of imagination it can be construed that directions have been issued in exercise of power under Section 40(e) pursuant to the inquiry conducted under Section 40 of the said Act. Though the penalty is proposed against petitioner of recovery of amount, towards the salary of the employees of APMC which is allegedly not disbursed by him but entries have been made in register. Such recovery cannot be directed from petitioner in 2011, who already stood retired in the year 2006 that too without conducting any departmental inquiry or by issuing any show-cause notice. The powers to impose any penalty rests only with the employer of petitioner i.e. respondent

No.6 APMC, respondent Nos.4 and 5 cannot pass any order against petitioner.

33. Petitioner has been condemned without affording him any opportunity. All the charges levelled against him are pertaining to the duties rendered by him in the APMC, only APMC could have taken action against petitioner as provided in the service regulations. Respondent Nos.4 and 5 have exceeded their jurisdiction while exercising their powers. Therefore, the inquiry conducted by respondent No.4 and directions issued by respondent No.5 are not sustainable. Since it has been done without issuing any notice to petitioner that too after a gap of almost four to five years after his retirement, such high handed approach of respondent Nos.4 and 5 is not at all justifiable. Since order passed against petitioner suffers from jurisdictional error, it deserves to be quashed and set aside.

34. In the result, writ petition is allowed. The order dated 04/11/2015, passed by respondent No.2 Minister of Cooperation and Textile, in Appeal No.03/2015, along with the order dated 29/12/2014 passed by respondent No.3 Director of Marketing, Maharashtra State, Pune and directions issued by respondent No.5 District Deputy Registrar, Cooperative Societies, Jalna, dated 24/04/2012, are hereby quashed and set aside.

(MANJUSHA DESHPANDE, J.)

SVH