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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2023

PRONOUNCED ON : 14.02.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.15163 of 2020
& W.M.P.No.18923 of 2020

E.Sivagamasundari

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Petitioner

versus

1.The Joint Registrar / The Review Authority,
District Central Cooperative Society,
Cuddalore.

2.The Chairman / The Appellate Authority,
The Cuddalore District Central Cooperative Bank Ltd.
Cuddalore.

3.The Managing Director,
The Cuddalore District Central Cooperative Bank Ltd.,
Cuddalore.

4.The Sub-Registrar / Enquiry Officer,
District Central Cooperative Society,
Cuddalore.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records with respect to the order passed by the 1st respondent in Review Petition vide Na.Ka.696/2018/du va da.1 dated 26.06.2020 confirming the Orders of



the 2nd respondent Appellate Authority vide Na.Ka.En.01/2016-17/Me.Mu-5 dated 22.12.2017 and 3rd respondent Disciplinary Authority vide Na.Ka.En.21/2013-14/B2 dated 14.09.2017, and quash the same, consequently direct the respondents to restore the original designation of the petitioner by granting promotion with back wages and allied benefits as applicable.

For Petitioner : Mr.R.Prabhakaran
For Respondent Nos.1, 2 & 4 : Mr.T.Cheziyan,
Additional Government Pleader
For Respondent No.3 : Mr.L.P.Shunmugasundaram

ORDER

The petitioner has filed this writ petition seeking to quash the order passed by the 1st respondent dated 26.06.2020 and consequently direct the respondents to restore the original designation of the petitioner by granting promotion with back wages and other benefits.

2. Heard Mr.R.Prabhakaran, learned counsel for the petitioner, Mr.T.Cheziyan, learned Additional Government Pleader for the respondents 1, 2 & 4, Mr.L.P.Shunmugasundaram, learned counsel for the 3rd respondent and perused the materials available on record.

3. Mr.R.Prabhakaran, learned counsel for the petitioner submitted that the petitioner was working as an Assistant Manager in Mandarakuppam



Branch during the period from 06.06.2012 to 31.07.2014. As she found something fishy with the attitude of the Appraiser Masilamani, she enquired and found that 21 jewel loans were given with false certificates of purity since 2009. Hence the petitioner reported the matter to the higher authorities on 12.03.2014 and the Appraiser has confessed the malpractice done by him to their higher authorities. Instead of recovering money and taking criminal action against the Appraiser, disciplinary proceedings were initiated against the petitioner. Without properly appreciating the materials available on record, the 3rd respondent / disciplinary authority has passed an order on 14.09.2017 by imposing a penalty of reduction of rank to the petitioner for a period of 4 years and the petitioner's promotion was also withheld.

4. The petitioner filed an appeal on 18.09.2017 before the 2nd respondent and he also confirmed the order of the 3rd respondent. Thereafter, the petitioner filed a Review Petition on 12.02.2018 and the Review Authority upheld the orders of the respondents 2 and 3 *vide* order dated 26.06.2020.



5. In fact, the criminal proceedings initiated against the Appraiser and the other bank staff along with the petitioner, the petitioner was not found guilty and the same fact was not considered by the authorities. Since the petitioner's career progress has been jeopardised, she has filed this writ seeking for the above relief.

6. It is further submitted by Mr.R.Prabhakaran, learned counsel for the petitioner that it is the Appraiser, who alone is responsible as he has given opinion about the quality of the jewels which were brought for pledging. But the 3rd respondent has initiated surcharge proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 to recover the loss from the petitioner, who is in no way has any control over assessing the quality of the jewels.

7. Mr.T.Cheziyan, learned Additional Government Pleader for respondents 1, 2 & 4 submitted that the disciplinary proceedings and surcharge proceedings are different and the petitioner cannot claim that both the proceedings should not be initiated. The petitioner has come to the Court without exhausting the remedy available under Section 154 of the



Tamil Nadu Cooperative Societies Act, 1983 by way of filing a Review Application.

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8. There is no quarrel on the point that the disciplinary proceedings and the surcharge proceedings are 2 different actions and the surcharge proceedings can be initiated either parallelly or subsequently after the conclusion of the disciplinary proceedings. The contention of the petitioner is that even the punishment imposed by fixing the guilt upon the petitioner itself, is not correct.

9. The petitioner, who is the Branch Manager of the Bank has got the responsibility in respect of the jewel loans. In the enquiry itself, it has been stated that the Branch Manager has to check the weight of the jewels and keep it in the safety locker and only after affixing seals, it can be redeemed. It is the appraiser, who has to give opinion about the weight and quality of the jewels. The Manager can only process the eligibility for the loan. Hence, the Manager could not have suspected the quality of the jewels which were already appraised by the Appraiser. If the Manager is able to appraise the quality of the jewels and take decisions on that aspect by himself, there is no necessity for the appraiser's opinion at all.



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10. It is a common practice that in all Banks which provide gold loans would engage an Appraiser, who has the expertise in assessing the quality of the jewels pledged for availing the loan. In the case in hand, among several charges which have been issued against the petitioner, it is stated that many of the borrowers have already pledged the jewels of spurious quality and availed loan and thereafter, excess loans have been sanctioned for discharging the outstanding dues of the earlier loans without checking the quality of the jewels.

11. One of the borrowers who is said to be working in the Bank is outsourced staff and for whom, the loans should not be given. The petitioner has not sanctioned gold loan for the first time to the outsourced staff viz. Malathi. What was done by her was renewal. The said fact was not denied by the respondents as well. In all the charges, reference has been made to one daily wager (Malathi) and for whom atleast 13 gold loans have been given on various occasions and those loans have been availed by the said Malathi between the period from 2011 to 2012.



12. It seems to be in practice that the outstanding gold loans are discharged with the new gold loans against same jewels. Since the value of the gold increases from time to time, it was quite possible to sanction an enhanced new loan than the pending balance to discharge the same. Each time when the loan falls overdue and reaches the point where the jewels are to be auctioned, the existing loans will get renewed in the above fashion.

13. So far as the new gold loans are concerned, the petitioner sanctioned 3 gold loans, obviously by believing the fact that the individual was in the habit of availing several loans and her predecessor was pleased to sanction loans to the individual. It is only the petitioner, who brought out the scam in respect of the gold loan. The petitioner was obviously suspicious on certain strange acts done by the Appraiser about which she had explained in her reply.

14. However, the petitioner was found guilty on certain assumptions by alleging that she could have avoided by sanctioning fresh gold loans or renewing the loans, if she had taken a decision that the daily wagers are not entitled to be given with any loans. But the loans sanctioned



by the petitioner for an individual is not on the basis of the professional status, income criteria or any other parameters which have to be considered for granting other types of loans. All that which have been sanctioned to the individual were gold loans and that are given on the pledging of the gold jewels. So the main issue is granting loan against the fake jewels by getting persuaded with the certificate given by the Appraiser.

15. So far as the gold loans are concerned, the Bank has got the immediate security for the loans offered. The default on the part of the borrower will result in the auction of the jewels pledged. So the general rule that a daily wager should not be granted with any loan cannot be strictly applied to the gold loans, as they are extended to all those persons who bring genuine jewels for pledging.

16. In the instant case, the loans have been given only on pledging the jewels, by an individual irrespective of her status or relationship with the Bank. Much handwork has been done by the respondents about the quality of the jewels that was offered as a security, for the purpose of fixing the guilt upon the petitioner.



17. Undoubtedly, it is the Appraiser who is responsible for giving any certificate about the purity of the jewels. The predecessor of the petitioner did not have any suspicion on the Appraiser but it is the petitioner who had rightly doubted about his conduct and investigated in order to know any fraud committed by the Appraiser.

18. The petitioner's suspicion proved to be correct and she had brought it to the notice of the higher authorities. Even though she was not rewarded for the good work done in bringing out the malpractice, she ought not to have been made as a scape goat. So far as the assessment of purity of the jewels is concerned, it does not fall within the functions of the Branch Manager. Admittedly for this reason she was acquitted from the criminal proceedings initiated against her along with the Appraiser and another.

19. Only if the loss is caused due to any lapse on the part of the petitioner, recovery proceedings can be initiated against her. In the absence of any materials to show that the Branch Manager has also acted hand in glove with the Appraiser and the borrowers, one cannot act on the assumptions and presumptions. This is more so, when majority of the loans



have been sanctioned by the predecessor of the petitioner on the basis of the certificates given by the Appraiser.

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20. It might be right on the part of the respondents' authorities to doubt about the involvement of the Branch Manager and roped her in the criminal case. But in that case she was found to be not guilty. So the doubt raised against the petitioner has been cleared in view of the verdict of the criminal Court. In fact, in the impugned proceedings of the Joint Registrar dated 26.06.2020 passed in the Review Petition filed by the petitioner, it has been reasserted that the procedure of not sanctioning the loan to a daily wager was not followed.

21. So far as the identity of the person is concerned, there is no quarrel that the borrower is a real person and was working as a daily wager in the Bank. As regards the purity of the jewels, the Manager can go only as per the recommendations given by the Appraiser. In fact, during the inspection done in the year 2014, 21 bags of fake jewels were found and the Appraiser himself has admitted that all these were his handwork. Such being



the case the petitioner cannot be found guilty for the fraudulent act committed by someone.

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22. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in *Union of India and others Vs. P.Gunasekaran* reported in (2015) 2 SCC 610. In the said judgment, the *Do's and Don'ts* of the High Courts while exercising the powers under Articles 226 / 227 of the Constitution of India while dealing with the writs filed challenging the disciplinary proceedings and punishment have been laid down below:-

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*



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(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(i) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(f) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;



(vii) go into the proportionality of punishment unless it shocks its conscience.”

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23. As stated already, the authorities are seen to have been influenced by an extraneous point of giving gold loan to a daily wager of the Bank. It is the Appraiser, who has to state about the genuineness of the jewels sought to be pledged. Had the authorities concerned looked into the essential aspects which would affect the whole issue of the entire matter and appreciated in a holistic manner, it would have been known easily that it was the Appraiser to say about the purity of the jewels.

24. So the above omission on the part of the authorities concerned comes within the ambit of essential aspects on which the High Court can look into the interest of justice. The petitioner has been punished with penalty of reduction of rank for a period of 4 years and the petitioner's promotion was also withheld, for none of her mistakes but for bringing out the scam already played by an individual, who was an Appraiser of the Bank.



25. It is submitted by Mr.R.Prabhakaran, learned counsel for the petitioner that just because the Appraiser had committed the scam, the petitioner who was the Branch Manager cannot be held liable for recovery.

26. The petitioner has already found to be not guilty by the Criminal Court and the charges imposed on her have been framed by taking into account of some extraneous facts. Hence, the petitioner is entitled to the relief as prayed for.

27. So far as the surcharge proceedings are concerned, the findings itself would show that the petitioner is responsible for the loans granted on the fake jewels. As the basic ground for the said proceedings itself got crumbled, there is no scope to initiate any recovery proceedings against the petitioner. Though it is right on the part of Mr.T.Cheziyan, learned Additional Government Pleader for the respondents 1, 2 & 4 to state that the rightful course open to the petitioner is to file a Review Application under Section 154 of the Tamil Nadu Cooperative Societies Act, 1983, when the foundational facts on which 81 proceedings that have been initiated by themselves got shattered, those proceedings have no legs to stand.



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For the reasons stated above, this Writ Petition is **allowed** and the order passed by the 1st respondent in Review Petition *vide* Na.Ka.696/2018/du va da.1 dated 26.06.2020 confirming the orders of the 2nd respondent Appellate Authority *vide* Na.Ka.En.01/2016-17/Me.Mu-5 dated 22.12.2017 and 3rd respondent Disciplinary Authority *vide* Na.Ka.En.21/2013-14/B2 dated 14.09.2017, is quashed and the respondents are directed to restore the original designation of the petitioner by granting promotion with backwages and other benefits and pass orders in accordance with law, within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

14.02.2024

Speaking order

Index : Yes

Neutral Citation : Yes

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W.P.No.15163 of 2020
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R.N.MANJULA, J.

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Pre-Delivery Order made in
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& W.M.P.No.18923 of 2020

14.02.2024