IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.03.2019

Delivered on: 08.04.2019

C O R A M

The Honourable Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.19110 of 2006

R.Swamikannu ... Petitioner

Vs

The Managing Director,
Tamil Nadu Adi Dravidar Housing
& Development Corporation Ltd.,
Thirumangalam,
Chennai-600 101. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in his ref.No.A5/192/99 dated 9.5.2006 and quash the same and reinstate the petitioner in service.

For Petitioner : Mr.M.Ramalingam for
Mr.A.Muthuraman

For Respondent : Mr.S.Saravanan

O R D E R

This Writ Petition has been filed seeking for a Writ of Certiorari cum Mandamus to call for the records of the respondent in reference No.A5/195/99, dated 09.05.2006, quash the same and reinstate the petitioner in service.

2.The salient facts relating to this writ petition are as follows:

The petitioner states that he joined the services of the Tamil Nadu Adi Dravidar Housing and Development Corporation [TAHDCO], Madurai, on 31.03.1975 in the Construction Department and that he was transferred thereafter to the Development Department as an Accountant without providing him proper training. He further states that he discharged his duties under two Assistant Managers and one Manager. He further states that when loans are applied for, certain certificates such as Community Certificate, Income Tax Certificate, Family Card and the Photo should be submitted with the applications and that such completed applications would be forwarded to the Selection Committee. On receipt of the applications, the Selection Committee would prepare a nodal order and recommend the applications to the nodal bank for sanction of the loan. The nodal bank thereafter releases the loan amount. It is also the case of the petitioner that the Branch Manger, Canara Bank, Madurai, released funds to Lakshmi Vilas Bank, Melur, on the basis of false nodal orders and that the Branch Manager, Lakshmi Vilas Bank, Melur, disbursed the TAHDCO subsidy without verifying the genuineness of the nodal order. Consequently, on 15.08.1999, the District Manager, TAHDCO, Madurai, gave a complaint to the Police against the Branch Manager, Canara Bank, Madurai and the Branch Manager, Lakshmi Vilas Bank, Melur, for alleged criminal breach of trust and cheating. In the said complaint, the allegation was that the Branch Manager, Lakshmi Vilas Bank had admitted the offence and that on admitting the same, he agreed to return the entire amount within three days. According to the petitioner, no allegations were made against the petitioner in the FIR. The petitioner further states that Mr.Narayanan, Branch Manager of Lakshmi Vilas Bank, Melur, admitted his liability and repaid a sum of Rs.3,20,000/- with an undertaking to pay the remainder.

3.In these circumstances, disciplinary proceedings were initiated against the petitioner and the petitioner was served with a copy of the charge memo dated 15.02.2002. the main charge against the petitioner was that he did not maintain and verify the monthly accounts properly and that he did not tally amounts in the Office Cash Book and Bank Pass Book. Pursuant to the charge memo, an enquiry was conducted by the General Manger [Development and Administration] and the enquiry report dated 19.08.2005 was submitted on the conclusion of the enquiry holding that five charges had been proved. Later, by proceedings dated 26.08.2005, a show cause notice was issued to the petitioner requesting him to explain as to why he should not be dismissed from service on the basis of the enquiry report. Notwithstanding the explanation dated 22.09.2005 submitted by the petitioner to the show cause notice, the petitioner was dismissed from service by order dated 09.05.2006. The petitioner further states that not a single document was produced to prove the complicity of the petitioner in the commission of misappropriation and no oral evidence was adduced to prove the case against the petitioner.

4.The case of the respondent is that the criminal case was registered on 16.08.1999 before the Madurai Crime Branch Police in Crime No.37 of 1999 under Sections 409 and 420 of IPC for criminal misappropriation and cheating. According to the respondent, the FIR dated 16.08.1999 states that the Bank

Officials and TAHDCO staff colluded to misappropriate funds to the extent of Rs.9 lakhs. It is also stated that the criminal case is pending adjudication. The respondent further stated that the petitioner was suspended on 25.08.1999, charges were framed on 15.02.2002 and that the departmental enquiry was conducted on 07.02.2003. According to the respondent, the petitioner admittedly failed to compare the TAHDCO Cash Book with the Bank Pass Book and even after discovering the discrepancy between the Cash Book and Bank Pass Book, he did not inform the superior officials about the same. On receipt of nodal proceedings, as per the respondent, the Bank Reconciliation Statement was intentionally not prepared properly.

5.The respondent further states that five charges were framed against the petitioner as set out in Paragraph-6 of the counter and that all five charges were proved on enquiry. He further submits that the enquiry was duly conducted and that the petitioner participated in the enquiry and was provided a personal hearing. Therefore, it is submitted that the petitioner is liable to be punished for proven misconduct and that the punishment meted out to the petitioner is appropriate in the facts and circumstances of the case.

6.The affidavit, counter affidavit, documents and oral submissions of the parties have been carefully considered.

7.The averment of the petitioner that he was not named in the FIR is not denied by the respondent. Further the averment that the Branch Manager of Lakshmi Vilas Bank, viz., Mr.Narayanan, admitted his liability and repaid a sum of Rs.3,20,000/-, out of the total sum of Rs.9 lakhs, is also not denied by the respondent. From these facts, it is clear that the petitioner did not misappropriate the sum of Rs.9 lakh and the act of misappropriation was actually done by the Branch Manager of Lakshmi Vilas Bank at the relevant point of time. This leads to the question as to whether the petitioner colluded with and aided and abetted the act of misappropriation by the Branch Manager of Lakshmi Vilas Bank, for this purpose, the Impugned Order dated 04.05.2006 should be carefully examined.

8.The five charges against the Petitioner are set out herein. The first charge against the petitioner was that he failed to tally the Canara Bank Pass Book with the Cash Book of TAHDCO and that he did not carry out proper reconciliation on monthly basis and thereby caused a loss of Rs.9 lakhs to TAHDCO. The second charge is that the petitioner aided and abetted the misappropriation of a sum of Rs.9 lakhs through the issue of four demand drafts of Canara Bank. The third charge relates to the preparation of false nodal orders, as a result of which Rs.9 lakhs was misappropriated. The fourth charge is that the petitioner did not carry out his duties responsibly inasmuch as he did not tally the accounts with the Cash Book properly and thereby failed to prevent the offences. The fifth charge is with regard to breach of trust/loyalty by committing the offences as per articles of charges 1 - 4. In this regard, it is relevant to take a broad look at the kind of evidence that was adduced to prove these charges. In the instant case, it is clear from the charge memo dated 15.02.2002 that no witnesses were proposed to be examined on behalf of the respondent. It is also clear that it was proposed to rely upon only three documents, namely, the FIR dated 16.08.1999, the letter dated 05.01.1999 of the Madurai District Manager and paragraph-17 of the Zonal Accountant's report dated 25.06.1999. The Canara Bank Pass Book, the TAHDCO Cash Book, the nodal orders, demand drafts and bank reconciliation statements were not produced as documents. In fact, by reply dated 03.04.2002, the petitioner stated that the charges cannot be proved without witnesses. Further, in response to Annexure-3 of the Charge Memo, the petitioner stated that important documents such as the cash register, bank pass book, false nodal orders, debit invoice, police investigation report were not produced and that without these basic documents and without witnesses, the enquiry cannot be proceeded with and, therefore, the charges should be withdrawn. Even after the receipt of this response, the respondent did not produce these documents or lead oral evidence. In the absence of those material documents and witnesses, it is not possible to prove the charges of aiding and abetting the misappropriation or even the charge of negligence in the performance of duties.

9.In the exercise of supervisory jurisdiction under Article 226 of the Constitution of India, this Court would not ordinarily reappraise evidence. Nevertheless, the sufficiency of evidence is required to be considered in order to ascertain whether there are errors apparent in the Impugned Order. It is true that the standard of proof that is required in disciplinary proceedings is different from that required in criminal proceedings inasmuch as it is not necessary to prove the charges beyond all reasonable doubt. Nevertheless, it is necessary to establish the charges on a preponderance of probability. In other words, there should be sufficient evidence to conclude that the probability that the charges are true is greater than the probability that the charges are untrue. In this regard, it is relevant to refer to the judgment of the Hon'ble Supreme Court in MAHARASHTRA STATE BOARD OF SECONDARY AND HIGHER SECONDARY EDUCATION V. K.S.GANDHI & OTHERS reported in (1991) 2 SCC 716, in which it was held as follows:

> "37.It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not

apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities tending to drawn an inference that the fact must be more probable. Standard of proof cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries."

10.It is also relevant to refer to the judgment of the Hon'ble Supreme Court in SHER BAHADUR V. UNION OF INDIA (2002) 7 SCC 142, wherein, at paragraph 7, it was held as follows:

> "the expression "sufficiency of evidence" postulates the existence of some evidence which links the charge officer with the misconduct alleged against him... 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."

11.The principles that can be gleaned from these judgments in respect of departmental enquiries are as follows:

> (i) The principles of natural justice should be followed.
>
> (ii) The standard of proof that applies is preponderance of probabilities as in the case of civil proceedings.
>
> (iii) Ordinarily, the Court would not reappraise evidence in judicial review.
>
> (iv) Nevertheless, the evidence adduced should link or be capable of linking the charged officer with the misconduct alleged on preponderance of probabilities. If the evidence adduced by the Management does not patently or on the face of it, link or be capable of linking the charged officer with the misconduct, interference in judicial review would be warranted.

12.In the instant case, there is neither documentary nor oral evidence to show that the petitioner colluded with the officials of Canara Bank, TAHDCO and Lakshmi Vilas Bank and intentionally failed to maintained accounts properly so as to aid and abet the misappropriation of the aggregate sum of Rs.9 lakhs. As stated earlier, none of the material documents such as, the bank pass book, the TAHDCO cash book, the bank reconciliation statement, nodal orders, etc., were marked as exhibits and oral evidence of witnesses was also not adduced. In the absence of the said evidence, it is not possible to conclude that the petitioner was complicity in the misappropriation. An additional factor is that the petitioner was not named in the FIR in connection with the act of cheating and misappropriation and the Branch Manager of Lakshmi Vilas Bank admitted liability. Therefore, the impugned order suffers from errors apparent on the face of the record and is liable to be interfered with in exercise of supervisory jurisdiction by this Court. Consequently, the dismissal from service of the petitioner is set aside. In view of the fact that the petitioner attained the age of superannuation in the interregnum, there shall be a notional reinstatement. However, the Enquiry Report and the Impugned Order disclose that the petitioner was not diligent in the performance of duties and it is a fact that he did not carry out any work after dismissal. Therefore, the petitioner would not be entitled to arrears of salary and other benefits from the date of notional reinstatement until retirement but would be entitled to retirement benefits.

13.Accordingly, this writ petition is allowed subject to the above observations but there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Managing Director,
Tamil Nadu Adi Dravidar Housing
& Development Corporation Ltd.,
Thirumangalam,
Chennai-600 101.

+1 cc to Mr.A.Muthuraman, Advocate Sr.No.34194
+1 cc to Mr.S.Saravanan, Advocate Sr.No.34143

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