NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 1053 of 2003

1. Rajnandgaon District Co-operative Bank Ltd., through Manager, District Central Co-operative Bank, Rajnandgaon.
2. Rajnandgaon District Co-operative Bank Ltd., through Cadre Committee, Rajnandgaon, Central Cooperative Bank, Rajnandgaon.

---- Petitioner

Versus

1. Narendralal Sahu, S/o Shri Ram Prasad Sahu, Ex.Samiti Sewak of District Co-operative Bank, R/o village Khapri, Dist. Rajnandgaon (CG) at present employee of Agricultural Service Co-operative Society Limited, Ghumka, Tah. And Dist. Rajnandgaon (CG).
2. M.P. State Co-operative Tribunal, Bhopal (MP).
3. Joint Registrar, Co-operative Societies, Raipur Division, Raipur (CG).
4. Deputy Registrar, Co-operative Societies, Durg (CG).

---- Respondent

For Petitioner	Shri P.K.C. Tiwari, Sr. Advocate with Shri Ashutosh Trivedi, Advocate
For Respondent No.1	Shri Rakesh Thakur, Advocate
For Respondent/State	Shri Rajendra Tripathi, Panel Lawyer

Order On Board

By

Prashant Kumar Mishra, J.

24/09/2018

1. The petitioner would assail the order passed by the Madhya Pradesh State Cooperative Tribunal, Bhopal (henceforth 'the Tribunal'), on 10-1-2002 dismissing the second appeal, which,

in turn, arose out of the orders passed by the Deputy Registrar, Cooperative Societies and the Joint Registrar, Cooperative Societies.

2. Indisputably, the respondent No.1 was a regular employee of the petitioner Bank and his services were governed under the provisions of the District Cooperative Central Bank Service Conditions Rules, 1966 (henceforth 'the Rules, 1966'). During the relevant period, the respondent No.1 was allegedly found to have received a sum of Rs.134/- from the borrowers which he was required to deposit with the Bank, but on his failure to do so a show cause notice was issued to him and preliminary enquiry was conducted wherein the respondent No.1 allegedly admitted the fact and deposited the amount. Treating this deposit of amount and his reply to the notice issued during the preliminary enquiry the Board of Directors of the Bank in its meeting dated 29-6-1976 decided to remove the petitioner from services without holding any enquiry.

3. The Deputy Registrar, Cooperative Societies dismissed the dispute raised by the respondent No.1 under Section 55 of the Chhattisgarh State Cooperative Societies Act, 1960 (henceforth 'the Act, 1960') holding that the respondent No.1 having admitted the fact of temporary misappropriation no enquiry was necessary, however, the Joint Registrar, Cooperative Societies allowed the appeal of the respondent No.1; set aside the order passed by the Deputy Registrar, Cooperative Societies; and

quashed the order of termination dated 30-6-1976. The Tribunal has maintained the order passed by the Joint Registrar, Cooperative Societies.

4. It is argued by Shri P.K.C. Tiwari, learned senior counsel appearing for the petitioner, that once the fact constituting the misconduct was admitted by the employee/respondent No.1 there was no need for a regular enquiry as he could not have made any other statement, once having admitted the guilt. He would submit that a regular enquiry would be conducted only when the employee denies the allegations levelled against him in the preliminary enquiry.

5. *Per contra*, Shri Rakesh Thakur, learned counsel appearing for the respondent No.1/employee would support the impugned order passed by the Tribunal.

6. In my considered opinion, the writ petition must fail for the reason that admission of a delinquent of the fact constituting the misconduct has to be in response to the charge sheet issued to him and there can be no admission of the guilt when the charge sheet itself has not been issued to the delinquent. Any admission of fact, prior to the charges being made known to the delinquent would not amount to admission because by that time the employee was not even aware as to what would be the charge against him.

7. Even otherwise, in the case at hand, the employee/respondent No.1 had deposited the amount of Rs.134/- with the Bank before the date on which the Board of Directors of the Bank resolved to remove the respondent No.1 from the service without holding enquiry. In a given case , the delinquent would have the opportunity to explain the circumstances under which the amount remained with him and the said explanation may or may not be acceptable to the disciplinary authority. Even where the explanation was not fully accepted, it would weigh with the authority to consider the proportionality of the punishment which the disciplinary authority might proceed to impose, depending upon the facts and circumstances of the case. In a given case the disciplinary authority may consider to impose minor punishment, if the explanation offered by the delinquent appears convincing.

8. It is precisely for this reason, a regular enquiry has been held to be mandatory under Rules 43 to 45 of the Rules, 1966 to impose any major punishment against a regular employee of the petitioner Bank.

9. In view of the above, the impugned order of the Tribunal dismissing the petitioner's appeal does not call for any interference, however, the petitioner Bank would be at liberty to institute a regular enquiry, if it so desires, and pass appropriate order depending on the findings recorded by the Enquiry Officer.

10. As an upshot, the writ petition is liable to be and is hereby dismissed. No order as to cost(s).

Sd/-

Judge
(Prashant Kumar Mishra)

Gowri