

(2009) 11 MAD CK 0150
In the Madras High Court
Case No : Writ Petition No. 26106 of 2005

N. Hari

APPELLANT

Vs

The Additional Registrar, (Sale, Planning and Development)
and The Special Officer, Dharmapuri District Central Co-
operative Bank Limited

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 120, 408, 420, 467

Citation : (2009) 11 MAD CK 0150

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T.K. Baskar, for the Appellant; R. Neelakandan, Government
Advocate for Respondent 1 and M.S. Palanisamy, for Respondent 2, for the
Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. The petitioner, who was a former Secretary of the Hozur Cooperative Agricultural Bank, has filed the present writ petition, challenging the order passed by the 1st respondent, dated 21.06.2005. The said order came to be passed on a Revision Application filed by the petitioner u/s 153 of the Tamil Nadu Co-operative Societies Act, 1983.

3. The facts relating to the passing of the impugned order is as follows:

The petitioner, who was working as a Secretary of the Hozur Co-operative Society, was charge sheeted by the Management on 19.10.1983. Subsequently, after getting his explanation, an enquiry was conducted against the petitioner. The Enquiry Officer by his report dated 24.3.1987 found the petitioner guilty. A show-cause notice was given to the petitioner on 17.9.1987. Subsequently, after getting further explanation from the petitioner, the 2nd respondent by an order

dated 30.11.1990 dismissed the petitioner from service. The petitioner was informed that for the proved charge, the dismissal is the only punishment, since he happened to be the Secretary should have been responsible for the bank's finance and must have protected the interest of the society. He has committed breach of trust and had written false documents. He had acted illegally and therefore, keeping him in service of the bank is against the interest of the bank.

4. The petitioner, thereafter sent a representation to the District Central Co-operative Bank. It is not clear as under what provision such a representation was sent. However, the District Central Co-operative Bank by an order, dated 27.7.2004, rejected his request for reconsidering the termination order passed by the Society.

5. The petitioner was also simultaneously proceeded in a Criminal Court for offences under Sections 120, 408, 420, 467, 468, 471 and 477 A read with 109 of the IPC in Crime No. 2/1984. The trial took place before the Judicial Magistrate, Krishnagiri in C.C. No. 2438/1981. It is claimed by the petitioner that by a judgment dated 26.9.2003, he was acquitted by the Criminal Court by granting the benefit of doubt to him.

6. It is also claimed that Surcharge notice was issued u/s 87 of the Tamil Nadu Co-operative Societies Act by the Deputy Registrar of Co-operative Societies in S.C. No. 8/1986. Out of the 55 loans which were outstanding, it was claimed that only in five cases, loans were pending. Therefore, the remaining five borrowers were directed to refund the amount. The petitioner claimed that the Surcharge proceedings were finally not proceeded against the petitioner.

7. The petitioner after 14 years after his dismissal from service, filed an application before the 1st respondent claiming to be a Revision Petition u/s 153 of the Co-operative Societies Act dated 23.12.2004. The Revisional Authority refused to entertain the revision by an order dated 1.2.2005. It was stated that there was an inordinate delay of 14 years in challenging the order of dismissal. Therefore no revision will lie.

8. Thereafter, the petitioner filed a Writ Petition No. 9651/2005 before this Court. This Court further noting that the petitioner had already filed another Writ Petition before this Court in W.P. No. 28404 of 2004 which was dismissed on 4.10.2004, gave the petitioner one more opportunity to pursue his revision and directed the 1st respondent to dispose of his revision petition. Accordingly, pursuant to the direction given by this Court dated 22.3.2005, the Revisional authority passed the impugned order.

9. The grounds urged by the petitioner in the Revision as well as in the Writ Petition are two fold. Since the petitioner has been acquitted by the criminal court and in terms of Section 77(4) of the Tamil Nadu Co-operative Societies Act, the petitioner is entitled to get restored in the same post. The second contention was that the petitioner was let off without surcharge proceedings. Therefore, there is no case against the petitioner to be removed from service.

10. The authority found that the claim u/s 77(4) is misconceived for the simple reason that the petitioner was not removed in terms of Section 77(1) of the Act. He was removed after conducting an independent enquiry by the society for specific acts of misconduct. Therefore, the petitioner by virtue of his subsequent acquittal after 13 years cannot rely upon Section 77(4).

11. Regarding the second contention raised it was stated that the surcharge proceedings can only fix civil liability whereas the petitioner had been dismissed for misconduct after forwarding all particulars. This order is under challenge in the writ petition. Pending the writ petition, the petitioner filed an application for restoration to service which was also rejected by this Court on the petitioner making endorsement that he was not pressing the said application.

12. On notice from this Court, both the respondents have filed counter affidavits. While the 1st respondent filed counter affidavit on 15.9.2006, the 2nd respondent filed counter affidavit on 26.3.2008 justifying the termination of the petitioner. The 1st respondent in paragraph 3 of the counter affidavit has set out the series of charges levelled against the petitioner which were found proved in the enquiry. It is also stated that the acquittal of the petitioner by the criminal court was not on merits only by the grant of benefit of doubt. In paragraph 11 of the counter affidavit, it is stated that the charges levelled against the petitioner are grave in nature and was proved in the enquiry beyond doubt after following the due procedure under law. The action taken by the society was independent and has got no connection with the criminal case or the surcharge proceedings. Once again the petitioner raised the very same issue before this Court.

13. The findings of the Revisional Authority cannot be reversed due to the subsequent acquittal of the petitioner in the criminal case. The proceedings in the criminal case and departmental enquiry are quite different. A perusal of the dismissal order passed on 30.8.1990 shows that there are specific acts implicating the petitioner. Being the Secretary, he had perverted the procedure of the bank and was also responsible for grave loss to the society. Under the circumstances, no case is made out. Therefore, the Writ Petition is dismissed. No costs.