IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WRIT PETITION NO.19674 OF 2009

K.C.Sundaram .. Petitioner

Vs.

1.The Additional Registrar of
Co-operative Societies
(Sales, Planning and Development)
Kilpauk, Chennai-10.

2.The Chairman
Common Cadre Authority/Joint Registrar of
Co-operative Societies,
Salem Region, Salem, Salem District.

3.The Special Officer
S.411 Suramangalam Primary Agricultural
Co-operative Bank
Suramangalam Post
Salem-5. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus, calling for entire records relating to the impugned order passed by the 1st respondent in his proceedings No.Na.Ka.No.102545/2008 Sa.Pa.1, dated 12.09.2009 and quash the same and consequently, direct the respondents to reinstate the petitioner into service with all backwages and other benefits.

For Petitioner :Mr.C.Prakasam

For R1 and R2 :Ms.T.Girija
Govt. Advocate (Co-operative Societies)

For R3 :Mr.A.Arumugam

ORDER

Writ Petition is filed for issuance of a writ of Certiorarified Mandamus, calling for entire records relating to the impugned order passed by the 1st respondent in his proceedings No.Na.Ka.No.102545/2008 Sa.Pa.1, dated 12.09.2009, quash the same and consequently, direct the respondents to reinstate the petitioner into service with all backwages and other benefits.

2.The petitioner was appointed in the 3rd respondent Bank as Fertiliser Salesman on 15.07.1983. Subsequently, he was promoted as Attender in the year 1985, Clerk in the year 1986 and Secretary in the 3rd respondent Bank on 16.02.1987. While he was working as Secretary in the 3rd respondent Bank, the 2nd respondent suspended him from service on 01.03.2007 and issued charge memo dated 08.09.2007. The petitioner has submitted his explanation. Not being satisfied with the explanation, the 2nd respondent ordered domestic enquiry. The Enquiry Officer without furnishing relevant documents sought for by the petitioner, concluded the enquiry proceedings and submitted the report to the 3rd respondent Bank. The 2nd respondent has issued 2nd show cause notice and the petitioner submitted his explanation. Inspite of the explanation submitted by the petitioner, the 2nd respondent by the order dated 28.05.2008 terminated the service of the petitioner. The petitioner filed revision before the 1st respondent under Section 153 of Tamil Nadu Co-operative Societies Act. The 1st respondent without considering the grounds raised by the petitioner, rejected the revision by the order dated 12.09.2009. Hence, the present writ petition.

3(i).The learned counsel appearing for the petitioner contended that the charge levelled against the petitioner is that he has failed to supervise the day-to-day activities of Suramangalam service branch. Due to his failure, the staff of Suramangalam branch misappropriated the funds in the jewel loan and Savings Bank account and caused loss to the 3rd respondent Bank.

3(ii). The petitioner was working as Secretary in the Head Office. The persons who are working in the branch office are responsible for the day-to-day activities. The Special Officer and Bank Inspectors have to inspect the branches. Every month, Bank Inspectors are inspecting the branches and submitting their report to the higher officials. Audit officials also audited the branch and submitted their report.

3(iii). The charge against the petitioner is that he has failed to supervise the branch officials and did not submit the documents to the audit officials for the period from 2001-2002, 2002-2003, 2003-2004 and 2004-2005. The petitioner has given all the documents to the audit officials. If the petitioner has failed to give documents to the officials, the audit officials would have reported the same to the higher officials. The branch was inspected once in three months by the Inspector of the branch and audit parties every year.

3(iv). The petitioner when inspected the branch office, detected the irregularities and immediately informed the same to the Special Officer. The Special Officer reported the same to the Deputy Registrar of Co-operative Societies and the Deputy Registrar of Co-operative Societies ordered enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. The enquiry report was not furnished to the petitioner. The 1st respondent having held that the petitioner is not involved in the misappropriation of funds, but failed to supervise the work of the branch, ought to have allowed the revision filed by the petitioner. Without any basis, the 1st respondent has held that the petitioner was indirectly responsible for the misappropriation. The punishment imposed against the petitioner is excessive.

3(v). The Special Officer is in-charge of over all administration of the bank including service branch. The petitioner by his effort has recovered the misappropriation amounts from the Bank officials together with interest. When the misappropriation is only a sum of Rs.14,85,000/-, the petitioner has recovered a sum of Rs.29,60,000/- being the amount misappropriated together with interest.

4.The respondents 1 to 3 filed separate counter affidavits. The learned Government Advocate appearing for the respondents 1 & 2 and the learned counsel appearing for the 3rd respondent separately contended that the petitioner was working as a Secretary in the 3rd respondent Bank and as a Secretary, his duty is to supervise the day-to-day affairs of the Bank including service branches. The petitioner has failed to discharge his duties of supervising the service branches. Due to his failure, the staff of the service branch misappropriated the funds in the jewel loan account and Savings Bank account to the tune of Rs.14,85,000/- from 2001 to 2005. Had the petitioner supervised the service branch, the Bank would not have suffered the said loss. The contention of the learned counsel appearing for the petitioner that due to work, the petitioner could not supervise the work of the staff in the service branch, is not acceptable. There is no irregularity or illegality in the disciplinary proceedings initiated against the petitioner. The petitioner is blaming other employees for committing irregularities in maintaining the account and misappropriation of funds for which he cannot be held liable is not accepted. The petitioner being the Chief Executive of the Bank is responsible for the day-to-day activities of the Bank including service branch and his duty is to supervise the work of all his subordinates services. The petitioner has committed irregularities, which are grave in nature and caused revenue loss to the Bank and by proper domestic enquiry, the charges levelled against the petitioner were proved. The punishment of termination of service for the proven charges is proportionate to the grave misconduct committed by the petitioner and prayed for dismissal of the writ petition.

5.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 1 & 2 and the learned counsel appearing for the 3rd respondent and perused all the materials available on record.

6.From the materials available on record, it is seen that the charge levelled against the petitioner is that he has failed to supervise the day-to-day administration of Suramangalam service branch. According to the 3rd respondent Bank, the petitioner as a Chief Executive of the branch has the duty to be in-charge of the day-to-day administration of the Bank including service branches. Due to the failure on the part of the petitioner to supervise the work of the service branch at Suramangalam, the staff of the said branch misappropriated the funds of the Bank to the tune of Rs.14,85,000/- during 2001 to 2005. According to the petitioner, he was stationed at Head Office as Secretary and the Manager, Cashier, Clerk and Jewel Appraiser working in the branch office are fully in-charge of its day-to-day administration and the Special Officer is in over all control of the entire Bank. The Bank Inspectors are regularly inspecting the service branch in Suramangalam every month. Further, audit of the Bank including service branch was conducted every year. During the said inspection and audit, the officials failed to detect the irregularities and misappropriation committed by the staff at the branch office. Further, the Inspector of the 3rd respondent Bank has the key for the jewel safe, which is two key system and without knowledge of the Inspector, the jewels cannot be removed. It is only the petitioner, who detected irregularities and misappropriation committed by the staff of the branch. The petitioner further contended that he has recovered a sum of Rs.29,60,000/- from the staff of the Bank for misappropriation of Rs.14,85,000/-, the amounts recovered by the petitioner includes the interest payable on Rs.14,85,000/- and the Bank has not suffered any loss. These contentions of the petitioner are not disputed by the respondents.

7.From the contention of the petitioner, it is clear that the Bank Inspectors and auditors of the Bank inspected and audited the branch from 2001 to 2005. They have not detected irregularity and misappropriation. The respondents have not filed any material to show that the 3rd respondent initiated disciplinary proceedings against the Inspectors and Auditors of the Bank for their failure to detect the irregularity and misappropriation committed during the year 2001 to 2005. The 1st respondent in the impugned order has held that the petitioner is not directly involved in the irregularity or misappropriation of funds. Further, the 1st respondent has held that the petitioner is indirectly responsible for the misappropriation committed by the staff at service branch. There is no charge against the petitioner that he has indirectly helped the staff to misappropriate the funds and no evidence was let in to show that the petitioner was directly and indirectly involved in misappropriation. The 1st respondent without any basis, has held that the petitioner was indirectly responsible for the misappropriation committed by his subordinates i.e., staff at Suramangalam branch. The respondents have failed to properly appreciate the facts i.e., keys for the jewel safe are maintained by double key system and one key is with the Inspector at Head Office and without his knowledge, the jewels cannot be taken and handed over to the borrowers, who have paid the loan amounts and redeem the jewels. Similarly, the respondents failed to appreciate the facts that Bank Inspectors and audit officials inspected the service branch once in every three months and audit was conducted every year. The respondents have also failed to consider the report of the petitioner to the Special Officer about the irregularities and misappropriation committed by the staff of the said branch. An enquiry was conducted by the Deputy Registrar of Co-operative Societies under Section 81 of the Tamil Nadu Co-operative Societies Act and entire irregularities and misappropriation came to light. The respondents have failed to consider the contention of the petitioner that entire misappropriated amounts together with interest were recovered from the staff of the Suramangalam branch and no loss was caused to the 3rd respondent Bank. Further, the respondents have alleged that the petitioner has not provided the registers for audit party. From the order of the respondents 1 and 2, it is seen that no material was produced by the 3rd respondent Bank to substantiate their claim that the petitioner has failed to produce the registers for the year 2001 to 2005 to the audit party and there is no complaint from the audit party that the petitioner has not produced the registers to them. The respondents without properly appreciating the above facts, terminated the service of the petitioner for his failure to supervise the day-to-day administration of the service branch at Suramangalam. The reason given by the respondents 1 and 2 for terminating the service of the petitioner is not valid.

8.For the above reason, the impugned order of the 1st respondent is liable to be set aside and it is hereby set aside.

In the result, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Registrar of
Co-operative Societies
(Sales, Planning and Development)
Kilpauk, Chennai-10.

2.The Chairman
Common Cadre Authority/Joint Registrar of
Co-operative Societies,
Salem Region, Salem, Salem District.

3.The Special Officer
S.411 Suramangalam Primary Agricultural
Co-operative Bank
Suramangalam Post
Salem-5.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.55137
+2ccs to Mr.A.Arumugam, Advocate, S.R.No.54231

W.P.No.19674 of 2009

RV(CO)

RRS(28/08/2019)