



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
ORDERS RESERVED ON 02.12.2016
ORDERS DELIVERED ON 14.02.2017
CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) No.1577 of 2013
and
WMP (MD) Nos.16991 and 16992 of 2016

K.Natarajan

.. Petitioner

Vs

1.The Secretary to Government,
Co-operation, Food and Consumers
Protection Department,
St. Fort George,
Chennai-9.

2.The Joint Registrar of Co-operative Societies,
Madurai Region,
Lady Doak College Road,
Chinachokkikulam,
Madurai 625 002.

3.The Special Officer,
Madurai District Central Co-operative Bank,
187, North Veli Street,
Madurai 625 001.

.. Respondents

Prayer: This writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the 1st respondent in G.O.No.89, dated 11.07.2012 and order of 3rd respondent dated 15.04.2009, confirmed therein, quash the same.

For Petitioner : Mr.S.Balamurugan

For Respondents : Mr.K.Guru (for R1 and R2)
Government Advocate
Mr.D.Senthil (for R3)

ORDER

[https://hcservices.eprints.org.in/hcservices/](https://hcservices.eprints.org.in/hcservices/eprints.org.in/hcservices/)
The objection levelled against the petitioner is that he was working as Accountant in Madurai District Central Co-operative Bank, head office branch. Charges against the petitioner is that a demand



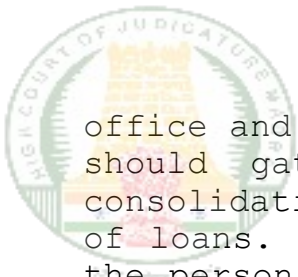
draft dated 16.01.2006 drawn and issued in favour of one M/s.Sri Jeyaprabha Jewellers for a sum of Rs.65,945/- was presented for collection on 17.01.2006 through State Bank of India which is the demand draft drawn on Madurai District Central Co-operative Bank purported to be issued by the Pudur Branch of MDCC Bank. The subject Demand Draft was passed on 17.01.2006 by the Head office Branch where the petitioner is working as Accountant and this Demand Draft has been passed by the petitioner without verifying the specimen signature of the signatories who are supposed to issue Demand Draft which subsequently found to be forged one by fabricating signature of the issuing authority and thereby the petitioner committed deliberate negligence and dereliction of duty which caused financial loss to the Bank.

2.This is the foremost reason of 3rd respondent for the negligence on the part of petitioner that the Pudur Branch was on weekly holiday (Monday) on 16.01.2006, but the subject Demand Draft bears the date of holiday and when this has been presented for collection on the next day, the petitioner has failed to ascertain the genuineness of the demand draft in question.

3.Therefore, charge memorandum was issued against the petitioner on 27.09.2006 and the petitioner offered his explanation on 30.05.2008 and thereafter domestic enquiry has been conducted and enquired into the charges levelled against the petitioner. After giving opportunity for cross examination, the witness was closed and the petitioner given evidence and produced 7 documents and on appreciation of evidences and witnesses on either side, the enquiry officer has filed his report dated 19.11.2008, holding that the charges levelled against the petitioner are not proved. But, the disciplinary authority/3rd respondent did not concur with the findings of enquiry report dated 19.11.2008 and issued a show cause notice on 07.02.2009 as the management has the reasons to believe that the petitioner has committed negligence and dereliction of duty even though the enquiry officer held the charges are not proved.

4.The petitioner has given an explanation on 02.03.2009 to the show cause notice of the 3rd respondent dated 07.02.2009. However, the 3rd respondent has imposed a punishment of stoppage of increment for next three months without cumulative effect by order dated 15.04.2009 against which the petitioner filed an appeal under Section 153 of Tamilnadu Co-operative Societies Act before the 2nd respondent/Joint Registrar, Co-operative Societies, Madurai Region. On 10.11.2009, the 2nd respondent has dismissed the appeal and confirmed the order of the 3rd respondent and the petitioner preferred revision against this order before the 1st respondent and both the orders were confirmed by the 1st respondent by the G.O.No.89, dated 11.07.2012.

5.The contention of petitioner is that, as per memo dated 27.02.1999 of the Madurai District Central Co-operative Bank Limited, Madurai-1 regarding responsibilities for the staff in head



office and branches, in respect of account selection, the accountant should gather particulars from different section and maintain consolidation demand, collection and balance register for all type of loans. In view of this responsibility casted on him, he is not the person to verify the specimen signature of subject Demand Draft and his duty is to gather and collect the demand draft and passing of the same, only vested with the Manager and Assistant Manager. Hence, he is not responsible and he has not passed the subject Demand Draft as alleged by the 3rd respondent.

6. Further, he contended that as against the surcharge proceedings initiated by the 3rd respondent against all 8 delinquent employees including this petitioner viz., the surcharge order in S.C.No.2/2007-2008 dated 05.12.2007, the petitioner alone preferred appeal in C.M.A.(CS)No.14 of 2008 on the file of the learned Principal District Judge, Madurai and the same was allowed on 31.01.2011 and the criminal proceedings also action dropped. Besides the petitioner contended that the surcharge proceedings and criminal proceedings are ended in favour of petitioner and the enquiry officer held that the charges levelled against the petitioner are not proved and even then, the 3rd respondent ought not to have imposed punishment on surmise and conjectures.

7. It is evident that the enquiry officer held the charges against the petitioner are not proved and surcharge proceedings also ended in favour of petitioner and criminal case also dropped by the police. When the 3rd respondent differing with the view of the enquiry officer, he should have assigned as to how he is disagreeing with the findings of enquiry officer and the impugned order of 3rd respondent is without placing and basing any materials, but on surmise and conjectures, the second show cause notice dated 07.02.2009 was issued by the 3rd respondent without setting forth valid reasons for their conclusion independently.

8. The petitioner placing reliance on the decision of Supreme Court reported in **(2006) 5 Supreme Court Cases 88**, by which it is held that there had been a preponderance of probabilities to prove the charges on the basis of materials on record and there cannot any rejection of relevant testimony of the witnesses only on the basis of surmises and conjectures. Further the petitioner relies upon a decision reported in **(2011) 4 Supreme Court 584**, whereby the Supreme Court held that if the findings are based on no evidence and perverse in departmental enquiries, the Court will interfere with the same.

9. It is well settled law that when the enquiry officer given his report for charges are not proved, the disciplinary authority must have given reason for his differ. But, in the present second show cause the 3rd respondent had not given any reason for the differ from the enquiry report, but they issued the 2nd show cause notice as the charges proved.



10. The above Judgments are squarely applicable to the present case on hand. In view of the above facts and circumstances of the case and it is well settled law that the impugned orders are liable to be set aside.

11. In the result:

(a) the writ petition is allowed by setting aside the order passed by the 1st respondent in G.O.No.89, dated 11.07.2012 and order of 3rd respondent dated 15.04.2009.

(b) the respondents are hereby directed to grant the monetary and service benefits to the petitioner;

(c) the said exercise to be completed within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

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+1 cc to Mr. S.BALAMURUGAN, Advocate, Sr.No: 8218

vsa/skn

MAS/RSK/SAR1:24.02.2017:4P-5C

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