THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No.3810 OF 2001

ORDER:

This Writ Petition was filed, under Article 226 of the Constitution of India, for a writ of Certiorari, to call for the records relating to the proceedings Ref.No.VC/Est/ DA-661533, dated 29.06.2000, of the first respondent and the consequential proceedings Ref.No.VC/Est/DA-66/1930 dated 07.11.2000 of the second respondent and to declare them as illegal and arbitrary and consequently to direct the respondents to treat the period of suspension of the petitioner from 03.05.1999 to 24.03.2006 as on duty with all consequential benefits.

2. On 29.10.2003, this Court while admitting the writ petition, granted interim direction in WPMP.No.24934 of 2003 to the respondents to consider the case of the petitioner for promotion as Assistant General Manager in any existing vacancy, as per the eligibility of the petitioner. Subsequently, on 02.01.2004, the *interim* direction granted by this Court had been vacated in WVMP.No.3964 of 2003 as cause had no longer been survived.

3. Heard the arguments of Sri Abhinand Kumar Shavili, learned counsel for the petitioner, and Sri Ramakrishna Rao, learned Standing Counsel for the respondents.

4. The brief facts of the case, according to the writ affidavit, are that the petitioner was initially appointed as Staff Assistant-cum-Assistant Cashier in the Andhra Pradesh State Cooperative Bank Limited in the year 1977 and he had joined duty on 02.11.1997. He was promoted as Manager on 01.08.1986. He was placed in-charge of Clearing Department on 03.10.1998, as the concerned Head Cashier had applied for half-day leave on that day. The duties of Cashier was to lookafter the payment counter and also the receipts counter and, for that purpose, there were two Assistants-cum-Assistant Cashiers. Sri Mohd. Yousuf was the in-charge of receipts counter and Sri P.Gopal was the in-charge of payments counter. Sri P.Gopal has accepted a receipt for Rs.1,60,000/- in the absence of Receipt Counter Clerk and issued counter-foil to the party and sent the pay slip to the petitioner. The petitioner, who was the in-charge of the Head Cashier, has entered the receipt in the Head Cashier's scroll and passed on the same to the Current Account Section to credit to the concerned account. For the said irregularity, a charge was framed for major misconduct and, in the enquiry, he was found guilty for his misconduct. The disciplinary authority imposed punishment of stoppage of three increments with cumulative effect and also without salary during the suspension period. The petitioner, aggrieved by the order of imposition of major penalty, challenged the same before the appellate authority. The appellate authority, on

consideration of the matter, had reduced the major penalty to that of stoppage of three increments without cumulative effect and to treat the suspension period as absence and directed to deduct the leaves in proportion to the period of suspension. The petitioner, still being aggrieved by the order of the appellate authority, has field the present writ petition.

5. It is further averred in para 5 of the writ affidavit as under:

> "5. It is respectfully submitted that the petitioner submitted explanation denying the findings of the enquiry officer and submitted the following with regard to the proposed punishment and treatment of suspension period.
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> Proposed punishment:
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> The alleged misconduct is treated as 'minor misconduct' in terms of SSR 44 and the punishment of 'stoppage of 3 increments with cumulative effect' is proposed in terms of SSR No.50. The maximum punishment for minor misconduct as per SSR 50 is 'stoppage of an increment' and that too 'without cumulative effect'. For these reasons the proposed punishment of 'stoppage of three increments with cumulative effect' is improportionate and violative of Service Regulations governing the service conditions of APCOB.
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> Treatment of Suspension Period:
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> The period of suspension was for 326 days (i.e., from 4.5.1999 to 24.3.2000). Treatment of suspension period as on leave and the balance as on extraordinary leave involves in double punishment. The Enquiry Officer has unduly prolonged the enquiry proceedings (for about 5 months) which was already brought to the notice of the Management. Even according to office, the alleged misconduct was 'minor misconduct' and as per SSR 51(b) the petitioner is entitled to full pay and allowances and to all other privileges for the period of suspension. Therefore, the decision to treat the period of suspension as on leave and the balance on extraordinary leave may be reviewed in the light of the nature of misconduct."

6. Learned counsel for the petitioner submitted that the disciplinary authority has not followed the prescribed procedure in imposing the punishment and therefore the petitioner is entitled for all the benefits. He further submitted that as per Regulation No.47 of the Andhra Pradesh State Cooperative Bank Limited Staff Service Regulations (for short, the Regulations), the punishment for grave misconduct is as follows:

> **"47. Grave Misconduct:**
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> The expression "Grave Misconduct" shall mean among others, any of the following acts and omissions on the part of any employee:
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> a) Engaging in any trade or business outside the scope of his duties.
> b) Unauthorized disclosure of information regarding the affairs of the bank or any of its constituents or any other person connected with the business of the Bank which is confidential or the disclosure of which is prejudicial to the interests of the Bank.
> c) Drunkenness or riotous or disorderly or indecent behaviour.
> d) Wilful insubordination or disobedience of any lawful and reasonable order of the Board or Committee or of an officer.
> e) Wilful damage or attempt to cause damage to the property of the Bank.
> f) Habitual doing of any act which amounts to 'Minor Misconduct' as defined below.
> 'Habitual' means a course of action taken or persisted in, notwithstanding that at least on a three previous occasions reprimand or warnings have been administered or an adverse remarks has been entered against him and communicated to him.
> g) Wilful slowing down in performance of work.
> h) Speculation in stocks, shares, securities or any commodity whatever on his account or that of any other person.
> i) Doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in loss;
> j) Giving or taking bribe or illegal gratification to or from any person or institution or an employee of the Bank;
> k) Abetment or instigation or any of the acts or omissions above mentioned.

7. As per Rule 50 of the Regulations, punishment for minor misconduct is as follows:

> **<u>"50. Punishment for minor misconduct:</u>**
>
> An employee found guilty of minor misconduct may
>
> a) be reprimanded or be warned, or
> b) have an adverse remark entered against him and communicated to him,
> c) be fined, or
> d) be stopped of an increment."

8. Learned Standing Counsel for the respondents submitted that though charges were framed against the petitioner under the provisions of minor penalty, the major penalty has been imposed on the petitioner and that was corrected by the appellate authority, who reduced the punishment of three increments with cumulative effect to that of three increments without cumulative effect. It has been fairly conceded by the learned Standing Counsel for the respondents that the petitioner is entitled for the backwages during the suspension period as the punishment imposed on him was a minor one and not a major one.

9. It is obvious to note that the appellate authority has considered the mistake of the disciplinary authority and corrected it by reducing the punishment from stoppage of three increments with cumulative effect to stoppage of three increments without cumulative effect, but however, erred in not treating the suspension period of the petitioner as on duty, though it was a case of minor punishment. No doubt, the disciplinary authority has every right to maintain

discipline with the Department, but it cannot go beyond the provisions made for the conducting of disciplinary enquiries as per the norms set by them.

10. In this connection, it is relevant to refer Regulation 50 (d) of the Regulations, which says that the punishment for minor misconduct, if the employee is found guilty, is stoppage of an increment. In this case, such a provision has been violated by imposing the punishment of stoppage of three increments with cumulative effect, for his minor misconduct. The petitioner has also been placed under suspension, so he would have definitely suffered stigma, because of his suspension. The petitioner not only suffered stigma due to his suspension, but has also suffered from loss of his salary during the period of suspension. Placing under suspension and not paying salary during that period amounts to additional punishment, which is not suggested in Regulation No.50 of the Regulations. It is a patent error committed by the disciplinary authority.

11. Having regard to the facts and circumstances of the case, it is appropriate to consider the request of the petitioner for treating his period of suspension for 326 days i.e., from 04.05.1999 to 24.03.2000, which period the learned Standing Counsel for the respondent did not dispute, as on duty. The respondents are directed to treat the said period of

suspension of the petitioner as on duty and to pay all consequential benefits accordingly.

12. With the above observations, the Writ Petition is allowed. No order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

G.SHYAM PRASAD, J

Date: 21.10.2016
TJMR