



W.P.(MD).No.25481 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 21.01.2025

ORDER PRONOUNCED ON : 27.01.2025

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.25481 of 2024
and WMP(MD).No.21619 of 2024**

M.Rajapandi

...Petitioner

Vs

1.The Additional Registrar (Sales, Plan and Development)
Office of the Registrar of Co-operative Societies
Chennai

2.The Joint Registrar of Co-operative Societies/
The Chairman of the Common Cadre Authority
Tuticorin Region
Tuticorin

....Respondents

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned order passed by the first respondent in Na.Ka.6828/2013/Sapal dated 09.04.2015 confirming the order of dismissal passed by the second respondent dated Na.Ka.1024/2005/CA4 dated 20.10.2009 and quash the same as illegal and consequently direct the respondents to reinstate the petitioner in service with full back wages and continuity of service along with attendant benefits within the period that may be stipulated by this Court.



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For Petitioner : Mr.M.Jerin Mathew

For Respondents : Mr.D.Sasikumar
Additional Government Pleader

ORDER

The present writ petition has been filed by a Secretary of a Co-operative Society (under dismissal) challenging the order of the first respondent confirming the order of the second respondent wherein the petitioner has been imposed with a punishment of dismissal from service.

(A)Factual Matrix:

2.While the petitioner was working as a Secretary of TNSPL 122 K.Kumarettaiyapuram Primary Agricultural Co-operative Bank Limited, Tuticorin, proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act were initiated. On the basis of the findings of the said report, criminal action, surcharge proceedings and disciplinary action were initiated. In the criminal proceedings, the petitioner was convicted by Judicial Magistrate No.II, Tirunelveli in C.C.Nos.32 and 33 of 2006. The petitioner had filed C.A.Nos.149 and 150 of 2007 on the file of the Additional Sessions Court/Fast Track Court No.I, Tirunelveli, Tuticorin. The learned District Judge was pleased to allow the appeal and acquitted the writ petitioner on 01.12.2008.



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3.Surcharge proceedings were initiated as against the writ petitioner under Section 87 of Tamil Nadu Co-operative Societies Act and surcharge order was passed as against the writ petitioner on 21.04.2005. The petitioner had challenged the said surcharge order in CMA(CS).No.49 of 2005 before the Principal District Court, Tuticorin. The learned District Judge was pleased to confirm the order of the original authority. Challenging the same, the petitioner had filed CRP(MD).No.368 of 2012, this Court by an order dated 09.02.2023 has allowed the revision petition and set aside the surcharge proceedings.

4.In the disciplinary proceedings, the petitioner was issued with a charge memo on 29.07.2005. The petitioner has submitted his explanation on 07.10.2005. The enquiry report was submitted on 07.07.2006. The common cadre authority had sought explanation from the writ petitioner on the enquiry report on 28.06.2008. The petitioner has submitted his further explanation on 04.08.2008. The common cadre authority had conducted a personal hearing on 08.10.2009. Thereafter, the common cadre committee had convened a meeting and passed a resolution on 20.10.2009 resolving to impose the punishment of dismissal from service. Consequently, the dismissal order was issued on 20.10.2009 by the second respondent. The petitioner had challenged the said order before the first respondent. The first respondent herein by his proceedings dated 09.04.2015 has confirmed the order of



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dismissal. Challenging these two orders arising out disciplinary proceedings, the present writ petition has been filed.

(B)Contentions of the counsel on either side:

5.According to the learned counsel for the writ petitioner, the duties and responsibilities of the Secretary of Society have not been clearly spelt out in any one of the proceedings issued by the higher officials. That apart, all the documents relating to the allegations were maintained only by the Society Clerk namely Krishnamoorthy and he alone had signed in those documents. The petitioner was not vested with any responsibility to look into or supervise the activities of the Society Clerk.

6.The learned counsel for the petitioner had further contended that the enquiry officer had not furnished the documents which were sought for by him. He had further contended that the enquiry officer has not recorded the statement of the witnesses in his presence and he was not permitted to cross examine them. Therefore, the enquiry enquiry proceedings have been conducted clearly in violation of principles of natural justice.

7.The learned counsel for the petitioner had further stated that the petitioner has submitted a detailed explanation to the enquiry report. However, the said explanation has not been considered and the disciplinary authority has proceeded to impose the punishment. He had further stated that



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based on Section 81 enquiry report, the criminal proceedings, surcharge proceedings and the disciplinary proceedings were initiated as against him.

The petitioner was acquitted in the criminal case and the surcharge order was set aside by the High Court. Those two orders have an impact over the disciplinary proceedings initiated as against the writ petitioner. On the same set of charges, the petitioner has been acquitted and the recovery proceedings initiated under Section 87 of the Tamil Nadu Co-operative Societies Act have been set aside. In such circumstances, on the same set of allegations, the petitioner cannot be subjected to disciplinary proceedings which can culminate in imposition of dismissal from service.

8.The learned counsel for the petitioner had further pointed out that in the criminal proceedings, the said Krishnamoorthy has been convicted and the petitioner alone has been acquitted. The findings rendered in the criminal Court would have a bearing upon the disciplinary proceedings when the same is based upon the same set of facts.

9.The learned counsel for the petitioner had relied upon the decision of this Court to the effect that when the incriminating documents were not furnished, the entire enquiry proceedings would get vitiated. He had further stated that when the enquiry was conducted in an unsatisfactory manner, the said enquiry report and the order of punishment imposed by the disciplinary authority based upon the said enquiry report are vitiated and they have to be



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set aside. He had further contended that this Court in CRP(MD).No.368 of 2012 has categorically held that the petitioner is a whistle-blower and the said Krishnamoorthy alone has committed misconduct. In such circumstances, the petitioner is entitled to succeed in the writ petition.

10.Per contra, the learned Additional Government Pleader appearing for the respondents herein had contended that petitioner being a Secretary of the Co-operative Society is the head of the institution and he has to supervise all the subordinate officials and he cannot simply contend that all the receipts and records were maintained by the Clerk and therefore, he is not responsible.

11.The learned Additional Government Pleader had further contended that as per Byelaw No.38(4), the Secretary of the Society is custodian of all its movable and immovable assets. As per Byelaw No.49(1), the Secretary is responsible for issuing cash receipts to the amount remitted by the members/borrowers. As per Byelaw No.44, the Secretary is responsible for scrutinising all the loan applications submitted by the members and place them before the board for its approval. The Secretary is having the general supervisory control over the staff of the society. Only due to gross willful negligence on the part of the writ petitioner and for his personal gains in collusion with the former clerk, had misappropriated the funds of the Society to a tune of Rs.9,64,207/- by falsifying the accounts and by issuing bogus loans without documents.



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12.The learned Additional Government Pleader had further contended that the order of dismissal was passed by the second respondent on 20.10.2009 and the revisional authority had dismissed the revision on 09.05.2015. However, the present writ petition, challenging the order of revisional authority has been filed only in October 2024. Therefore, the writ petition is liable to be rejected on the ground of laches also. He had further pointed out that the standard of proof for a criminal case or the surcharge proceedings is completely different from that of the disciplinary proceedings. Therefore, the petitioner cannot rely upon the favourable orders obtained by him in those proceedings in the present writ petition. Hence, he prayed for sustaining the order of dismissal passed by the authority.

13.I have considered the submissions made on either side and perused the material records.

(C)Discussion:

14.A perusal of the charge memo issued to the writ petitioner on 29.07.2005 reveals that the petitioner has been charged with four articles of charges which are as follows:

a)The petitioner is said to have colluded with the Clerk namely one Krishnamoorthy and had released the loan amount without Debt Note or Saving Pass Book and thereby he had failed



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in his duty and caused loss to the society to a tune of Rs.78,343/-.

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b)The petitioner and the said Krishnamoorthy had misappropriated a sum of Rs.3,23,951/-.

c)The petitioner is said to have colluded with the said Krishnamoorthy and released the jewels without giving receipt for the amount paid by the members of the society and thereby caused loss to a tune of Rs.1,13,100/-.

d)The petitioner is said to have colluded with the Krishnamoorthy and misappropriated a sum of Rs.1,25,000/-by disbursing agricultural loan without any document whatsoever.

15.The petitioner has submitted an explanation on 07.10.2005. For all the four articles of charges, the petitioner has taken a common defence that the duties and responsibilities to maintain the debit account of the society is with the Clerk Mr. Krishnamoorthy. The petitioner has not signed in any one of the documents. The petitioner is no way responsible for the delinquencies committed by the Society Clerk. All the documents have been signed only by the said Clerk and therefore, the petitioner cannot be saddled with any responsibility.

16.As rightly pointed out by the learned Additional Government Pleader, the Byelaws of the Society clearly point out that the Secretary of the Society is the custodian of the movable and immovable assets. He is having



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overall supervisory control over the staff members. The petitioner cannot contend that he is not responsible for any one of the financial irregularities committed by the Clerk of the Society. It is strange to find out that the petitioner feigns ignorance about the illegal activities of the Secretary who is subordinate to him.

17.The sole contention of the writ petitioner is that the Clerk of the Society was working independently and he was not having any control over him. In such circumstances, the petitioner cannot allege that certain documents were not furnished to him or no proper opportunity was afforded to him during the enquiry proceedings. The petitioner cannot contend that unless the duties and responsibilities are assigned to him through a written order, he is not expected to supervise his subordinates.

18.The petitioner has been acquitted from the criminal case merely on the ground that the petitioner's signature is not found in any one of the documents and the Society Clerk namely Krishnamoorthy had signed in all those documents. The surcharge order as against the writ petitioner has been set aside by this Court on the only ground that the lack of supervision is not coupled with willful or deliberate intention to such negligence. Therefore, it is clear that the standard of proof in the criminal case or the standard of proof that is required to impose recovery under surcharge proceedings is completely different from that of the disciplinary proceedings.



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19.In the disciplinary proceedings, the enquiry has revealed that the subordinate of the writ petitioner has misappropriated so much amount under the nose of the writ petitioner. The petitioner cannot feign ignorance that he was not given any responsibility or supervisory power over the said Clerk. The order of dismissal issued by the second respondent has been confirmed by the first respondent in the year 2015. The present writ petition has been filed in October 2024. No legally acceptable reason has been assigned for filing this writ petition after a period of 8 years from the date of order passed in the revision petition. Probably, the petitioner wanted to take advantage of the order of this Court in CRP(MD).No.368 of 2012 dated 09.02.2023. This Court has already held that setting aside of the surcharge order on the ground that willful or deliberate intention to commit such misconduct has not been established will not in any way come to the advantage of the writ petitioner.

20.In view of the above said deliberations, this Court does not find any merit in the contention of the learned counsel for the writ petitioner. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27 .01.2025.

Internet : Yes/No
Index : Yes/No
NCC : Yes/No



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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