THE HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.17686 of 2001

O R D E R:

The petitioner who is working as Senior Assistant in the 1st respondent Corporation filed this Writ Petition being aggrieved by the impugned dismissal order dated 29.8.1998 passed in Rc.No.4242/93 Admn.7 by the 2nd respondent.

Brief facts of the case are that the petitioner worked as Senior Stores Assistant at Chittoor during the period from 18.6.1990 to 12.8.1993. He was kept in full additional charge of the post of Manager at Chittoor from 30.11.1991 to 10.6.1993. As some serious irregularities were noticed, a Charge Memo was issued to him alleging misappropriation of Corporation funds to the tune of Rs.6,68,666.25. While keeping the petitioner under suspension vide proceedings in Rc.No.4242/93 A-II C, dated 2.8.1993, the following (9) charges were framed against him:

> "**Charge No.1**: That Sri Ch.Dakshinamurthy, Manager (FAC) has colluded with Sri KPS Varma and got issued Binami loans in the name of tribals amounting to Rs.26,654.25 ps for his personal gain with mala fide intention and cause loss to the Corporation.
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> **Charge No.2**: That Sri Ch.Dakshinamurthy has issued binami loans and misappropriated a sum of Rs.10,800/-.
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> **Charge No.3**: That Sri Ch.Dakshinamurthy, Manager (FAC) GCC Ltd., Chittoor has miserably failed to discharge his legitimate duties as Manager FAC to failed to supervise properly the activities of the CCPAs with the result the CCPAs misappropriated loan collection of Rs.31,957.70.
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> **Charge No.4**: That Sri Ch.Dakshinamurthy has utterly failed in getting undistributed stocks of seed and fertilizers handed over by Sri KPS Varma with ulterior motive.

Charge No.5: That Sri Ch.Dakshinamurthy, the then Manager-in-charge arranged deliberately distribution of SAO loans of Rs.12,61,723/- during Rabi 1991-92 to 481 tribal loanees in 51 villages without submitting credit limits application and sanction of Corpn. Head Office with ulterior motive.

Charge No.6: That Sri Ch.Dakshniamurthy while working as Manager (FAC) Girijan Co-operative Corporation Branch Office, Chittoor has drawn Rs.2,11,000/- towards DRs purchase advance during April, 1993 to June, 1993 and retained the amount without any purchased and misappropriated with mala fide intention for his personal gain causing loss to the Corporation.

Charge No.7 : That Sri Ch.Dakshinamurthy, Sr. Stores Assistant failed to hand over shell tamarind stocks worth Rs.3,49,666.25 to his successor on 12.8.93 and misappropriated the amount for his personal gain with mala fide intention and caused monetary loss to the Corporation.

Charge No.8: That Sri Ch.Dakshinamurthy, Godown Clerk, MFP, has caused deficit worth of Rs.1,02, 146.80 as on 12.8.93 at the time of handing over charge of MFP godown and misappropriated the amount for his personal gain and mala fide intention.

Charge No.9: That he deliberately failed to handover the stock of DRs godown, to his successor Sri C.penchalaiah."

The petitioner sought extension of time for submitting the explanation. Finally, he submitted his explanation on 26.7.1996 to the Enquiry Officer. The Enquiry Officer conducted a detailed enquiry into the charges levelled against the petitioner. The petitioner was given ample opportunity before submitting the Enquiry Report by the Enquiry Officer on 29.8.1997 holding that the charges are proved. The disciplinary authority/2nd respondent based on the Enquiry Officer's report and the evidence available on record came to the provisional conclusion that the charges are proved and issued show-cause notice of dismissal to the petitioner and served on him on 3.3.1998. The petitioner submitted a representation to the show-cause notice. The explanation and the representation submitted by the petitioner requesting for *de novo* enquiry were rejected. The petitioner produced defence witnesses in the enquiry. Thereafter, the petitioner was dismissed from service and the period of suspension undergone by the individual was treated as *dies non* through the impugned order dated 29.8.1998. Being aggrieved by the same, the present writ petition is filed.

Sri P.Ramachander Rao learned counsel appearing for Sri P.B.Vijay Kumar, learned counsel for the petitioner, would contend that in the enquiry, no opportunity was given to the petitioner and he was not permitted to cross-examine the witnesses. He would further contend that the statements of the witnesses were not recorded in his presence by furnishing copies of their statements and the enquiry was not properly conducted, opportunity was not given and principles of natural justice are violated. The Enquiry Report submitted based on the statements of the witnesses is vitiated and the same could not be relied upon to impose the punishment. He made representation to the 2nd respondent on 15.3.1998 to provide him opportunity to cross examine the witnesses and to conduct *de novo* enquiry. He preferred appeal against the dismissal order. The appeal was considered by the appellate authority and rejected on 21.6.2000. Learned counsel would further contend that the appeal which was rejected by confirming the dismissal order is illegal and liable to be set aside.

Sri P.V.V.Satyanarayana, counsel for the respondents, would contend that the petitioner while working as Senior Stores

Assistant committed serious misconduct of misappropriation of the funds of the Corporation for which a charge memo dated 23.9.1994 was issued to the petitioner framing (9) charges. The petitioner has not submitted any explanation to the charge memo and dragged the matter for two years and filed his explanation on 26.7.1996. Thereafter, Enquiry Officer was appointed and a detailed enquiry was conducted. In the enquiry, petitioner was given ample opportunity to cross examine the prosecution witnesses but he failed to produce any witness. The Enquiry Officer, based on the evidence available on record before it, came to the conclusion that the charge Nos. 1, 3 5, 6, 7 and 9 were proved and recommended for dropping the charge Nos.2, 4 and 8. The disciplinary authority came to the provisional conclusion that the charges are proved and the petitioner is liable to be dismissed from service. Accordingly, show-cause notice dated 7.2.1987 was issued to the petitioner.

Learned counsel for the respondents would also contend that a preliminary enquiry was conducted by the Deputy Registrar/Vigilance Officer and from the report dated 16.07.1993 it was found that maximum loans that are stated to be sanctioned by the petitioner and another Credit-cum-Procurement Assistant (CCPA) were in the name of non-living and benami and who are not residing at the loaning villages. Some loans were issued to persons, who have no agriculture land and loans were given twice to a single person. Some loans were issued in the name of some farmers, who have denied receipt of loan amounts. The financial irregularities also consist of extending huge advances to CCPAs without clearing the earlier advances giving scope to temporary misappropriation of the Corporation funds by them. Further, the petitioner also resorted to fabrication of records in purchase and sale of tamarind stocks. The stocks were sold without raising sale bills and the sale proceeds were not remitted to the office. Similarly, the petitioner failed to remit the loan recovered amounts into the office by the CCPA. Hence, the petitioner was kept under suspension pending detailed enquiry vide proceedings dated 02.08.1993. A charge memo dated 23.09.1991 was issued to the petitioner framing 9 charges for misappropriation of the Corporation amounts. But, the petitioner after dragging the matter for more than two years, filed explanation to the charge memo on 26.07.1996. Being not satisfied with the explanation, an Enquiry Officer was appointed. The Enquiry Officer conducted a detailed enquiry wherein the petitioner was given opportunity to defend his case. The Enquiry Officer examined the witnesses and opportunity was given to the petitioner to cross-examine the witnesses. Finally, the Enquiry Officer submitted his report holding that charge Nos.1, 3, 5, 6, 7 and 9 are proved while recommending for dropping of charge Nos.2, 4 and 8. The disciplinary authority on considering the Enquiry Officer's report in detail, issued a show cause notice dated 07.02.1997 to the petitioner asking to explain as to why he should not be dismissed from service duly enclosing the copy of the Enquiry Officer's report. Petitioner submitted representation on 15.03.1998 and sought for re-enquiry on the ground that the Enquiry Officer has not given proper opportunity in the enquiry to cross examine the witnesses. It is to be seen that the petitioner has not examined any witnesses on his behalf as given in form-I. Petitioner was given telegram on 03.04.1998 directing him to produce witnesses whom he wants to examine on his behalf on 24.04.1998. But, the telegram could not be served on the petitioner since he was on leave up to 04.04.1998 and extended up to 30.04.1998 as he was suffering from back pain. Thereafter, the General Manager has issued a memo asking the petitioner to appear along with his witnesses on 14.05.1998, which was also not served on the petitioner as he extended leave up to 31.05.1998. Ultimately, telegram communication was served on the petitioner on 24.05.1998 asking him to produce his witnesses on 10.06.1998, but the petitioner instead of producing the witnesses on 10.06.1998, submitted a representation dated 22.06.1998 seeking *denova* enquiry without. Thus, the petitioner resorted to drag on the matter on one pretext or the other. The disciplinary authority dismissed the petitioner from service on 29.08.1998, against which, the petitioner preferred an appeal before the third respondent-Board of Directors. The same was considered and rejected confirming the order of the dismissal order passed by the second respondent. Hence, the petitioner was given sufficient opportunity before the Enquiry Officer and the enquiry has been conducted as per the procedure enumerated under the Rules, but the petitioner failed to utilize the opportunity afforded to him and requested for *denova* enquiry and the same was rejected by the disciplinary authority. He further contended that the arbitration proceedings under Section 61 of the A.P. Co-operative Societies Act were initiated before the Co-operative Sub Registrar/ Arbitrator, who passed award against the petitioner for an amount of Rs.1,50,159.75 ps against which an amount of Rs.21,102/- has already been recovered from the petitioner. The petitioner is involved in serious financial irregularities by advancing fictitious loans and misappropriation of huge amounts of the Corporation. Hence, there is no irregularity or illegality in dismissing the petitioner from service and the punishment of dismissal from service commensurate with the proved misconduct.

For the reasons stated supra and in considered view of this Court, the petitioner was dismissed from service duly following the procedure by conducting enquiry giving opportunity to the petitioner. Based on the Enquiry Officer's report and on perusal of the material available on record, the disciplinary authority provisionally came to the conclusion that the charges are proved and a show cause notice was issued to the petitioner asking as to why he should not be dismissed from service. But, the petitioner failed to submit any explanation. Hence, there is no procedural irregularity in imposing punishment of removal from service. Charges proved in the enquiry are serious in nature. There is no perversity finding in the Enquiry Officer's report and in dismissing the appeal. Hence, this Court finds no reason to interfere with the dismissal order. Hence, the writ petition is dismissed.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

12th July, 2018
sur/lkv