IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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<u>WRIT PETITION No.3681 OF 2005</u>

29th OCTOBER, 2015

Between:

G.Purnachandra Rao and another .. Petitioner

and

The Krishna District Co-operative Central Bank Limited, rep. by its General Manager, Machilipatnam, Krishna District, and another. .. Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.3681 OF 2005

O R D E R

This writ petition was filed by the first petitioner herein, an Assistant Manager in the service of the Krishna District Cooperative Central Bank Limited at its Kanchikacherla Branch, assailing the proceedings dated 05.07.2004 of the General Manager, Krishna District Cooperative Central Bank Limited, Machilipatnam, Krishna District, dismissing him from service and Resolution No.17 dated 29.09.2004 of the Committee of Persons-in-charge of the Bank dismissing his appeal against the said proceedings, which was intimated to him under Memo dated 12.10.2004.

The first petitioner expired on 17.12.2011 and his widow, the second petitioner, came on record. As dismissal of the first petitioner from service had monetary implications in terms of forfeiture of his terminal benefits, the cause would survive and the second petitioner would be entitled in law to prosecute this writ petition.

The first petitioner was subjected to disciplinary proceedings in relation to the fraudulent withdrawal and misappropriation of Rs.1,61,000/- from the account of one M.Pulla Rao, a customer of the bank at its Kanchikacherla Branch. Charge Memo dated 10.06.2003 was issued to the first petitioner specifying one charge:

> 'That he is willfully and deceitfully withdrawn amount of Rs.1,61,000/- from SB account No.4543, without the knowledge of the account holder Sri.M.Pulla Rao and misappropriated the said amount and utilized the amount to his personal advantage and thereby cheated the Bank and acted in a manner unbecoming of an employee of the Bank derogatory to the code of conduct and

committed grave misconduct.'

The Charge Memo also detailed the irregularities allegedly committed by the first petitioner in the misappropriation of the sum involved. These alleged irregularities were as under:

> '1. It is compulsory to present the Pass Book along with the withdrawal form for payment, but Sri G.Purnachandra Rao, Assistant Manager allowed payment for withdrawals without presenting the Pass Book.
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> 2. It is also reported that Sri.G.Purnachandra Rao, Assistant Manager and in connivance with an outsider made postings in the SB Ledger though the Staff Assistant concerned should do it.
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> 3. It is also reported that Sri.G.Purnachandra Rao, Assistant Manager has instigated Sri.P.Sriram Kumar Secretary, Nekkalampeta PACS for filling up of the withdrawal forms and drawn the amount.
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> 4. Sri.G.Purnachandra Rao, Assistant Manager has forged the signature of the Account holder Sri.M.Pulla Rao on the withdrawals.
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> 5. Sri.G.Purnachandra Rao, Assistant Manager being passing officer in the Bank has misused his position to his personal advantage and misappropriated the amount of an innocent customer.'

The first petitioner submitted his explanation dated 02.08.2003 but unsatisfied with the same, the bank initiated a domestic enquiry under proceedings dated 26.08.2003. After conducting the enquiry, the Enquiry Officer submitted Report dated 11.11.2003. Basing on this report, the bank issued show-cause notice dated 23.02.2004 to the first petitioner proposing the punishment of dismissal from service. The first petitioner submitted his written objections thereto under letter dated 28.06.2004. Rejecting his contentions, the bank ultimately dismissed him from service under proceedings dated 05.07.2004. His appeal against this disciplinary action was rejected by the managing committee of the bank under Resolution No.17 dated 29.09.2004. This was intimated to the first petitioner under Memo dated 12.10.2004. Aggrieved by these events, the first petitioner approached this Court by way of the present writ petition.

Perusal of the Enquiry Report dated 11.11.2003 reflects that the

Enquiry Officer dealt with the five irregularities alleged against the first petitioner. Significantly, the Enquiry Officer concluded that the allegation that the first petitioner had willfully and deceitfully withdrawn the amount; misappropriated and utilized it for his personal advantage, thereby cheating the bank, and instigated P.Sriram Kumar, Secretary of Nekkalampeta PACS (MW.3) to fill up the withdrawal forms and draw the amount, was not proved. The Enquiry Officer also found that it was not proved that the first petitioner had forged the signatures of the account holder, M.Pulla Rao, on the withdrawal forms. These findings therefore indicated that the first petitioner was not guilty of the alleged irregularities 3, 4 and 5. The Enquiry Officer also found that the allegation leveled against the first petitioner that he had allowed an outsider to make postings in the S.B. Ledger was not proved. This finding therefore disproved irregularity 2 alleged against the first petitioner.

In so far as irregularity 1 is concerned, it was to the effect that the first petitioner had allowed withdrawals without presentation of the pass book. The Enquiry Officer however recorded that P.Sriram Kumar (MW.3) had admitted that he had prepared a pass book, produced it every time he made withdrawals and also made entries therein. The Enquiry Officer therefore concluded that the first petitioner might have seen the said fabricated pass book produced by MW.3. Having stated so, the Enquiry Officer surprisingly observed that the first petitioner failed to detect the fake pass book prepared by MW.3 and that it was a lapse on his part. The Enquiry Officer further observed that the first petitioner, as the passing officer of the bank, could not be excused for failing to detect the fake pass book owing to the pressure of work. It was on the basis of this reasoning that the Enquiry Officer held that the allegation of passing the withdrawal without production of the pass book was proved.

The Disciplinary Authority did not disagree with any of the findings of the Enquiry Officer. It was on the basis of the findings rendered by the Enquiry Officer that the show-cause notice was issued to the first petitioner proposing punishment. However, the charge leveled against the first petitioner in the Charge Memo dated 10.06.2003 was not that he failed to detect a fake pass book.

It is the settled legal position that charges leveled against a delinquent employee in disciplinary proceedings must be clear, precise and unambiguous. Once no charge was framed that the first petitioner had failed to detect a fake pass book, the question of rendering a finding in that regard did not arise. However, in the present case, that was the only finding which formed the basis for the dismissal of the first petitioner from service.

That apart, the Enquiry Report clearly demonstrates that P.Sriram Kumar (MW.3) unequivocally admitted his guilt and stated that he alone was responsible for the entire defalcation. Glossing over the same, the Enquiry Officer and thereafter, the Disciplinary Authority, chose to pin the guilt upon the first petitioner. The impugned proceedings dated 05.07.2004 of the General Manager of the bank further compounded the matter by holding that the negligence of the first petitioner was the reason for the entire fraud taking place and that the same was attributable to his total failure in discharging his legitimate duties. He also recorded that the first petitioner, with a *malafide* intention, resorted to misappropriation of the customer's money. This finding was totally contrary to the finding recorded by the Enquiry Officer. As he failed to disagree with the findings recorded by the Enquiry Officer, there was no basis for the Disciplinary Authority to come to such a conclusion.

The Resolution passed by the managing committee of the bank, rejecting the first petitioner's appeal, was cryptic and unreasoned. This Resolution reads as under:

> 'The Committee of Persons-in-Charge of the Bank has carefully considered and examined in detail the appeal filed by Sri.G.Purnachandra Rao, Asst Managerr (Dismissed) for condoning the punishment of dismissal. The appeal does not merit any consideration even on humanitarian grounds as the extent of loss and damage caused to the Bank due to his gross misconduct is irreparable. Hence the appeal is not considered and the punishment already imposed is confirmed.'

The Enquiry Report clearly brought out the fact that the entire amount fraudulently withdrawn from the account of M.Pulla Rao was subsequently re-credited. The appellate authority, the managing committee of the Bank, did not even consider this fact and baldly observed that the extent of loss caused to the bank was irreparable. Further, the bank strongly relied upon the fact that the first petitioner himself deposited Rs.1,50,000/- in the said customer's account and that such action on his part was a clear admission of his guilt. However, the Enquiry Report demonstrates that MW.3, having admitted his guilt and sole responsibility for the entire fraud, returned the amount of Rs.1,50,000/- to the first petitioner and separately deposited a sum of Rs.8,000/- to the credit of M.Pulla Rao's account.

On a conspectus of the above facts, this Court finds that the single irregularity alleged to have been proved against the first petitioner was on a charge which was not even framed, i.e. with regard to his failure to detect a fake pass book, and the other irregularities alleged against him were held not proved. The gist of the findings returned by the Enquiry Officer with regard to these alleged irregularities was to the effect that the first petitioner had not willfully and deceitfully withdrawn the amount or misappropriated it or utilized it for his personal advantage, thereby cheating the bank. The single charge framed against the first petitioner under the Charge Memo dated 10.06.2003 therefore stood disproved. In spite of the same, the Disciplinary Authority, having agreed with the findings of the Enquiry Officer, visited the punishment of dismissal from service upon him and the same was blindly confirmed in appeal. The disciplinary action taken against the first petitioner was wholly unsustainable in the light of the observations made hereinbefore.

In that view of the matter, the impugned proceedings dated 05.07.2004 and confirmation thereof in appeal, under Resolution No.17 dated 29.09.2004, are set aside. As the first petitioner has already expired, the bank is directed to treat the first petitioner as having continued in service till the date of his attaining the age of superannuation and based on such continuity of service, notionally extend to him attendant benefits, including increments, and settle his terminal benefits accordingly. The amount so computed shall be remitted, along with the statement of such computation, to the second petitioner expeditiously and in any event, not later than three months from the date of receipt of a copy of this order.

The writ petition is accordingly allowed to the extent indicated above. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

29th OCTOBER, 2015
PGS