

(2015) 02 MAD CK 0508
In the Madras High Court
Case No : Writ Petition No. 30677 of 2005

A. Shajahan

APPELLANT

Vs

Joint Director of Handlooms and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Tamil Nadu Co-operative Societies Act, 1983 — Section 81

Citation : (2015) 02 MAD CK 0508

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : P. Ganesan, for the Appellant; P. Govindasamy, A.G.P., Advocates for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J—This Writ Petition is directed against the impugned order of the 1st respondent dated 2.4.2001 issued in Na.Ka. 30369/99/S1 and the consequential Order dated 22.7.2004 issued by the 2nd respondent in Na.Ka. 30369/99/Q1, in and by which the petitioner was imposed with a punishment of censure and in the consequential proceedings dated 22.7.2004, the period of suspension of the petitioner from 18.8.1999 to 10.12.2000 has been treated as loss of pay.

2. Assailing the impugned orders, the learned counsel for the petitioner would submit that the petitioner was put in-charge of Anna Weavers Co-operative Society in Paramakudi circle and subsequently he was relieved on 25.6.1996 and one Mr. K. Alagar was given charge of the said society. On 2.7.1999, the petitioner was issued with the charge memo. alleging that due to his negligence, a loss of Rs. 46,984/- was caused to Anna Weavers Cooperative Society. Immediately on receipt of the said charge memo. the petitioner submitted detailed explanation on 17.8.2000 clearly indicating to the disciplinary authority that during the relevant period, the petitioner was not in-charge of the Anna Weavers Cooperative Society, since he was relieved from the said society from 25.6.1996 and joined duty in Cuddalore Circle on 3.7.1996 and as such he was

no way connected to the affairs of the Anna Weavers Cooperative Society. However, the said explanation was not accepted. Thereupon, an Enquiry Officer was appointed. The said Enquiry Officer on completion of the enquiry taking note of two vital facts that for the same loss, caused to the Anna Weavers Cooperative Society, one Mr. Gunasekaran was proceeded under Section 81 of the Tamil Nadu Cooperative Societies Act and a sum of Rs. 46,984/- was also recovered, rightly came to the conclusion that the petitioner cannot be held responsible and on that basis found him not guilty. However, after the receipt of the report of the Enquiry Officer, the disciplinary authority, while differing from the report of the Enquiry Officer, unilaterally reached a conclusion holding the petitioner guilty without assigning reasons, whatsoever, as to how the petitioner can be held responsible for the loss of Rs. 46,984/-. Adding further, the learned counsel submitted that though the disciplinary authority is entitled to differ with the finding in the report of the Enquiry Officer, in the present case, without assigning any reason, reached its own conclusion by finding the petitioner guilty and as a matter of empty formality issued second show cause notice calling upon explanation. On receipt of the said show cause notice, the petitioner submitted detailed explanation repeatedly mentioning that the petitioner cannot be held responsible as he was relieved from duty from the said society on 25.6.1996 and the alleged loss to the tune of Rs. 46,984/- has occurred only after the petitioner was relieved from the said Society. Secondly, it was also mentioned in the said written representation that proceedings were initiated under Section 81 of the Tamil Nadu Cooperative Societies Act, 1981 against one Gunasekaran, who was in-charge of the Society and finally a sum of Rs. 46,984/- was also recovered. Therefore, no loss was caused to the society. Without even considering the said written representation, as found in the second show cause notice, the disciplinary authority imposed a punishment of censure against the petitioner and consequently treated the period of suspension as leave on loss of pay. When the report of the Enquiry Officer has clearly spoken about the incident as to how the incident had happened and how the loss of Rs. 46,984/- has occurred at the instance of Mr. Gunasekaran and finally when the entire loss of Rs. 46,984/- has also been recovered from Mr. Gunasekaran, again indicating the said loss to the Society towards the petitioner is not legally tenable and sustainable. Yet the disciplinary authority without applying its mind either to the report of the Enquiry Officer or to the explanation offered by the petitioner or to the written representation, unilaterally reached a conclusion. The approach adopted by the disciplinary authority is running contra to the principles of natural justice and that apart there is no any acceptable reason to differ from the report of the Enquiry Officer. Therefore, the impugned punishment of censure and the consequential order treating the period of suspension as leave on loss of pay are liable to be set side.

3. A detailed counter has been filed by the respondent. Learned Additional Government Pleader appearing for the respondents would submit that as complained by the learned counsel for the petitioner there is no proper opportunity given to the petitioner after the submission of report by the Enquiry

Officer was not correct. The reason is, immediately on receipt of the report of the Enquiry Officer holding the petitioner not guilty, the disciplinary authority refused to accept the report of the Enquiry Officer and issued second show cause notice dated 18.10.2002 to the petitioner. Only on receipt of the further written representation from the petitioner to the said second show cause notice, impugned punishment of censure and consequential order treating the period of suspension as leave on loss of pay have been issued. Therefore, no violation of principles of natural justice as alleged by the petitioner had taken place. Adding further, the learned Additional Government Pleader would submit that it is an admitted case of loss of Rs. 46,984/- to the Anna Weavers Cooperative Society. The petitioner was working as a Special Officer of Anna Weavers Cooperative Society in Paramakudi Circle from 7.2.1996 to 25.6.1996 and he was transferred to Cuddalore and was relieved from the post only on 25.6.1996. But before the petitioner was relieved from the said society, he should have handed over all his charges to his successor. But he has not handed over his charges to the successor Mr. K. Alagar inspite of repeated reminders issued by the Circle Assistant Director of Handlooms and Textiles, Paramakudi and only as per the instructions of the Assistant Director of Handlooms and Textiles, Paramakudi, Mr. K. Alagar, Handloom Officer took charges of the post of Special Officer of the Anna Weavers Co-operative Society in the presence of circle Handloom Inspector and accordingly stock deficit of Rs. 46,984/- was found in the Society. Only thereafter enquiry was ordered under Section 81 of the Tamil Nadu Cooperative Societies Act, (Act No. 30 of 1983). The report reveals that the petitioner was responsible for the stock deficit found in the society. Therefore, the petitioner was subjected to departmental proceedings by issuing charge memo. under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules. The Enquiry Officer, who was appointed to go into the charges, also submitted a report differently holding the petitioner not guilty. As the report was not based on the documentary evidence available with the Department, the disciplinary authority differed with the finding of the Enquiry Officer and issued the second show cause notice deviating from the report of the Enquiry Officer as to why the said report should not be accepted. Therefore, at every point of time, the petitioner was given all reasonable opportunities, hence, the impugned orders cannot be interfered with.

4. This Court is unable to find any justification in the submission made by the learned Additional Government Pleader appearing for the respondents. The reason is, as contended by the learned Additional Government Pleader, a statutory enquiry was ordered under Section 81 of the Tamil Nadu Cooperative Societies Act, (Act 30 of 1983). After the enquiry was over, the report was submitted by the Enquiry Officer, which clearly reveals that the petitioner was not responsible and one Gunasekaran was found responsible for the stock deficit in the Society. The said report does not say anything about the petitioner. When the independent enquiry was ordered by issuing charge memo. under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, the petitioner

submitted his detailed explanation indicating that he was relieved from duty on 25.6.1996 and thereafter Mr. Gunasekaran was put in-charge of the said society. Only after the said Gunasekaran took charge of the said society, the alleged loss had occurred, which has been confirmed by the Enquiry report submitted under Section 81 of the Tamil Nadu Cooperative Societies Act (Act No. 30 of 1983) and the report of the Enquiry Officer also clearly shows that the petitioner was not responsible.

5. As highlighted above, the petitioner was relieved from duty on 25.6.1996 and the impugned order nowhere justifies as to how the petitioner can be held responsible. Therefore when there is no evidence, whatsoever, available on record implicating the petitioner for the so called loss caused to the Anna Weavers cooperative Society, the disciplinary authority, in my view, has miserably failed to apply his mind. Hence, the impugned order of punishment of censure imposed against the petitioner is liable to be set aside. Consequently, the order of treating the period of suspension of the petitioner as loss of pay is also liable to be set aside. Accordingly, the impugned orders are set aside.

6. For the above reasons, the writ petition stands allowed. Needless to mention that the period of suspension of the petitioner shall be directed to be treated as period on duty. Consequently, what ever benefit accrues after regularising the period of suspension shall be paid to the petitioner. However, there is no order as to costs.