

*** THE HON'BLE MR JUSTICE C.V.NAGARJUNA REDDY**

+ Writ Petition No.28359 of 2015

+ DT.04.09.2015

Bh.Syam Prasad

...Petitioner

Vs.

\$ The Krishna District Co-operative Central Bank Limited, rep.by its
Chief Executive Officer, Jagannadapuram, Machilipatnam, Krishna
District and another

... Respondents

^ Counsel for the Petitioner: Sri K.Chidambaram

! Counsel for the respondents: Sri V.Kishore

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> Head note:

? Cases referred:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.28359 of 2015

Dated 04th September, 2015

Between:

Bh.Syam Prasad

...Petitioner

And

The Krishna District Co-operative Central Bank Limited, rep.by its
Chief Executive Officer, Jagannadapuram, Machilipatnam, Krishna
District and another

...Respondents

Counsel for the petitioner: Sri K.Chidambaram

Counsel for the respondents: Sri V.Kishore

The Court made the following:

ORDER:

This writ petition is filed for a mandamus to set aside proceeding bearing Ref.No.Estt/Certificate Verification/2015-16, dated 20.08.2015, of respondent No.2.

I have heard Sri K.Chidambaram, learned counsel for the petitioner, and Sri V.Kishore, learned Standing Counsel appearing for the respondents.

The petitioner is an employee of respondent No.1-Bank. On 01.08.2015, respondent No.2 has issued show-cause notice alleging that the petitioner has produced a fake B.Sc., Degree Certificate and calling upon him to submit his explanation within seven days from the date of receipt of the same. The petitioner sought for extension of time for submitting his explanation. However, as no explanation was submitted and further extension was sought, respondent No.2 through the impugned order appointed one A.Sudhakara Rao, Advocate, Vijayawada as the Domestic Enquiry Officer to enquire into the allegations and submit his enquiry report. Feeling aggrieved by this order, the petitioner filed this writ petition.

At the hearing, the learned counsel for the petitioner advanced three contentions, namely, (1) that respondent No.2 has no authority to initiate the disciplinary proceedings, (2) that under the Rules of Conduct of respondent No.1-Bank, the Management of the Bank is obliged to appoint any Officer of the Bank as Enquiry Officer and the appointment of an Advocate as an Enquiry Officer is contrary to the

said Rules and (3) that before appointment of an Enquiry Officer, the Management shall issue charge sheet and in the instant case, no such charge sheet has been issued.

As regards the first submission of the learned counsel for the petitioner, under Rule 66 of the Rules of Conduct, it is the Bank Management which is empowered to take a decision on the initiation of disciplinary action against an employee. Respondent No.2 being the Chief Executive Officer is only a functionary of the Bank and he cannot be treated as the Management. It is the Managing Committee or the Board of Directors, as the case may be, which constitutes Management of the Bank. Therefore, the disciplinary proceedings initiated by respondent No.2 under the impugned proceeding are without jurisdiction.

As regards the submission of the learned counsel that only an Officer of the Bank can be appointed as an Enquiry Officer, I do not find any merit therein. Under Rule 62 of the Rules of Conduct, for the purpose of finding out the truth of an act of misconduct or malfeasance alleged against an employee, the Management may appoint any Officer of the Bank as an Enquiry Officer. It, therefore, means that at the preliminary stage before initiation of disciplinary proceedings, an Officer of the Bank may be appointed to hold a preliminary enquiry. However, when it comes to holding of the departmental enquiry after the Management decides to initiate disciplinary proceedings, no such restriction on a particular person to be appointed as the Enquiry Officer is placed by the Rules. Therefore, the Management of the Bank is free to appoint any person of its choice as Enquiry Officer.

Coming to the third submission of the learned counsel, under Rule 66(i) of the Rules of Conduct, if the Bank Management is satisfied that an employee is guilty of misconduct and the same requires initiation of disciplinary action, the decision by the Bank to initiate disciplinary action against the employee shall be communicated to him and charge sheet issued for the purpose shall clearly set forth the

circumstances operating against him. This Rule, thus, clearly envisages that the decision of the disciplinary authority i.e., the Bank Management which alone is empowered to issue charge sheet before appointing the Enquiry Officer, shall be communicated to the employee. As no such charge sheet has been issued by the Bank Management, appointment of an Enquiry Officer without issuing charge sheet cannot be sustained.

For the above-mentioned reasons, the impugned proceeding is set aside. However, respondent No.1 is left free to initiate disciplinary proceedings by issuing charge sheet and appoint an Enquiry Officer of its choice.

The writ petition is accordingly allowed to the extent indicated above.

As a sequel to disposal of the writ petition, W.P.M.P.No.36781 of 2015 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

04th September, 2015

Note: LR copies to be marked

(b/o)

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