IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2019

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.9399 OF 2010

P.Muthusamy ... Petitioner

Vs.

1.Joint Registrar of Cooperative Societies
Salem - 7.
Salem District.

2.Special Officer
5564, Illupanatham Primary Agricultural
Cooperative Bank
Illupanatham, Gangavalli Taluk,
Salem 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 pertaining to the order passed by the first respondent in his Proceedings Na.Ka.No.8343/09 Sa.Ba. dated 04.03.2010 confirming the order passed by the second respondent in his Proceedings No.Nil dated 21.05.2009 and quash the same and direct the respondents to reinstate the petitioner in service and confer all the consequential benefits.

For Petitioner : Mr.P.Ganesan
for M/s.C.S.Associates

For Respondent-1: Mr.L.P.Shanmugasundaram
Special Government Pleader (Co-op.)

For Respondent-2: Mr.T.P.Savitha

ORDER

The petitioner was appointed as Peon cum Watchman on 01.01.1975 in the second respondent Bank. On 12.12.2008, he was served with a charge memo for misconduct on two counts. One he had withdrawn a sum of Rs.48,500/- from the account of one Tmt.Kandhayee without her knowledge as loan in D.L.No.3742 and admitted the charges. The second charge was that he colluded for misappropriation of Rs.1,00,000/- from the F.D. account of one holder namely K.Murugesan by filling up and signing D.L.No.3801 without the knowledge of the Account holder. He submitted his explanation to the charge memo. An enquiry was conducted, in which the charges were held proved and he was removed from service. The appeal preferred against the punishment was also confirmed. Against which he preferred the above writ petition.

2. According to the learned counsel for petitioner framing of charges was itself baseless. The account holder themselves remitted the money and had not given any complaint against the alleged misappropriation Without any complaint, the charges were framed. In the enquiry conducted under Section 81, the petitioner was exonerated. Whereas on the basis of the said enquiry report, the charges were framed and letter said to be given by him was taken as admission of guilt. Eventhough he denied all the charges in his explanation and that he was forced to sign a statement prepared by the Special Officer by threat and coercion, no witness was examined to prove the charges and the said letter admitting his guilt was not produced. The charges were held to be proved on the basis of the Deposit Register, loan document and evidence given by the Secretary in charge. But the account holders were not examined. Therefore according to him, the conduct of enquiry itself contrary to principles of natural justice and the findings are perverse.

3. Per contra, the learned counsel appearing for the respondent bank would contend that the enquiry was conducted in accordance with principles of natural justice. The petitioner had never complained of any irregularity in the conduct of enquiry and he was given ample opportunity to defend himself. But he failed to cross examine the management witness and did not examine any witness on his side also. He requested the enquiry officer to treat the explanation given by him as his defense statement and satisfied himself with procedure. The second show cause notice was given on 04.05.2009 giving 15 days time and order was passed by the disciplinary authority only on 21.05.2009, hence allegation of denial of opportunity is false. Since the petitioner himself admitted his charge in his voluntary statement dated 24.07.2008 to the Special Officer, which was marked as Exhibit M.1, it is an afterthought to deny the same. Hence, he would pray dismissal of the Writ Petition.

4. I have considered the rival submissions.

5. Admittedly, the delinquent had denied the charges in his explanation dated 31.12.2008. He would state that the amount was misappropriated by the then Secretary and Cashier and that they had remitted the money along with interest and he had

nothing to do with the misappropriation in respect of first charge. In respect of the other charge, he would state that no such misappropriation had taken place as loan was obtained by the account holders themselves. The enquiry officer had also rightly decided that oral enquiry was required for proving the charges.

6. The Secretary in charge appeared as a witness for prosecution before the enquiry officer and let in evidence to the effect that he has nothing more to state than the contents of charge memo and produced the documents relating to loan transaction such as Deposit Loan Register, loan applications and the letter submitted by the delinquent to the Special Officer on 24.07.2008. Other than him no other witness was examined. It is well settled that mere producing the documents is not enough, but, it shall be proved in accordance with law. In the instant case, the petitioner had denied the voluntariness of the statement dated 24.07.2008. He would state that he had to sign the statement in those prevailing circumstances. He would further state that in respect of that transaction, the Secretary and Cashier admitted the guilt and remitted the money along with interest. When such a statement is made the prosecution is bound to prove that there was misappropriation of money and that was committed by the petitioner. In order to prove the same the enquiry officer should have verified the evidence with regard to repayment of misappropriated money. Further when the delinquent states that no misappropriation as alleged had taken place in respect of second charge, again the Management should have proved the charges by examining the account holder as the allegation was that the loan was taken without their knowledge and forging their signature. Unless the account holders are examined, the forgery and securing loan without their knowledge will not come to light. In such a situation the loan applications should have been proved through them.

7. The Hon'ble Supreme Court in Roop Singh Negi Vs. Punjab National Bank [2009 (2) SCC 570] has categorically held that mere production of documents is not enough, but it shall be proved in accordance with law. In the present case, the management witness had merely produced the documents and confined his evidence to the extent of contents of charge memo. Such statement will amount to allegation and will not amount to proof. But the enquiry officer solely relied on the statement of the petitioner, dated 24.07.2008 and held the charges proved. Such a finding is based on no evidence and will amount to perversity. Further finding as to the second charge that since the petitioner filled up and signed the loan application, the charge was held proved. But there is no evidence to the effect the petitioner had filled up and signed the loan application and signed the same. In the absence of any material evidence to show that the

petitioner only filled up and signed the document, the finding is perverse.

8. Apart from this, the disciplinary authority also failed to discuss the denial made by the petitioner. Pathetically the disciplinary authority would extract the charges, explanation given by the petitioner, findings of the enquiry officer and his decision. At his decision, he would state that since the petitioner did not submit his explanation to the second show cause notice and since the continuance of petitioner in service would damage the good reputation of the bank and welfare of the members, the punishment of removal of service was imposed. Other than this, there is no discussion as to how the findings of the enquiry officer was acceptable.

9. The revisional authority also rejected the revision without even discussing the grounds raised by the petitioner. It is well settled that the order passed without recording reasons by itself is violative of principles of natural justice. The order under challenge in this Writ Petition is also without recording reasons and thereby a non-speaking order. Therefore, in the considered opinion of the Court, the order of disciplinary authority based on findings of the enquiry officer without any legal evidence and the cryptic order without reasons by the revisional authority do not stand the test of scrutiny of law and is liable to be set aside.

10. Accordingly, the impugned order passed by the first respondent in his Proceedings Na.Ka.No.8343/09 Sa.Ba., dated 04.03.2010 stands set aside. A direction is issued to the respondents to reinstate the petitioner in service with continuity of service with 50% of back wages within a period of four weeks from the date of receipt of a copy of this order.

11. The Writ Petition is ordered accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

To

1.Joint Registrar of Cooperative Societies
Salem - 7.
Salem District.

2.Special Officer
5564, Illupanatham Primary Agricultural Cooperative Bank
Illupanatham, Gangavalli Taluk,
Salem District.

+1cc to the Special Government Pleader Sr.105834
+1cc ot M/s.C.S.Associates, Advocate Sr.105577

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