PETITIONER:
THE DEPUTY REGISTRAR, CO-OPERATIVE SOCIETIES, FAIZABAD.

Vs.

RESPONDENT:
SACHINDRA NATH PANDEY & ORS.

DATE OF JUDGMENT21/02/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
MANOHAR SUJATA V. (J)

CITATION:
1995 SCC (3) 134 JT 1995 (2) 407
1995 SCALE (1)848

ACT:

HEADNOTE:

JUDGMENT:
1. Leave granted. Heard counsel for the parties.
2. This appeal is preferred against the judgment of a learned Single Judge of the Allahabad High Court (Lucknow Bench) allowing the writ petition filed by the first respondent herein.
3. The first respondent was appointed as a Co-operative Supervisor in 1961. In August 1976, he was working as Seed Store Incharge-cum-Secretary, Sahkari Sangh, Raniwan. On 19th August, 1976 he was transferred to Gonda, but he did not hand over the charge. It is alleged that he took the records of the society with him and absconded.' On inspection of the Raniwan Seed Store in October 1976, the irregularities and misappropriation allegedly committed by the respondent came to light. A FIR was lodged against the first respondent for criminal breach of trust in November 1976 and on 13.12.1976, the first respondent was placed under suspension pending inquiry into charges against him,
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and an Inquiry Officer appointed. Memo of charges was issued to the first respondent but the case of the appellant is that it could not be served upon the first respondent because he was avoiding service and did not also co-operate in the conduct of the inquiry. Ultimately the first respondent was dismissed by an order dated 20th April, 1978 made by the Deputy Registrar. The respondent filed an appeal but while the appeal was pending he filed a writ petition in the High Court and requested for dismissal of his appeal as withdrawn. The Appellate Authority, however, dismissed the appeal on merits.
4. On 15th January, 1992 the High Court allowed the writ petition (W.P.No.2990 of 1979) on the only ground that a copy of the Inquiry Officer's Report was not furnished to the first respondent before dismissing him and that it is a violation of the principle of natural justice. Reliance was placed upon the decision of this Court in Union of India and

Others v. Mohd. Ramzan Khan (1991 (1) SCC 588). On an appeal being preferred by the appellant against that order, this Court set aside the Judgment of the High Court and remitted the matter for disposing of the writ petition afresh after considering the other grounds raised by the first respondent. It is then that the impugned order was made on 7th December, 1993 allowing the writ petition again. The only ground on which the High Court has allowed the writ petition on this occasion is that the Inquiry Officer ought to have held an inquiry "by recording the statements of witnesses and send his report to the Disciplinary Authority" even if the first respondent failed to co-operate with the Inquiry Officer. Since it was not done, the order of dismissal has been held to be bad.

5. The learned counsel for the appellant submits that in this case the first respondent adopted a course of total noncooperation and procrastination and that inspite of repeated opportunities being given he did not respond or participate in the inquiry. The first respondent did not even care to file an explanation or reply to the memo of charges. In the circumstances, the authorities had no option but to hold that the charges are proved. Even after the report of the Inquiry Officer was submitted, a number of opportunities were given which he again failed to avail of. It is submitted that though the whole history of the case has been set out in the counter affidavit filed in the High Court, the learned Judge did not notice any of those facts and yet allowed the writ petition on an untenable ground. It is further contended that according to Regulation 68 of the Cooperative Federal Authority (Business) Regulations, 1976, it was not obligatory upon the Inquiry Officer to record the evidence of the witnesses where the first respondcnt did neither submit a reply nor an explanation to the memo of charges. Though he was apprised of the inquiry, he did not care to attend inspite of repeated opportunities. In such a situation, he cannot complain of not recording the evidence of witnesses and other evidence, it is submitted.

6. On the other hand, Shri Raju Ramachandran, learned counsel for the first respondent submitted that it is not a case where the first respondent refused or failed to submit his reply/explanation to the memo of charges but that he could not do so in view of the refusal of the authorities to grant him inspection of the relevant documents. Learned counsel submitted that the charge of non-co-operation is

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unsustainable in the facts and circumstances of the case. He also impressed upon us that though the proceedings against the first respondent were initiated as far back as 1978, proceeding in that behalf arc still continuing even after the expiry of about 16 years.

7. On a perusal of charges, we find that the charges are very serious. We arc, therefore, not inclined to close the matter only on the ground that about 16 years have elapsed since the date of commencement of disciplinary proceedings, more particularly when the appellant alone cannot be held responsible for this delay. So far as the merits are concerned, we regret to say that the High Court has not dealt with the submission of the appellant - that inspite of being given a number of opportunities the first respondent has, failed to avail of them. If the appellant's allegtations are true then the appellant cannot be fitulted for not holding a regular inquiry (recording the evidence of witnesses and so on). The High Court has assumed, even without referring to Regulation 68 aforesaid that holding of an oral inquiry was obligatory. Indeed, one of the

questions in the writ petition may be the interpretation of Regulation 68. On facts, the first respondent has his own version. In the circumstances, the writ petition could not have been allowed unless it was held that the appellant's version of events is not true and that the first respondent's version is true. In the circumstances, we have no alternative but to set aside the order under appeal and remit the matter to the High Court once again for disposal of the writ petition afresh in the light of the observations made herein. Since the matter is a very old one it is but appropriate that the matter is dealt with expeditiously. Perhaps, it would be appropriate if the Court looks into the records relating to the disciplinary proceedings also.

8.The appeal is accordingly allowed with the above directions. No costs.