



2025:KER:16770

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR

TUESDAY, THE 25TH DAY OF FEBRUARY 2025 / 6TH PHALGUNA,

1946

WA NO. 402 OF 2025

AGAINST THE JUDGMENT DATED 21.05.2024 IN WP(C) NO.12099 OF

2010 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

KAKKOPRATHU PRABHAKARAN

AGED 68 YEARS

S/O. OTHENAN, CHERIYAN HOUSE, MADAYI AMSOM,,
VENGARA DESOM, P.O.VENGARA, KANNUR DISTRICT.,
PIN - 670305

BY ADV P.U.SHAILAJAN

RESPONDENTS/RESPONDENTS:

- 1 THE PRESIDENT KANNUR DISTRICT EX-SERVICE
EX-SERVICEMEN- MULTI PURPOSE CO-OPERTIVE
SOCIETY,, PAZHAYANGADI, KANNUR DISTRICT., PIN -
670358
- 2 THE LABOUR COURT KANNUR.
KANNUR, PIN - 670001

BY ADV M.SASINDRAN

SRI.T.K.VIPIN DAS - GP

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THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
25.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



AMIT RAWAL & K.V.JAYAKUMAR, JJ.

W.A. No.402 of 2025

Dated this the 25th day of February, 2025

JUDGMENT

Amit Rawal, J.

1. Present writ appeal is directed against the judgment of the learned Single Bench in WP(C)12099 of 2025, challenging the award of the Labour Court, Kannur dated 25.06.2009 in Industrial dispute No.44 of 2004.

2. Succinctly, the facts in brief for the adjudication of the lis are as follows:

Appellant/petitioner was employed as a peon/workman in a society running business in the name and style of 'Kannur District Ex-Serviceman Multi Purpose Co-operative Society', Pazhayangadi, Kannur District. While working in the aforementioned post, there was certain misappropriation at the hands of the President and



Secretary of the Society. Noticing the fact that the petitioner also had knowledge with regard to the aforementioned misappropriation, was served with following three charges.

"Charge No.1. "Sri. K. Prabhakaran, Peon in the management Society had not questioned the acts of giving huge amounts on gold loans to the same person. The delinquent had deposed before the enquiry officer (Unit Inspector) that the honorary secretary was having the practice of giving mere amount on gold loan then that xx permitted by the byelaws of the society and that the secretary had committed alterations and corrections in the loan application and concerned ledgers of the society on that the persons Mullabi Nabeese and Asma had frequently visited the society and had the practice of spending a lot of time in the cabin of the honorary secretary and was given loans to them exceeding the limits prescribed and the persons including the delinquent had the practice of taking loans and secretary would allow the amount asked by the concerned parties.

Charge No.2. That on 27.01.2000, Sri. K. Balan, Unit Co-operative Inspector had visited Society and indicated that there are misappropriations in the Society and on 07.06.2000, the Unit Inspector and Assistant Registrar had conducted enquiry in the Society and detected the misappropriation and on 08.06.2000, the concerned officers had sealed the strong room of the Society. The delinquent who knows the above incidents did not inform the matter to the President of the society.

Charge No.3. The delinquent Prabhakaran by violating Rule 16(2) (a) of the Kerala Co-operative Societies Rule availed gold loan for Rs. 2,500/- on 06.01.1999 (loan account gold loan No.4908) and Rs.4,500/- on



14.05.1999 (gold loan account No. 5242). That the delinquent Prabhakaran deposed before the Enquiry Officer that he was writing all the informations in the loan application except the weight of the ornaments and the amount required."

3. Dissatisfied with the reply, an enquiry officer was appointed and as per the report of the enquiry officer, all the charges stood proved against the appellant/petitioner except charge No.2 and was dismissed from service.

4. The aforementioned dismissal was assailed before the Labour Court. Labour Court, on the basis of the evidences brought on record and on appreciation of the enquiry report filed, in paragraph 16 and 17 of the award found that the appellant/petitioner had knowledge of the bungling done by the Secretary of the Society but admitted that the same have not been informed to the President or the higher officials. Paragraph 16 of the award reads as under:

"MW1 was the Secretary-in-charge of the society. Ext.M1 is the enquiry report of the Unit



Inspector Co-operative Department. The Enquiry report was submitted to the Joint Registrar of Co-operative Society, Kannur. Ext.M10 proved that the delinquent employee and other delinquents had colluded with the Honorary Secretary and committed the acts of financial misappropriation in the society. MW1 has stated that the maximum loan to be granted to a person is Rs.10,000/- as per the byelaws of the management society. The Honorary Secretary had illegally granted loan to a single person exceeding the limits as prescribed. This fact was known to the workman and he did not inform it to the President or any higher officials of the society. The delinquent had admitted before the Enquiry Officer (Unit Inspector) that he knew very well that the Secretary was doing illegal acts and the ladies by name Mullabi Nabeese and Asma were frequently visiting the Secretary and spending a lot of time with him in his cabin and that gold loan were given to these ladies exceeding the permissible limit. He also came to know that the Secretary made correction the gold loan applications and ledgers of the society. Ext.M9 is the certified copy of the statement given by the workman to the Unit Inspector at the time of his enquiry. On going through the enquiry file, the statement of witness, the statement of the delinquent, I find that the Enquiry Officer has come to the right conclusion that Charge No.1 is proved against the delinquent. On a re-appraisal and re-analysis of the entire circumstances of the case, I also come to the conclusion that the finding arrived at by the Enquiry Officer with regard to Charge No.1 is just and proper and not perverse in any manner."

5. As far as charge No.3 is concerned, an employee of the society cannot be considered to be the member, for the purpose of taking the facility of gold



loan, as per Rule 16(2)(a) of the Kerala Co-operative Societies Rule. Appellant/petitioner had obtained the membership and thereafter, availed gold loan of Rs.2,500/- and Rs.4,500/- respectively, which was found to be a misconduct and upheld the termination from the services as per the award dated 25.06.2009.

6. The aforementioned award was assailed before this Court in writ petition No.12099 of 2010, which has also been dismissed.

7. Learned counsel appearing on behalf of the appellant submitted that, in the proceedings initiated by the department for recovery of the amount qua the alleged misappropriation, particularly, at the instance of one Sivadas, it was found that he had played no role in the misappropriation and therefore the liability was fastened only upon the higher officials ie., the Secretary. But that aspect has not been taken into consideration by



the learned Single Bench while deciding the writ petition on merits. In support of the contention, relied upon the judgment of the Single Bench of this Court in ***Rajeev Koshy alias Reju K. Koshy v. State of Kerala and Others*** [2018 KHC 237] to contend that only the Senior Officers are responsible for the proper custody and accounting of the cash and other assets of the society and not the ministerial staff, who had no deep and pervasive control over the accounts and the locker of the Co-operative Bank.

8. We have heard the learned counsel for the appellant/petitioner and appraised the paper book.

9. Two parallel proceedings, in view of the deduction of the misappropriation are conducted, one for recovery and the other for departmental proceedings. Concededly, appellant/petitioner was charged for the departmental proceedings as per the charges extracted



supra. Appellant/petitioner was found to be guilty of charge No.1 and 3 and was punished.

10. The question which is posed before us is whether exoneration of the ministerial staff in the proceedings initiated for recovery of the amount can be parameter for the purpose of disciplinary proceedings or acquitted in the criminal cases. But the fact remains that we are confronted only with the disciplinary proceedings wherein, only misconduct was attributed and not with regard to the loss caused to the society, as per the charges extracted *supra*. Both the charges were proved on the basis of the evidences brought on record.

11. It is settled law that the writ Court cannot assume the role of an expert and re-appreciate the evidence while exercising the power of judicial review under Article 226 of the Constitution of India. Learned Single Bench did not agree with the aforementioned



findings recorded in the other proceedings viz-a-viz the recovery of the amount. The fact remains that there was a violation of Rule 16(2) (a) of the Kerala Co-operative Societies Rule. It was the duty of the petitioner to inform the Management Committee that he cannot become a member, but despite knowing it, intentionally became the member and availed the loan. Though the amount availed by way of loan is too less and have been repaid, the fact remains that it is a serious misconduct and would have far-reaching consequences, if remained undetected.

12. We are of the view that the finding of fact and law arrived at by the Labour Court cannot be tinkered while exercising the power of judicial review. There is no quarrel to the *ratio decidendi* culled out in the judgment but that was the matter with regard to the recovery of the amount and it is re-iterated that the proceedings for recovery cannot have a binding effect qua the disciplinary



proceedings. Therefore, the writ petition has been dismissed.

We do not find any illegality and perversity in the findings of the Single Bench. Writ appeal stands dismissed.

**Sd/-
AMIT RAWAL
JUDGE**

**Sd/-
K.V.JAYAKUMAR
JUDGE**

Anu



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APPENDIX OF WA 402/2025

PETITIONER EXHIBITS

Exhibit P6 to P11 I.A. NO. 13036 /2014 PETITION FOR
ACCEPT DOCUMENT

petition to Accept PETITION TO ACCEPT THE DOCUMENT,
the document I.A.NO. 1 OF 2020

Exhibit P6 ENGLISH TRANSLATION OF EXT P6 IN W.P.
(C)

Exhibit P7 ENGLISH TRANSLATION OF EXT P7 IN W.P.
(C)

Exhibit P11 ENGLISH TRANSLATION OF EXT P11 IN W.P.
(C)

Exhibit P3 READABLE /TYPED COPY OF EXHIBIT P3

Exhibit P4 READABLE COPY OF EXHIBIT P4

Exhibit P8 READABLE COPY OF EXHIBIT P8