IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

WP(C).No. 13125 of 2012 (M)

PETITIONERS:
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1. PAZHUVIL SERVICE CO-OPERATIVE BANK LIMITED NO.126,
P.O.PAZHUVIL, THRISSUR DISTRICT,
REPRESENTED BY ITS SECRETARY.

2. THE BOARD OF DIRECTORS,
PAZHUVIL SERVICE CO-OPERATIVE BANK LIMITED NO.126
P.O.PAZHUVIL, THRISSUR DISTRICT,
REPRESENTED BY ITS PRESIDENT.

3. A.B.JAYAPRAKASH,
VICE PRESIDENT(SINCE RESIGNED),
PAZHUVIL SERVICECO-OPERATIVE BANK LIMITED NO.126,
P.O.PAZHUVIL, THRISSUR DISTRICT.

4. SUBASH THANDIAKKAL,
DIRECTOR BOARD MEMBER
PAZHUVIL SERVICE CO-OPERATIVE BANK LIMITED NO.126,
PAZHUVIL, THRISSUR DISTRICT.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENT:

GIRIJA DEVI
W/O.BALAPPAN, THENKKUMPATTU HOUSE, P.O.PAZHUVIL,
THRISSUR DISTRICT.

BY ADV. SRI.A.JAYASANKAR
ADV. SRI.MANU GOVIND
ADV. SRI.ANIL VINCENT
ADV. SRI.V.H.NOUFALMON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.13125 OF 2012:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 - TRUE COPY OF THE REPORT SUBMITTED BY THE ENQUIRY OFFICER.

EXT.P2 - TRUE COPY OF THE DECISION TAKEN IN THIS REGARD.

EXT.P3 - TRUE COPY OF THE PLAINT SUBMITTED BY THE RESPONDENT.

EXT.P4 - TRUE COPY OF THE AWARD ISSUED BY THE ARBITRATION COURT IN A.R.C. NO.57/2006

EXT.P5 - TRUE COPY OF THE JUDGMENT PASSED IN APPEAL NO.11 OF 2011 DATED 30/3/2012.

EXT.P6 - TRUE COPY OF THE F.I.R.

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P.S. to Judge

K. HARILAL, J.

W.P. (C) No.13125 of 2012

Dated this the 14th day of December, 2015

JUDGMENT

The 1st petitioner is a Co-operative Society Bank registered under the provisions of the Kerala Co-operative Societies Act, 1967 (for short 'the Act') and the Rules framed thereunder. The petitioners 2 to 4 are the Board of Directors, Vice President and the Director Board Member respectively of the said Bank. The 1st respondent was the Secretary of the Bank. The 1st respondent, while holding the post of Secretary of the Bank, faced disciplinary proceedings alleging misconduct on her part. A domestic enquiry was conducted on the charges, 8 in number, framed against her and she was found guilty of the alleged misconduct, by Ext.P1 enquiry report. On the basis of the enquiry report, the Disciplinary Sub-Committee imposed punishment of compulsory retirement from service. Though she had preferred a statutory appeal before the Managing Committee, the Managing Committee also affirmed the punishment, as such, by Ext.P2. Feeling aggrieved, the 1st respondent filed A.R.C.No.57/2006 before the Co-operative Arbitration Court, Thiruvananthapuram, challenging Ext.P2 enquiry report and punishment imposed on her thereunder. The legal validity of the enquiry report was considered, as a preliminary issue, and set aside the enquiry report by the order dated 11/6/2008 with liberty to the parties to adduce further evidence regarding the charges levelled against the 1st respondent. D.Ws.1 to 3 were examined on the side of the 1st petitioner/Bank and Exts.M1 to M26 were marked. The 1st respondent was examined as P.W.1 and Exts.A1 to A32 were marked. After considering the evidence on record, the Arbitration Court set aside the punishment of compulsory retirement imposed on the 1st respondent, as per the decision dated 20/6/2006 of the Disciplinary Sub-Committee, which was confirmed by the Managing Committee of the 1st petitioner/Bank, by Ext.P2; decreed the ARC and directed the 1st petitioner to reinstate the 1st respondent as Secretary in the service with all service benefits, including full back wages from the date of suspension, by Ext.P4. Aggrieved by the order passed by the Arbitration Court, the petitioners preferred Appeal No.11/2011 before the Court of the Kerala Co-operative Tribunal, Thiruvananthapuram (for short 'the Tribunal'). The Tribunal, after re-appreciating the evidence on record, affirmed the findings of the Arbitration Court; but modified the punishment directing the 1st petitioner/Bank to pay the service benefits to the 1st respondent treating that she was in the post of Secretary till 31/5/2011 and on that date, she retired from service on superannuation, by Ext.P5 judgment. The legality and propriety of the findings, whereby the Tribunal affirmed the findings of the

Arbitration Court, are subjected to judicial review in this writ petition, invoking the jurisdiction under Art.226 of the Constitution of India.

2. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents.

3. The learned counsel for the petitioners advanced arguments challenging the judgment passed by the Tribunal, mainly on the ground that the findings are perverse and not based on factual or legal material and made without adverting to the relevant facts. It is further submitted that both the Arbitration Court as well as the Tribunal failed to appreciate the fact that misconduct alleged against the 1st respondent was caused to be enquired by the Vigilance and Anti-corruption Bureau and now, she stands charge sheeted for the charge of misappropriation and facing prosecution. So, the Tribunal ought not to have affirmed the findings of the Arbitration Court contrary to the charge framed by

the vigilance against the petitioner.

4. Per contra, the learned counsel for the 1st respondent advanced arguments to justify the findings, whereby the Arbitration Court found the 1st respondent is not guilty of the charges of misconduct alleged against the 1st respondent and affirmed by the Tribunal, by Ext.P5 judgment.

5. The scope and extent of interference with the findings in Exts.P4 and P5 invoking jurisdiction under Art.226 of the Constitution of India are very limited and confined to legality and propriety of the said findings and the regularity of the proceedings whereby those findings have arrived at. It is to be borne in mind that this Court is not a Court of Appeal and the concurrent findings of the disputed facts cannot be re-appreciated or substituted with the opinion of this Court, unless those findings are so perverse or unacceptable, at any view of the matter.

6. Going by the impugned judgment, it is seen that the domestic enquiry was conducted on 8

charges of misconduct alleged against the 1st respondent and out of that, 7 charges were found true and correct. But the Arbitration Court set aside the enquiry report by the preliminary order dated 11/6/2008 and the parties were given an opportunity to adduce further evidence independently regarding the charges levelled against the 1st respondent, and all the parties adduced evidence to their satisfaction. None of the parties have a case that sufficient opportunity was not given to them.

7. In this writ petition also, the petitioners have no such case. So, it can be safely concluded that there is no illegality or irregularity in the proceedings and no prejudice was caused to any of the parties in that respect. It follows that there is no violation of the principles of natural justice in the proceedings.

8. The Tribunal has raised 9 points for consideration in appeal and each point pertains to the factual disputes which determined by the Arbitration Court on the basis of the evidence on record. In view

of the fact that sufficient opportunity was given to both parties to adduce evidence independently before the Arbitration Court, and both parties had availed of that opportunity, the Tribunal is justified in re-appreciating the evidence on record independently without considering the validity of the findings in the enquiry report which stood set aside by the Arbitration Court, particularly, when the copy of the enquiry report was not available on the records.

9. Coming to the financial misconduct, the charge against the 1st respondent is supervisory laches over the financial irregularities committed by an Attender by name 'Rajesh' who was handling the MDS Section in the Head Office Branch of the 1st petitioner/Bank. The specific allegation against the 1st respondent is that the 1st respondent, as Passing Officer of the Head Office Branch of the Bank, and she sanctioned 16 vouchers prepared by the said Rajesh for drawing loans from the account pertaining to MDS by which he committed financial irregularities, amounting to

Rs.20,70,000/- .

10. Per contra, the case of the 1st respondent was that she was not a Passing Officer of the Head Office Branch. As per Ext.A29, one K.P. Vijayan was put in charge of the Passing Officer of the Head Office Branch and the said Rajesh was placed in full charge of MDS Section. That apart, Ext.A30 copy of the resolution No.120 of the Managing Committee of the Bank shows that the said K.P. Vijayan was the Assistant Secretary of the Bank and he was transferred to Pazhuvil Branch of the 1st petitioner/Bank with effect from 1/8/2002 and the alleged vouchers were passed at the time when he was the Passing Officer. When subordinate staff were given full charge and supervision thereon, as Passing Officer, merely on the reason that the 1st respondent was the Chief Executive of the Bank, the said liability cannot be shouldered on the 1st respondent and the Tribunal is justified in affirming the findings whereby the Arbitration Court exonerated the 1st respondent

from that charge. The Tribunal is justified in finding that if any subordinate staff committed any financial irregularity on account of lapses on the part of the immediate superior, that responsibility cannot be directly fastened with the Chief Executive. Thus, the Bank miserably failed to prove that the 1st respondent has direct supervisory charge and control over Rajesh, who has committed the financial irregularity. More over, it stands proved that the said Rajesh was under the supervisory control of K.P. Vijayan, the Assistant Secretary.

11. Another serious allegation levelled against the 1st respondent was that she had taken away vital records, including 14 vouchers, out of 16 vouchers referred in the above charge. But, it has come out in evidence that D.W.2, the President of the 1st petitioner/Bank himself took custody of all the records of the 1st petitioner/Bank from the 1st respondent on her suspension with effect from 2/1/2006. The allegation is that she has taken away the records

which form part of the records of the domestic enquiry against Rajesh. As rightly observed by the Tribunal, the 1st petitioner/Bank miserably failed to explain any circumstance under which 1st respondent, who was under suspension from 2/1/2006, happened to be in possession of the records. On the other hand, it stands proved that the President of the Bank took custody of all the records from the 1st respondent on her suspension with effect from 2/1/2006. Out of 16 vouchers, the Bank itself produced 4 vouchers before the Arbitration Court. Therefore, in the absence of evidence, the Tribunal is justified in finding that the Bank failed to prove the allegation that the 1st respondent has taken away the records unauthorisedly.

12. Another allegation is that the 1st respondent misled the Managing Committee in relation to the financial irregularities committed by Rajesh. But, it has come out in evidence that the 1st respondent has noticed the misappropriation and financial

irregularities committed by Rajesh, reported the same to the Managing Committee and the Managing Committee has directed her to submit a detailed report regarding the nature and extent of irregularities and she submitted Ext.A8 report on 3/10/2005 stating that misappropriation and irregularities committed by Rajesh to the extent of Rs.10,18,500/-. Thus, it stands proved that the disciplinary proceeding against Rajesh has been commenced on the report filed by the 1st respondent. Though, dissatisfied with the said report, the Bank has appointed another person, an outsider by name 'V.G. Gopinathan' and he submitted a report stating irregularities to the extent of Rs.20,70,000/-, the Tribunal is justified in discarding the latter report on the reason that the said outsider is an Advocate having no competency or expertise to make an enquiry on financial irregularities and he was not examined in evidence either in the domestic enquiry or in the Arbitration Court. The non-examination of the said V.G. Gopinathan is fatal to the

Bank, particularly when the details of the documents on the basis of which he arrived at a conclusion regarding the nature and extent of financial irregularities allegedly committed by Rajesh, in Ext.M24, is not disclosed. Thus, the Tribunal is justified in affirming the findings of the Arbitration Court that the 1st respondent is not guilty of the said charge.

13. It was also alleged that the 1st respondent had sanctioned loans without the permission of the Managing Committee. But, after examining the evidence on record, the Tribunal found that the details of the loans alleged to have been sanctioned by the 1st respondent, without permission of the Managing Committee, are not disclosed either in the memo of charge or at the evidence stage.

14. As regards the charge that on account of supervisory laches on the part of the 1st respondent, the Bank suffered financial loss and damages to the extent of Rs.20,70,000/-. It stands admitted by the

Bank itself that the said Rajesh remitted the entire amount misappropriated by him by committing financial irregularities while in the service of the Bank. The 1st petitioner/Bank has no case that any amount is due on account of the financial irregularities committed by him. Thus, the allegation that the Bank has suffered loss on account of any supervisory lapses on the part of the 1st respondent has no legs to stand.

15. Another contention raised by the learned counsel for the 1st petitioner is that in view of the 'dispute' referred to in Sec.69 of the Act, the Arbitration Court has no jurisdiction to direct the Bank to reinstate the 1st respondent as Secretary. As rightly observed by the Tribunal, if the decision by which the punishment of compulsory retirement imposed on the 1st respondent is a matter coming under the 'dispute' referred to in Sec.69 of the Act, and the Arbitration Court is having jurisdiction to adjudicate the legality, propriety and correctness of the said decision, the

Tribunal has jurisdiction to direct the Bank to replace the 1st respondent in the place where she occupied earlier, when the decisions whereby she was expelled from the place is found illegal and unsustainable. As rightly held by the Tribunal, the contention that the Arbitration Court has no jurisdiction to direct the Bank to reinstate the 1st respondent is legally unsustainable in view of the wide powers granted to the Arbitration Court under Sec.69 of the Act.

16. As regards the direction to back wages, it stands proved that the imposition of punishment was illegal and unsustainable. The Bank has no case that the 1st respondent was profitably engaged in any other job during the period of her suspension. If that be so, the 1st respondent cannot be put to any financial loss on the basis of a decision which was arbitrarily and illegally taken by the Bank. Therefore, the Tribunal is justified in directing the Bank to give all financial benefits, treating the 1st respondent as she was in the post of Secretary till 31/5/2011 and retired on

superannuation. All the findings of the Tribunal are just, reasonable and legally sustainable also. There is no reason to invoke the extraordinary jurisdiction of this Court under Art.226 of the Constitution of India.

This writ petition is dismissed.

Sd/-
(K. HARILAL, JUDGE)

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P.S. to Judge