HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION Nos.17871, 17900 AND 17938 OF 2001

COMMON ORDER:

These three Writ Petitions, under Article 226 of the Constitution of India, 1949 are filed by three different petitioners to issue a writ, order or direction more particularly one in the nature of writ of *certiorari* calling for the records in proceedings Rc.No.Estt/E3/F108/96-97 dated 14.09.2000; wherein, the 2nd respondent passed the order of fixing the pay of the petitioners at Rs.1,640/- in the V category time-scale of Rs.1640-4595/- with effect from 30.08.2000; and the proceedings in Rc.No.Estt/E3/F108/96-97 dated 01.02.2001; wherein the 2nd respondent, in partial modification of his earlier order dated 14.09.2000, imposed major penalty of stoppage of 5 annual grade increments with cumulative effect; and quash the same as they are arbitrary, illegal and in violation of cardinal principles of natural justice and, consequently, direct the respondents 1 and 2 to release all consequential benefits with interest at bank rate.

The petitioners, by the date of filing petitions, are working as Supervisors in the Nalgonda District Central Co-operative Bank Limited, Nalgonda; initially, they were placed under suspension with effect from 22.10.1996 by the 2nd respondent; pending enquiry, charge memos were issued to the petitioners calling for their explanation for the alleged irregularities in disbursement of DTP loans during the Rabi 1995-96 and Khariff 1996, making the petitioners liable for the said amount with interest at 21% *p.a.* jointly and severally; the petitioners, accordingly, submitted their explanations.

Subsequently, the petitioners filed petitions under Section 4(2) of the A.P. Co-operative Societies Act 7 of 1964 (for short, ‘the Act’) before the 5th respondent challenging the orders of suspension passed by the 2nd respondent. The 5th respondent, by common order in Rc.No.48087, 48080 and 48081/97L1 dated 27.12.1997, set-aside the impugned orders of suspension passed by the 2nd respondent and directed the respondents to post the petitioners to different places other than the places where they worked prior to suspension, on reinstatement. It was further directed to complete the enquiry within a period of three months and conclude the disciplinary proceedings. As the 2nd respondent failed to implement the common order dated 27.12.1997, the petitioners preferred Writ Petition No.5094 of 1998 before this Court and this Court, by order 23.04.1998, allowed the Writ Petition directing the respondents to implement the order within a period of three months therefrom. Thereafter, a show-cause notice dated 19.05.1998 was issued by the 2nd respondent calling upon the petitioners to show-cause as to why their services could not be terminated for commission of the alleged lapses. Thereupon, the petitioners submitted their detailed explanations on 04.06.1998. Through the order dated 19.06.1998, the 2nd respondent reinstated the petitioners, pending re-enquiry, and posted the petitioners at different places. Thereafter, Dr. N. Muralidhar, Chief Project Officer, ICDP, 3rd respondent herein was appointed as Enquiry Officer to submit his report by 10.07.1998. Consequently, the petitioners submitted their explanations to the Enquiry Officer, on 13.07.1998, requesting to drop the charges, explaining the reasons therein.

The District Co-operative Officer, Nalgonda, 6th respondent herein, *vide* his letter in Rc.No.2026/98-C, dated 13.03.1999 informed the Registrar of Co-operative Societies, 4th respondent, that no benami loans have been noticed and misappropriation of funds took place in the PACS during the disbursement of DTP loans. Despite it the 2nd respondent, through his impugned proceedings dated 14.09.2000, fixed the pay of the petitioners at Rs.1,640/- in V category time-scale of Rs.1,640-4,595/-, pursuant to the resolution dated 30.08.2000 of the Board of Directors of the Bank to reduce the basic pay to the starting level and treated the period of suspension as leave to which they were eligible.

Aggrieved thereby, the petitioners preferred separate Appeals before the 1st respondent. Meanwhile, the 6th respondent, through his letter dated 06.12.2000, requested the 2nd respondent to restore the pay of the petitioners to their original position as on 29.08.2000, as they seem to have rendered 30 years of service, by imposing minor punishment *i.e.,* stoppage of one annual grade increment with cumulative effect for the administrative lapses and to treat the suspension period as on duty. Despite it the 2nd respondent, by impugned proceedings in Rc.No.Estt/E3/F108/96-97 dated 01.02.2001, in partial modification of his earlier order dated 14.09.2000, stopped 5 annual grade increments with cumulative effect, treating the period of suspension as leave to which they were eligible and to treat the balance, if any, as loss of pay.

As seen from the material available on record, the petitioners did not indulge in any misappropriation of funds but they seem to have violated the Circulars issued by the authorities, which is only an administrative lapse; therefore, such administrative lapse would not amount to grave misconduct, the punishment imposed by the 2nd respondent is shockingly disproportionate and liable to be set-aside.

It is further contended that the re-enquiry report copy was not furnished to the petitioners, calling upon their written submissions and violated the principles of natural justice. On this ground alone the entire proceedings have to be set-aside and prayed to set-aside the orders with a direction to grant all consequential benefits.

The respondents filed counters while admitting ordering of enquiry and re-enquiry *etc.,* alleging that the petitioners committed grave misconduct and that the punishment imposed and reduced by the 2nd respondent is in proportion to the misconduct attributed and proved against the petitioners. However, In Para 12 of the counters, it is stated that it is a fact as admitted by the petitioners that it is violation of guidelines in disbursement which may likely to result in mis-utilization, which had not taken place due to the timely action/rectification work by the Bank. The lapses committed by the petitioners come within the definition of gross misconduct and the punishment stipulated for the same is dismissal from service. Therefore, the punishment imposed by the 2nd respondent is in accordance with the Rules and prayed for dismissal of these Writ Petitions.

The petitioners filed reply to the counter albeit belatedly, at the time of hearing, almost denying the several contentions urged by the respondents while admitting that the allegations attributed against them are only administrative lapses which would not fall within the definition of grave misconduct and therefore imposition of penalty of stoppage of 5 annual grade increments with cumulative effect is shockingly disproportionate and prayed to set-aside the orders.

During course of hearing, Sri D.V. Bhadram, learned counsel appearing for the writ petitioners, would contend that the 6th respondent in his letter clearly stated that the petitioners did not misappropriate funds while disbursing loans for the Kharif year 1996 and at best such acts would amount to violation of Circulars issued by the authorities which is only an administrative lapse and those administrative lapses are justifiable as those acts were committed only to assure 100% recovery not otherwise, drawn the attention of this Court to Memorandum of Settlement arrived between The Andhra

Pradesh Co-operative Banks' Association, Hyderabad and The Andhra Pradesh Bank Employees Federation, Hyderabad on 15.06.1997 to contend that the administrative lapses attributed to the petitioners would only amount to minor misconduct and not gross misconduct as defined under the proviso to clause-IV of disciplinary proceedings; thereby, imposition of punishment of stoppage of 5 annual grade increments with cumulative effect is not in accordance with law. It is further contended that failure to furnish a copy of re-enquiry report is fatal on this ground alone the entire proceedings have to be quashed and prayed to quash the proceedings as referred *supra*.

Whereas, learned Standing Counsel appearing on behalf of the respondents supported the penalty imposed against the petitioners as the petitioners themselves have admitted that they are guilty of misconduct *i.e.,* administrative lapses. On this ground alone the penalty imposed against the petitioners cannot be set-aside and prayed to dismiss these Writ Petitions.

Considering rival contentions and perusing the material available on record, the points that arise for consideration in these Writ Petitions are:

1) Whether non-furnishing of the copy of re-enquiry report, which is the basis for imposing and modifying the penalty by the 2^{nd} respondent, is a ground to set-aside the entire proceedings?

2) Whether the misconduct attributed to the petitioners would amount to gross misconduct, as defined under the proviso to clause-IV of Memorandum of Settlement dated 15.06.1997? If so, the punishment imposed and modified against the petitioners by the 2^{nd} respondent is shockingly disproportionate to the gravity of misconduct? If so, the penalty imposed by the proceedings dated

01.02.2001 against the petitioners respectively is liable to be set-aside?

POINT No.2: Undoubtedly, the petitioners are working in Nalgonda District Central Co-operative Bank Limited and, noticing certain irregularities allegedly committed by the petitioners, a show-cause notice was issued calling for explanation of the petitioners and, accordingly, they submitted their explanations pleading not guilty for the alleged charges. However, after following necessary procedure, an enquiry was ordered against the petitioners. Dr. N. Muralidhar, Chief Project Officer, ICDP, 3rd respondent herein, after conducting necessary enquiry at the end of Page 39 Para 4, recorded the following finding:

> "4. There were no recorded reports of non receipt of loans by the members. Thus, it cannot be construed in the absence of contrary information that the loans have not reached the intended beneficiaries. Further, there were no recorded reports of mis-utilisation of loan. However, all the charged employees have violated the guidelines, policies and procedures communicated by the Head Office.
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> 5. All the charged employees have deposed that they have acted hastily only with an intention to achieve higher percentage of recovery of loans."

From the extracted portion in the enquiry report dated 27.07.1998, it is clear that the petitioners are hasty only with an intention to achieve higher percentage of recovery of loans. Prior to this, Sri G. Jayarama Rao was appointed as Enquiry Officer wherein he found the petitioners guilty for the gross misconduct and directed the Department to take suitable disciplinary action against the petitioners.

Based on the report of Sri N. Muralidhar dated 27.07.1998, the 2nd respondent imposed penalty reducing the pay to the minimum level. However, in the Appeal, it is modified to stoppage of 5 annual grade increments with cumulative effect. As seen from the material available on record, the petitioners are guilty of administrative lapses *i.e.,* violation of several guidelines, policies and procedures communicated by the Head Office and even in the letter dated 13.03.1999 addressed by the District Co-operative Officer to the Registrar of Co-operative Societies he informed that no benami loans have been noticed and misappropriation of funds took place but they are only guilty of administrative lapses; despite it, the 2nd respondent imposed major penalty. The only endeavour of learned counsel for the petitioners is that the alleged administrative lapses would only amount to “minor misconduct” and it would not fall within the ambit of “gross misconduct” as defined under the proviso to clause-IV of Memorandum of Settlement referred supra. As seen from the material available on record *i.e.,* the 1st report submitted by Sri G. Jayarama Rao, Assistant General Manager and Enquiry Officer, he found the petitioners guilty for all the charges recording his own finding in his undated report. However, a re-enquiry was ordered appointing Dr. N. Muralidhar as Enquiry Officer wherein he found that the petitioners guilty for violation of guidelines, polices and procedures.

In any view of the matter, the 2nd respondent initially imposed penalty of fixing the pay of the petitioners to their starting level for gross misconduct and the same was subsequently reduced to that of stoppage of 5 annual grade increments with cumulative effect. The report dated 27.07.1998 is clear that the petitioners are not guilty of gross misconduct but violated the circulars which is nothing but an administrative lapse. In such case, the petitioners cannot be said to have committed a gross irregularity which amounts to gross misconduct; at best, it is a minor misconduct. Clause-IV to proviso 6 of the Memorandum of Settlement, referred supra, defined the gross misconduct as follows:

"By the expression 'Gross Misconduct' shall be meant any of the following acts and omissions on the part of an employee:

a) engaging in any trade or business outside the scope of his duties except with the written permission of the Bank;
b) unauthorized disclosure of information regarding the affairs of the Bank or any of its customers or any other person connected with the business of the Bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the Bank;
c) drunkenness or riotous or disorderly or indecent behaviour in the premises of the bank;
d) wilful damage or attempt to cause damage to the property of the bank or any of its customers;
e) wilful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;
f) habitual doing of any act which amounts to 'minor misconduct' as defined below, 'habitual' meaning a course of action taken or persisted in notwithstanding that at least on these previous occasions censure or warnings have been administered or an adverse remark has been entered against him;
g) wilful slowing down in performance of work;
h) gambling or betting in the premises of bank;
i) Speculation in stocks, shares, securities or any commodity, whether on his account or that of any other person;
j) doing any act prejudicial to the interests of the Bank or gross negligence or negligence involving or likely to involve the bank in serious loss;
k) giving or taking a bribe or illegal gratification from a customer or an employee of the bank;
l) abetment or instigation or any of the acts or omissions above mentioned."

Whereas proviso to clause-V of the Settlement Award prescribed the penalties to be imposed against the employees found guilty of gross misconduct; proviso to clause-VI of the Settlement

Award defined the expression 'minor misconduct' and it reads as follows:

> "By the expression 'minor misconduct' shall be meant any of the following acts and omissions on the part of an employee:
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> a) absence without leave or overstaying sanctioned leave without sufficient grounds;
> b) unpunctual or irregular attendance;
> c) neglect of work, negligence in performing duties;
> d) breach of any rule of business of the bank or instruction for the running of any department;
> e) committing nuisance in the premises of the bank;
> f) entering or leaving the premises of the bank except by an entrance provided for the purpose;
> g) marked disregard of ordinary requirement or decency and cleanliness in person or dress."

In view of the definition of minor misconduct, breach of any Rules of business of the Bank or instructions for running any department is only a minor misconduct under the proviso to clause (VI) (d) of the Settlement Award. In the instant cases also, administrative lapses were attributed in the report dated 27.07.1998 submitted by Sri N. Muralidhar, the Enquiry Officer. In such case the omissions or commissions of the petitioners at best attract minor misconduct and for the minor misconduct punishment to be imposed is only warning or censure or making adverse remarks against them in their service registers or stoppage of increment for a period not later than 6 months under the proviso to clause-VII of the Settlement Award.

While imposing initial penalty of reducing the pay of the petitioners to their starting level, the 2nd respondent disagreed with the findings recorded by Sri N. Muralidhar, Chief Project Officer, ICDP-cum-Enquiry Officer in his report dated 27.07.1998 and it is bereft of any reasons. However, in Appeal, the 2nd respondent, in partial modification of his earlier order dated 14.09.2000 reduced the penalty to the extent of stoppage of 5 annual grade increments with cumulative effect but did not pass any reasoned order for not accepting the findings of the Enquiry Officer Sri N. Muralidhar. In any view of the matter, the misconduct attributed in the report is only minor misconduct which falls under the proviso to clause-(VI)(d) of the Settlement Award and the penalty to be imposed is only under the proviso to clause-VII of the Settlement Award. The 2nd respondent imposed major penalty of reducing the pay to the minimum level and the same was modified by imposing major penalty of stoppage of 5 annual grade increments with cumulative effect. The penalty imposed and modified by the 2nd respondent is contrary to the provisions of Settlement Award and, therefore, the punishment imposed on the petitioners is shockingly disproportionate and contrary to the provisions of Settlement Award; hence, the same is liable to be set-aside and, accordingly, set-aside holding this point against the respondents and in favour of petitioners.

POINT No.1: One of the major contentions of the petitioners is that the report submitted by Sri N. Muralidhar was not furnished to the petitioners; in fact, it was not the contention before the appellate authority *i.e.,* the 2nd respondent but for the first time such a ground is raised before this Court; however, prejudice that caused to the petitioners for not furnishing the same was shown and, in such case, it is not a ground in the absence of proof of any prejudice on account of the alleged violation of the principles of natural justice; therefore, failure to furnish a copy of the re-enquiry report submitted by Sri G. Jayarama Rao would not vitiate the entire proceedings and it is not a ground to set-aside the punishment. Accordingly, this point is answered in favour of respondents and against the petitioners.

In view of my foregoing discussion, I find that the misconduct attributed to the petitioners would only attract “minor misconduct” as defined under the proviso to clause-VI of the Settlement Award but not "gross misconduct" as defined under the proviso to clause-IV of the Settlement Award; thereby, the punishment to be imposed is any one of the punishment prescribed under the proviso to clause-VII of the Settlement Award. Hence, and in view of the finding recorded by Sri N. Muralidhar, Chief Project Officer, ICDP-cum-Enquiry Officer in his report dated 27.07.1998 and the letter addressed by the 6th respondent, dated 06.12.2000 the respondents 1 and 2 are directed to impose any of the penalties prescribed under the proviso to clause-VII of the Settlement Award against the petitioners for their administrative lapses and grant all consequential benefits to the petitioners.

Accordingly, with the above direction, these Writ Petitions are allowed.

In consequence, miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed. No order as to costs.

M. SATYANARAYANA MURTHY, J

Date: 19-01-2016.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION Nos.17871, 17900 AND 17938 OF 2001

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Date. 19-01-2016

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