IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.16526 OF 2012

P.Powlose ... Petitioner

Vs.

1.The Government of Tamil Nadu
Represented by its Secretary to Government
Co-operative, Food and Consumer Care Dept,
Fort St. George, Chennai - 600 009.

2.The Joint Registrar of Co-operative Societies
Kanyakumari Region at
Nagercoil.

3.The Deputy Registrar of Co-operative Societies
Thuckalay,
Kanyakumari District.

4.The Special Officer
No.25, Manakkavilai Primary Agricultural
Co-operative Bank Ltd.,
No.Y-25, Manalikkari and Post 629 164.
Kalkulam Taluk, Kanyakumari District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondents, especially the then President of the fourth respondent dated 14.05.2000 by way of advertisement in newspaper, and subsequently serving a copy of removal from service pursuant to an order made in W.P.No.4657/2001, dated 12.03.2001 as per his proceedings having "NIL" reference dated 27.03.2000, as confirmed by the first respondent pursuant to his proceedings made in G.O.Ms.(2D) No.71, Co-operative, Food and Consumer Care (C.N.2) Department, dated 04.11.2011 after setting aside, and remitting back his previous proceedings made in G.O.(2D) No.80, Co-operative, Food and Consumer Care (C.N.2) Department, 26.08.2006 by order made in W.P.No.22283 of 2007 dated 22.08.2011 directing him to pass fresh orders after considering all the points urged for consideration and quash the same as null and void, illegal and invalid and consequently directing the respondents, especially the fourth respondent to issue paper order, reinstating the petitioner in service disbursing him all nature of monetary benefits forthwith.

For Petitioner : Mr.A.Amal Raj

For Respondents: Mr.L.P.Shanmugasundaram
Special Government Pleader
(Co-op)

O R D E R

This writ petition is directed against the order of the first respondent conforming the dismissal order issued by the fourth respondent and to reinstate him in service.

2. The petitioner was originally appointed as Attender in the fourth respondent Co-operative Bank on 01.12.1969. He was promoted as Senior Clerk. On 16.02.1999, the fourth respondent framed two charges against the petitioner for the misconduct of making false entries in the jewel loan register and for securing jewel loan in the name of his wife without actually pledging any jewel and thereby, misappropriating a sum of Rs.40,000/-. Thereafter, the charges were modified and a comprehensive charge memo dated 17.06.1999 was issued comprising of about 9 charges. The petitioner was kept under suspension with effect from 30.03.1999. In the meanwhile, the third respondent initiated surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 vide order dated 03.09.1999. In the surcharge proceedings, the petitioner was exonerated, whereas the other officials connected with the loan section, namely, Cashier, Appraiser, Secretary and Peon were found responsible for the loss and misappropriation caused to the Society and the money sought to be secured from them. Thereafter, a domestic enquiry was conducted pursuant to the charges framed. The Enquiry Officer in his report dated 25.11.1999 found all the charges proved and objection to the enquiry report was called from the petitioner and the fourth respondent, after considering the objection raised by the petitioner, dismissed the petitioner from service. Against which, the petitioner filed an appeal and revision before the first and second respondents. The order of dismissal was confirmed in the impugned proceedings passed by the first

respondent, against which, the petitioner is before this Court.

3. It is pertinent to note that in the domestic enquiry, charge Nos.2,3,4,5 and 9 alone were proved and other charges were held not proved. It is the contention of the petitioner that the Enquiry Officer has held the charges proved on the basis of the records. But, none of the documents were presented and proved by letting in any oral evidence. The Enquiry Officer has also held that there were few charges, on which, the Management representative did not care to give evidence, as as result of which, the charges were not proved.

4. Controverting the above facts, the learned Additional Government Pleader would vehemently contend that three proceedings were initiated against the petitioner viz., the disciplinary action by the fourth respondent; criminal action through Police and surcharge proceedings by the third respondent. In the domestic enquiry, charges were proved and subsequently, the petitioner was dismissed from service. It is confirmed in appeal and in the revision filed by the petitioner. So far as the surcharge proceedings are concerned, the other officials of the Society were held responsible and the money was recovered from them and in the criminal proceedings, the petitioner was acquitted. Since there are three independent proceedings, the petitioner cannot interconnect all these things and contend that the dismissal order passed by the fourth respondent is improper. In fact, the petitioner had participated in the enquiry proceedings and submitted his explanation and hence, now he cannot turn around and contend that the enquiry proceeding is improper and illegal. Therefore, it is submitted that the order passed by the first respondent confirming the dismissal of the petitioner need not be interfered.

5. Heard the submissions made on either side and perused the materials available on record.

6. On perusal of the records produced before this Court, it is seen that the charge memo was originally issued for two charges on 16.02.1999 and later, it was revised incorporating various other charges and revised charge memo was issued on 17.06.1999. On the basis of the enquiry conducted, the charges framed against the petitioner was held to be proved and the fourth respondent has imposed the punishment of dismissal against the petitioner. It is to be seen as to whether the fourth respondent is the President of

the Society and he is competent to pass the dismissal order and as to whether the enquiry was conducted strictly in adherence of principles of natural justice.

7. By-Law No.12(b) of the Special By-Laws relating to Service Conditions of Employees of the fourth respondent-Cooperative Bank specifies the authority competent to impose punishment, which reads as follows:-

> "12. (b)
> Any member of the establishment may, for good and sufficient cause, be punished in one or other of the following ways in the discretion of the authority competent to award the punishment as shown in the table below:-

Rank of the employee punished	Authority comptent to			
	Censure or fine	Withhold increments	Suspend or reduce	Dismiss
Secretary or Manager	President	President	Sub Committee	Sub Committee
All other employees	Secretary	Do.	Do.	Do.

8. The petitioner, being a Senior Clerk, the authority competent to issue the order of punishment of dismissal from service is the Sub-Committee. But, the order of dismissal was issued by the President of the Society, in his individual capacity, and not by the Sub-Committee, as specified under By-Law 12(b) of the Special By-Laws of the Society. A reading of the dismissal order also does not specify any specific delegation of power given by the Sub-Committee to the President to impose such punishment. On that ground, it is very clear that the order passed by the President of the fourth respondent Society is without jurisdiction. The impugned order passed by the first respondent would justify the order by stating that as per By-Law No.13 of the Special By-Laws, the President is empowered to issue dismissal order against any or all the employees of the Society other than Secretary and Accountant, whereas, By-Law No.13 reads as under:

> "13. Every employee of the bank who has been, confirmed in his post shall be required to contribute to the employee's provident fund of the bank, in accordance with the rules framed by the Board of

Directors for the purpose."

By-Law No.13 of the Special By-Laws deals with contribution of provident fund and the same is nothing to do with the power of the President to remove the employees of the Cooperative Society.

9. Secondly, it has to be seen as to whether the enquiry was conducted properly in adherence with principles of natural justice. Opportunity to peruse the records relied on by the Enquiry Officer and copies of certain records were not given to the petitioner. But, it is recorded that all the relevant records were shown to him. However, the petitioner has failed to submit his explanation to all the charges.

10. It is relevant to refer para 4 of the enquiry report, which reads as under:

> "4.The management was represented by the Secretary of the Bank. No other witness was examined on the side of the Management. There were a few charges on which oral evidence were needed. The management representation did not care in give such evidence. As a result these charges were not proved."

Therefore, it is very clear from the enquiry report that the charges were held to be proved only on the basis of the records. As contended by the learned counsel for the petitioner, none of the documents were produced and marked by the Management through their witnesses. Even though the requirement of marking these documents through oral evidence was categorically recorded by the Enquiry Officer, it was not done by the Management representative. Recording that the Management representative did not care to give such evidence by itself would show that the charges attributed against the petitioner were not proved. In that event, it has to be seen as to whether preponderance of probabilities was there to hold the charges proved or not. The basic requirement of providing opportunity to disprove the charges shall be given to the delinquent. Unless the documents are marked before the Enquiry Officer through witnesses, the petitioner would be deprived of disproving them by cross examining such witnesses.

11. In the instant case, the gravamen of the charge is that the petitioner had made false entries in taking

jewel loan in the name of his wife, without actually pledging any of the jewels. So far as this charge is concerned, the explanation of the petitioner was that he was not aware of such transaction at all. In that event, the onus is on the Management to prove that the petitioner had actually involved in this misconduct. Curiously, domestic enquiry was conducted in respect of other employees concerned with the Loan Section by the Special Officer of the Society. In so far as one of the Cashiers namely Messiah Dhas, the fourth respondent imposed the punishment of dismissal on 05.04.2000. However, surprisingly, he was reinstated in service by an order dated 09.10.2000 by the very same President. Again, in respect of another employee by name Vincent, considering his past conduct, the suspension period was stated as punishment of stoppage of increment and he was reinstated in service. Likewise, punishment of stoppage of increment was imposed in respect of two other employees. Therefore, the totality of the circumstances show that the first enquiry held against the petitioner is not in conformity with the principles of natural justice and the charges were held to be proved on the basis of the explanation submitted by him and not on the basis of the evidence adduced by the Management. Secondly, for the very same set of charges, different punishments were imposed on different officers. Thirdly, even though there is a clear finding in the surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act that the other delinquent officers were responsible for the misappropriation, they were reinstated in service by the fourth respondent, whereas the petitioner alone was singled out and dismissed from service. If the petitioner did not cause loss to the Society, it goes without saying that he was not involved in any misconduct on the charges framed.

12. In support of his contention, the learned counsel for the petitioner would rely on the following judgments:

(i) Judgment of the Hon'ble Supreme Court in TATA ENGINEERING & LOCOMOTIVE CO. LTD., VS. JITENDRA PD. SINGH AND ANOTHER [2001 (10) SCC 530]

(ii) Judgment of the Hon'ble Supreme Court in SHER BAHADUR VS. UNION OF INDIA AND OTHERS [2002 (7) SCC 142]

(iii) Judgment of the Hon'ble Supreme Court in STATE OF UTTARANCHAL AND OTHERS VS. KHARAK SINGH [2008 (8) SCC 236]

(iv) Judgment of the Hon'ble Supreme Court in ROOP SINGH NEGI VS. PUNJAB NATIONAL BANK AND OTHERS [2009 (2) SCC 570]

(v) Judgment of this Court in MOHAMMED ABDUR RAHEEM VS. STATE BANK OF INDIA [2011 (7) MLJ 976]

(vi) Judgment of this Court in A.THANGAIAN VS. SUPERINTENDENT OF POLICE [2012 (5) MLJ 961]

(vii) Judgment of the Hon'ble Supreme Court in SHIV NANDAN MAHTO VS. STATE OF BIHAR AND OTHERS [2013 (11) SCC 626]

(viii) Judgment of the Hon'ble Supreme Court in DEEPALI GUNDU SURWASE VS. KRANTI JUNIOR ADHYAPAK MAHAVIDYALAYA [2013 (10) SCC 324]

13. The Hon'ble Supreme Court in TATA ENGINEERING AND LOCOMOTIVE CO. LTD., VS. JITENDRA PD. SINGH AND ANOTHER [2001 (10) SCC 530] has categorically held that when the workmen were found guilty on almost identical charges, giving different punishments will amount to discrimination and different yardsticks cannot be adopted on one particular workman and it amounts to denial of justice. In the present case on hand also, when the other employees, holding the post of Cashier and Secretary were let off with recovery of money and reinstated in service, the petitioner alone, who was exonerated from those surcharge proceedings, cannot be singled out and imposed with the punishment of dismissal from service.

14. The Hon'ble Supreme Court in STATE OF UTTARANCHAL AND OTHERS VS. KHARAK SINGH [2008 (8) SCC 236] has observed as under:

"20.A reading of the enquiry report also shows that the respondent herein was not furnished with the required documents. The Department's witnesses were not examined in his presence. Though the respondent who was the writ petitioner specifically stated so in the affidavit before the High Court in the writ proceedings, those averments were specifically controverted in the reply affidavit filed by the Department. Mere denial for the sake of denial is not an answer to the specific allegations made in the affidavit. Likewise, there is no evidence to show that after submission of the report by the enquiry officer to the disciplinary authority, the respondent herein was furnished with the copy of the said report along with all the relied upon documents. When all these infirmities were specifically pleaded and brought to the notice of the appellate authority (i.e. Forest Conservator) he rejected the same but has not pointed out the relevant materials from the records of the enquiry officer and disciplinary authority to support his decision. Hence, the appellate authority has also committed an error in dismissing the appeal of the respondent."

21.After taking note of all the infirmities and in the light of the various principles enunciated by this Court, the High Court has rightly interfered and quashed the orders dated 5-3-1986 passed by the Divisional Forest Officer, Haldwani as well as order dated 27-4-1991 passed by the Conservator of Forests, Western Circle, Nainital."

15. The Hon'ble Supreme Court in SHER BAHADUR VS. UNION OF INDIA AND OTHERS [2002 (7) SCC 142] has observed as under:

"7.It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Sh.R.A.Vashist, Ex. CVI/N.Rly., New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ex.P-1, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside."

16. From the above, it could be seen that the Management has not sufficiently given evidence to prove the charges of the petitioner and on the other hand, the charges were held to be proved, finding fault on the explanation submitted by the delinquent. Therefore, this Court is of the considered opinion that the impugned order of dismissal is vitiated for non-adherence of principles of natural justice and also for lack of jurisdiction on the President to impose capital punishment as per By-Law No.12 (b) of the Special

By-Laws of the fourth respondent Society. In such circumstances, the impugned order is liable to be set aside and accordingly, set aside.

17. Since the petitioner has attained the age of superannuation and he is about 70 years of age now, I do not think that any useful purpose will be served by remitting the matter and initiating fresh proceedings against the petitioner. Since the punishment order is set aside on technical grounds of jurisdiction and violation of principles of natural justice and since it is not feasible to conduct a fresh enquiry in the interest of justice, I deem it fit to restrict half of the backwages.

18. In these circumstances, even though I restrict payment of backwages to the tune of 50%, the respondents are directed to issue notional order of reinstatement and pay 50% of the backwages to the petitioner from the date of dismissal till the date of superannuation within a period of twelve (12) weeks from the date of receipt of a copy of this order.

19. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

To

1.The Secretary to Government
Government of Tamil Nadu
Co-operative, Food and Consumer Care Dept .
Fort St. George,
Chennai - 600 009.

2.The Joint Registrar of Co-operative Societies
Kanyakumari Region at
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3.The Deputy Registrar of Co-operative Societies
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+1cc to Mr.A.Amalraj, Advocate, S.R.No.103601
+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.103958
+1cc to the Spl Government Pleader(CO-OP, S.R.No.104480

W.P.NO.16526 OF 2012

PP(CO)
CB(03/08/2020)