BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.11.2016

CORAM:
THE HONOURABLE Mr.JUSTICE M.GOVINDARAJ
W.P.(MD)No.12125 of 2011
and
M.P.(MD)No.1 of 2011

V.Rajamani ... Petitioner

Vs.

1.The Registrar of Cooperative Societies (Housing),
Adayar, Chennai - 20.

2.The Joint Registrar of Cooperative Societies,
Dindigul Region, Dindigul.

3.The Deputy Registrar of Cooperative Societies (Housing),
K.K.Nagar, Madurai - 20.

4.P.Periakaruppan
5.The Special Officer,
A-1888, Palani Cooperative Building Society Ltd.,
Shanmugapuram,
Dindigul District. ... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the 2nd respondent in his proceedings in Na.Ka.No.9607/2006/Pa.Thoo, dated 30.09.2011 and quash the same as illegal, incompetent and without jurisdiction and consequently, direct the respondents to disburse the service benefits dues to the petitioner together with 18% of interest per annum.

For Petitioner : Mr.Issac Mohanlal, Senior Counsel for Mr.N.Sathish Babu
For Respondents : Mr.S.Kumar, AGP for R1 to 3
No appearance for R4 and 5

O R D E R

The Writ petition came to be filed challenging the punishment order passed by the 2nd respondent dismissing the petitioner from service.

2.The Writ petitioner while working as a Special Officer holding additional charge of the 5th respondent / Society, has implemented house plot scheme proposed by some promoters. Originally, a proposal was made on 22.07.2004 and promoters paid an advance of Rs.15,00,000/-. The proposal did not go through. Hence, a fresh proposal was sent. On 22.07.2004, the agreement was entered into between the promoters and the said sum of Rs.15

lakhs was deposited in a Fixed Deposit by the land owners towards development of the land. A resolution to that effect came to be passed on 24.07.2004, in a meeting conducted by the Special Officer.

3.Pursuant to the resolution, a sale agreement was entered into between the promoters and the society. On 27.09.2004, a proposal was sent to the 1st respondent seeking his permission to purchase the housing plots, wherein the terms and conditions of the scheme have been explained. While explaining the same, assurance was given by the promoters. It is stated that the promoters would get a loan advance from their fixed deposit Rs.15 lakhs and to adjust the same by sale proceeds, other conditions were also incorporated. The 3rd respondent in his proceedings in Na.Ka.No.4141/2004/Na.Vee, dated 02.12.2004, has further explained the salient features of the scheme and recommended for granting permission and has projected that approximately Rs.7 lakhs would be the profit to the society.

4.Considering the proposal, the 1st respondent in his proceedings in Na.Ka.No.13465/2004/E1, dated 04.01.2005, accorded permission to sell the housing plots in the layout that is going to be laid by the promoters, and to collect 2% service charges from the promoters as per the terms and conditions recorded therein.

5.As per the permission granted by the 1st respondent, condition No.5 would stipulate that for the service rendered by the society, the money of the society shall not be used. Condition No.13 is that the plots should be sold within one year and after lapse of one year, the unsold plots should be taken by the promoters themselves.

6.Pursuant to the letter issued by the 1st respondent dated 04.01.2005, the petitioner had sent a formal communication to the promoters on 20.01.2005, recording the terms and conditions. The scheme had taken effect from 20.01.2005 and from the records, it is seen that only 32 plots were sold and remaining 193 plots were not sold. As per the conditions the promoters have to take back the unsold plots. The petitioner has issued a letter on 05.06.2006 to the promoters to complete the project within one year or else to take back the plots as per the conditions, and it is categorically stated that in default, the agreement dated 30.04.2005, would stand cancelled.

7.The petitioner would submit that he was due to retire on attaining the age of superannuation on 31.10.2016. Just 18 days before the date of his retirement, a charge memo came to be served on him in Na.Ka.No.4141/2004/Na.Ve. dated 12.10.2006, by the 2nd respondent. The gravaman of the charge was that the petitioner has violated the conditions imposed by the 1st respondent in his letter No.Na.Ka.13465/2004/E1 dated 04.01.2005 and thereby, caused financial loss to the society and has failed to discharge his duty without adhering to the instructions given by the 1^{st} respondent. The imputation of charges would explain that the petitioner has caused financial loss to the society by advancing loan to the tune of Rs.15 lakhs from the fixed deposit without prior permission and that he had not taken any action even after the expiry of one year, in canceling the agreement with the promoters. The 2^{nd} respondent has relied on the documents of the Society and no witnesses were cited to be examined.

8.Pursuant to the charge memo, the petitioner was kept under suspension and pending disciplinary proceedings in R.C.No.9607/2006/Estt. Dated 31.10.2006, by the 2^{nd} respondent, he was also not permitted to retire from service.

9.The petitioner had submitted his explanation on 30.05.2007, explaining that the agreement was entered into between the Society and the promoters and as per agreement, one of the terms and conditions is that Rs.15 lakhs kept in the fixed deposit by the promoters, would be advanced as loan. After considering the condition in the agreement between the society and the promoters, the 1^{st} respondent has accorded permission for launching the housing scheme. That in his 34 year of service, he had never been found fault with on his dedication and he has a clean record of service. Considering his blemishless service, the charges shall be dropped and he should be given all the terminal benefits.

10.The enquiry officer has received the petitioner’s explanation and without conducting any oral enquiry and without examining any witnesses, had come to a conclusion on the basis of the records, that the charge is proved. No documents were marked and as stated supra, none of the witnesses have made any deposition in support of the misconduct against the delinquent. Simply on the basis of records unknown to the delinquent, the charges held to be proved.

11.The 2^{nd} respondent in his proceedings in Na.Ka.No.9607/2006/Pa.Tho. dated 08.01.2008 has forwarded the enquiry report and called for objection from the petitioner. The petitioner has submitted his explanation on 14.02.2008, reiterating the explanation given to the charge memo, and had stated that the enquiry officer has not at all considered the proposal sent by him, as well as the permission accorded by the 1^{st} respondent, after considering the conditions that the amount mentioned in the imputation of charges, was part of the agreement between the society and the promoters. Thereafter, vide proceedings in Na.Ka.No.9607/2006/Pa.Tho dated 08.09.2011, the 2^{nd} respondent has called the petitioner for personal hearing. The petitioner had also appeared and submitted a letter dated 19.09.2011 to consider the communications dated 14.08.2009 and 23.03.2011 as the explanation submitted and also to consider the 34 year of blemishless service rendered by him.

12.The 2nd respondent in proceedings in Na.Ka.No.9607/2006/Pa.Tho dated 30.09.2011, imposed the punishment of dismissal from service. Challenging the order of punishment, the above Writ petition is filed.

13.Mr.Isaac Mohanlal, learned Senior Counsel appearing for the petitioner, would submit that the charge framed by the 2nd respondent, is totally vague. It does not quantify specifically the quantum of loss caused to the society, and the role of the petitioner attributed towards the same. He would also submit that there is no charge of misappropriation and advance of Rs.15 lakhs from the fixed deposit made by the promoters cannot be taken as usage of the society's money for the project. He would also submit that on and after the permission granted by the 1st respondent on 04.01.2005, none of the conditions were violated and the petitioner had not failed to follow the instructions of the 1st respondent. It is also the contention of the learned Senior Counsel for the petitioner that the punishment of dismissal from service is disproportionate to the charges framed and in support of his argument, he would rely on a judgment of the Honourable Supreme Court in **S.R.TEWARI VS. UNION OF INDIA AND ANOTHER [2013 (6) SCC 602].** He would further submit that if the punishment on the face of it, shows perversity or irrationality, then there can be a judicial review of punishment and the Court should not interfere merely on compassionate ground. In the said case, the Court has considered the quantum of punishment and had found that the punishment imposed was not proportionate to the delinquency committed. Failure to give reasons amounts to denial of justice.

14.The learned Government Advocate appearing for the respondents, would submit that the charge framed by the respondent is very much sustainable and the petitioner has grossly erred in following the terms and conditions imposed by the 1st respondent in his letter dated 04.01.2005. He would further submit that it is to be noted that the fixed deposit once made to the society, shall be treated as general fund of the society and prior permission from the Registrar shall be obtained for advancing the loan. Further, the petitioner has failed to act in canceling the agreement even after a lapse of one year and there is delay of about 1 ½ years in performing that. He would submit that the date of first agreement shall be taken as a crucial date for commencing the scheme i.e., 30.07.2004, and it is not 30.04.2005 as stated by the petitioner in his letter dated 05.06.2006. He would also submit that the petitioner has failed to get permission even before getting permission from the 1st respondent and even before entering into the agreement and thereby, failed to adhere to the instructions issued by the 1st respondent.

15.Heard both sides.

16.The admitted facts are that the 5th respondent Society is having the business of promoting house projects. As per the proposal given by the promoters, a layout scheme was proposed by the petitioner and preliminary agreement was made after the board resolution dated 24.07.2004. In fact, there is a previous agreement dated 06.05.2004, which was cancelled and the proposal dated 12.07.2004, was considered and it was resolved to enter into a new agreement with the promoters. It was also specifically resolved to accord the loan advance to the promoters as per the agreement dated 06.05.2004, in the new agreement also. The proposal along with the agreement was sent to the 1st respondent and the 1st respondent in his letter dated 04.01.2005 has accorded permission to pursue the scheme as per the agreement's and terms and conditions and to collect 2% service charge from the promoters. The 3rd respondent recommended the project with the same terms and conditions. At the end of the project tenure only 32 housing plots were sold and the remaining 193 housing plots remain unsold. On 05.06.2006 the petitioner had written a letter to the promoters that they shall complete the project within 30 days as per the promise made, failing which, the agreement dated 30.04.2005, would be cancelled.

17.The petitioner was due to retire on 31.10.2006 and just 18 days before his retirement, a charge memo dated 12.10.2006 was issued. On a perusal of the charge memo it shows that the petitioner has caused financial loss by acting in excess of instructions issued by the 1st respondent dated 04.01.2005 and in violation of instructions issued by the 1st respondent and thereby, failed to discharge his duties.

18.As contended by the learned Senior Counsel, the specific quantum of loss has not been mentioned in the charge, nor the dereliction of duty has been pointed out. The imputation to the charges would state that as per condition No.4, the money of the society shall not be utilized for the scheme. It is stated that a sum of Rs.15 lakhs from the society has been advanced without prior permission and thereby a loss has been caused to the society. The 2nd imputation would reveal that even after 1 ½ years after the lapse of the agreement, the petitioner has failed to take action and thereby failed to discharge the duty.

19.I have considered the charge as well as the imputation to the charges.

20.The charge, admittedly, is very vague and does not specify the exact financial loss and the dereliction of duty. A perusal of the explanation submitted by the delinquent would go to show that the money advanced to the promoters, was not from the society, but, from the fixed deposit made by the promoters.

21.It should also be seen that there was a resolution by the society to cancel the previous agreement dated 06.05.2004.

As per the resolution, it could be seen that the sum of Rs.15 lakhs was advanced pursuant to the agreement dated 06.05.2014 and not as per the latest agreement dated 12.07.2014. The resolution would further specify that the sum of Rs.15 lakhs advanced shall be recorded in the new agreement. Accordingly, a proposal was sent on 27.09.2004, seeking permission for the housing plots scheme to the 1st respondent. On 02.12.2004, the 3rd respondent has recommended the same. On 04.01.2005, the 1st respondent accorded permission. From the sequence of events, it could be seen that loan amount advanced to the promoters was much earlier in time that is to say, as per the agreement dated 06.05.2004 and not after 04.01.2005, the date on which the 1st respondent accorded permission.

22.Even assuming that the proposal has categorically specified condition No.4 as to the duties and liabilities of the promoters that they would repay the money from the sale proceeds of the housing plots and it was agreed that it can be adjusted. While that being so, the 1st respondent has permitted the housing scheme after considering the advance amount of Rs.15 lakhs. He cannot now turn around and allege that the petitioner is solely responsible and that is the financial loss to the society.

23.Obviously, nowhere in the records, it is found that the 1st respondent or other respondents have instructed that the money should be recovered from the promoters. The 2nd imputation is that the petitioner has failed to take action towards cancellation of the agreement. Admittedly, the agreement dated 30.04.2005 expired on 29.03.2006. By letter dated 05.06.2006, the petitioner has sent a communication to the promoters that unless they complete the project within 30 days from the receipt of his notice, it will be cancelled. Therefore, it is inferred that the petitioner has promptly sent a letter for cancellation of agreement entered with the promoters dated 30.04.2005.

24.It is also seen that the charge memo came to be issued only 12.10.2006, ie., after the issuance of the letter for cancellation of agreement in June 2006 i.e., 4 months later the charge memo came to be issued.

25.I have considered the arguments and as contended by the learned Senior Counsel for the petitioner, the enquiry officer at the first instance has not relied on any specific document and in fact, no document was marked and no witness was examined in support of the allegations made against the petitioner. Thereby, the opportunity of effectively defending the case by cross examination and an opportunity to disprove the charges were taken away from the petitioner. I find the argument advanced by the learned Senior Counsel has some force and is in violation of principles of natural justice by depriving ample opportunity to the delinquent to disprove the charges. Other than the allegations, no other proof or legal evidence came to be filed or cited by the enquiry officer for proving the charge and for the disciplinary authority to come to a conclusion that the charge requires capital punishment.

26.A perusal of the enquiry report and the punishment order are exactly similar extracting the contents of the charge memo, explanation and the enquiry report. The disciplinary authority has not at all applied his mind to the charge as well as to the explanation to the charges that none of the conditions of the 1st respondent dated 04.01.2005 has been violated. In fact, I find that after 04.01.2005 no loan was advanced and there is no legal evidence to show that any money from the society was utilized for this project. Therefore, the contention of the petitioner that the money advanced from the fixed deposit made by the promoters, cannot be considered as the money belonging to the society, has much force and it is sustainable.

27.Insofar as the 2nd part of charge, there is no specific allegation that the petitioner has not adhered to the instructions and no specific instruction that was not adhered to, was also not shown. The allegation that the petitioner has not taken action even after 1½ years, is false ground by way of the document dated 05.06.2006, which has been issued to the promoters within 2 months after the lapse of the one year period. So, all the more for dereliction of duty, the punishment imposed is absolutely disproportionate. The explanation and other letters submitted by the petitioner would show that he has made statement that he has put in 34 years of dedicated and unblemished service. This fact has never been controverted by the respondents. It is also important to note that there is no allegation of misappropriation, except a vague allegation that the petitioner has caused financial loss to the society. These allegations are not supported by any legal evidence and thereby it is perverse.

28.As per the Government Orders, action should have been taken against the erring officials, in time. But in this case, for the alleged misconduct committed during the year 2006, the suspension order was issued, on the date of his retirement viz., 31.10.2006. Though such practice is prohibited by the Government Orders, yet the same irregularity is continued in the present case also.

29.The Hon'ble Supreme Court in **S.R.TEWARI's case** (cites supra) has categorically found that the cases where punishment awarded is found to be shockingly or strikingly disproportionate to gravity of misconduct and the decision making process is stated to be perversity and irrationality, can be interfered with the judicial review. In para 30 of the said judgment, it has been observed as under:

> "30.The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into

consideration irrelevant / inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice or irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with (vide: Rajinder Kumar Kindra v. Delhi Administration, AIR 1984 SC 1805; Kuldeep Singh v. Commissioner of Police and Ors. AIR 1999 SC 677; Gamini Bala Koteswara Rao @ Ors. v. State of Andhra Pradesh thr. Secretary AIR 2010 SC 589; and Babu v. State of Kerala (2010) 9 SCC 189)."

30.The facts of the present case is similar to the facts of the above said judgment. The process of making the decision is totally irregular and violative of principles of natural justice and without any material evidence. Therefore, I have no hesitation to hold that the punishment imposed on the petitioner is disproportionate and it is not commensurate with the gravity of the charges.

31.Accordingly, the impugned order passed by the second respondent, in Na.Ka.No.9607/2006/Pa.Thoo, dated 30.09.2011 is set aside and the punishment of dismissal from service is substituted with withholding of two increments for a period of six months without having cumulative effect. Since the petitioner has attained the age of superannuation, the respondents are directed to settle terminal benefits with all attendant and monetary benefits to the petitioner, taking note of the punishment substituted by this Court, without a period of twelve weeks from the date of receipt of a copy of this order.

32.The Writ petition is allowed to the extent indicated above. No costs. Consequently, connected M.P.is closed.

Sd/-
Assistant Registrar

/True copy/

sub Assistant Registrar

To
1.The Registrar of Cooperative Societies (Housing),
Adayar, Chennai - 20.

2.The Joint Registrar of Cooperative Societies,
Dindigul Region, Dindigul.

3.The Deputy Registrar of Cooperative Societies (Housing),
K.K.Nagar, Madurai - 20.

4.The Special Officer,
A-1888, Palani Cooperative Building Society Ltd.,
Shanmugapuram,
Dindigul District.
+1cc to Mr.N.Sathish Babu,Advocate,SR.64969
+1cc to M/S.Special Government pleader,SR.64940

W.P.(MD)No.12125 of 2011
01.11.2016

NBJ/TK
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