IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2019	DELIVERED ON : 02.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.704 of 2011

M.Subbiah ..Petitioner

Vs

1. The Additional Registrar of Cooperative Societies (Sales, Planning and Development)
   N.V.N.Natarajan Maaligai
   Kilpauk, Chennai-10

2. The Joint Registrar of Cooperative Societies/ Common Cadre /Standing Committees Chairman
   Tuticorin Region
   Tuticorin

3. The Special Officer
   Korampallam Primary Agricultural Cooperative Thrift Society
   Korampallam
   Tuticorin District .. Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order of dismissal passed by the 2nd respondent in proceeding Na.Ka.318/2006/CA4 dated 10.08.2009 and the Revision order passed by the 1st respondent in Proceeding Na.Ka.125003/2009 Sa.Pa.1 dated 06.09.2010 and quash these orders and consequently direct the respondents to reinstate the petitioner in service with full backwages and other consequential service benefits.

For Petitioner : Ms.Swadhi Subramaniam for Mr.R.Prem Narayan

For Respondents: Mr.L.P.ShanmugaSundaram Spl.G.P., (Coop) for R1 and R2
Mr.J.Raja Kalifulla, Senior Counsel for Ms.Renuka Devi for R3.

ORDER

The Writ Petition is filed challenging the impugned order of dismissal passed by the 2nd respondent in proceeding Na.Ka.318/2006/CA4 dated 10.08.2009 and the Revision order passed by the 1st respondent in Proceeding Na.Ka.125003/2009 Sa.Pa.1 dated 06.09.2010 and seeking to quash the same and consequently direct the respondents to reinstate the petitioner in service with full backwages and other consequential service benefits.

2. The Petitioner was working as a Secretary of the 3rd respondent Society from 17.10.1991. It is the contention of the Petitioner that the 3rd respondent suspended him on 22.10.2003 based on certain allegations. However, thereafter, he was reinstated on 04.03.2004. But again, for the same set of allegations, he was placed under suspension on 24.02.2005. It is further submitted by the Petitioner that as per the direction of this court, he was reinstated on 30.03.2005.

3. It is the case of the Petitioner that the 2nd respondent - Joint Registrar of Cooperative Societies had issued a charge memo in proceedings dated 16.02.2007, wherein, 11 charges have been framed against him by alleging that the Petitioner indulged in misappropriation of funds, fraud, breach of trust, issue of bogus loan, violation of TNCS Act, Rules etc. The Petitioner submitted his explanation on 08.02.2008, by denying all the allegations. The Enquiry Officer conducted domestic enquiry and submitted his report on 30.09.2008 holding that the charges are proved. Pending enquiry, remarks were called for from Petitioner, about enquiry officer report, by enclosing copy of the same. The petitioner submitted his remarks on 29.10.2008. Thereafter, a second show cause notice was issued on 08.06.2009 calling upon the petitioner to submit his explanation, about proposed punishment. An opportunity of personal hearing was offered to the petitioner and the petitioner participated in the personal hearing on 04.08.2009 and submitted his explanation. Based on the domestic enquiry findings, the Petitioner was found guilty of the charges levelled against him and he was dismissed from service by order dated 10.08.2009.

4. Aggrieved by the order of removal from service, the Petitioner had filed a revision u/s.153 of Tamil Nadu Cooperative Society Act, before the 1st respondent-Additional Registrar of Cooperative Societies and the same was dismissed on 06.09.2010. Aggrieved by the aforesaid dismissal order, the petitioner has filed the present Writ Petition.

5. According to the Petitioner, enquiry conducted by the Enquiry Officer is a defective and the order of the 2nd respondent violates the principles of natural justice. It is averred in the grounds of the Writ Petition that on the same set of allegations, criminal cases were filed against him and those cases ended in an order of acquittal. The cases therein are governed under Section 77(4) of TNCS Act and therefore, the impugned order passed by the respondent is in violation of Section 77(4) of the Act.

6. According to the counsel for the Petitioner, the Petitioner was placed under suspension and no subsistence allowance was paid to him during the enquiry period. Even though the Petitioner had requested for subsistence allowance by stating his family condition that there is no source of income, the respondents had rejected the same. Thus, non-payment of Subsistence Allowance is in violation of Article 21 of the Constitution of India and therefore, the entire disciplinary proceedings is vitiated on the aforesaid ground.

7. The next limb of argument of the counsel for the Petitioner is that the enquiry was conducted, without affording any opportunity to the Petitioner, to cross examine the witnesses and therefore, it is in violation of Principles of Natural Justice. It is also submitted that the enquiry officer did not supply any copies of documents and no opportunity was given to the Petitioner to inspect those documents.

8. The learned counsel for the Petitioner further contended that the enquiry officer failed to consider the circular regarding KCC loans and the finding against the Petitioner in respect of charge relating to KCC loan is not maintainable. Further, the enquiry officer failed to consider the fact that the entire KCC loans were rescheduled by the 1st respondent as per the Board Resolution dated 06.10.2005 and as such, no bogus loan was given by the Petitioner.

9. It is further submitted that one Sudalaimuthu, Senior Clerk who is responsible for the jewel loan has stated that the jewel loan was repaid by the borrowers of jewel loan and he was reinstated into service. In such circumstances, the finding of the enquiry officer in respect of the charge regarding misappropriation of jewel loan by the Petitioner, is arbitrary and discriminatory.

10. According to the learned counsel for Respondents 1 and 2, the 2nd respondent-Joint Registrar of Cooperative Societies appointed an enquiry officer to conduct domestic enquiry and accordingly, domestic enquiry was conducted on 22.04.2008, 23.05.2008, 04.07.2008, 05.07.2008 and 22.07.2008. The

Petitioner participated in the domestic enquiry and requested the Enquiry Officer to treat his reply to charges as his oral evidence and to drop further proceedings. Based on records and remarks, the Enquiry Officer submitted his report on 30.09.2008, holding that the petitioner is found guilty of all charges framed against him. On the basis of the said enquiry report, the petitioner submitted his explanation on 29.10.2008 and after scrutiny of the said explanation, the 2nd respondent had issued a show cause notice to the petitioner, calling upon him to submit his explanation. A copy of the Inquiry report under Section 81 of TNCS Act was sent to the Petitioner on 06.04.2009 by the Deputy Registrar of Cooperative Societies vide order dated 06.04.2009. Thereafter, a second show cause notice was issued on 08.06.2009 calling for explanation about the proposed punishment. On receipt of the second show cause notice, the petitioner had submitted his explanation on 29.06.2009. The Petitioner was provided with an opportunity of personal hearing and he has given a statement before the 2nd respondent on 04.08.2009. Taking into consideration the findings of the enquiry report, the 2nd respondent had passed the order of dismissal on 10.08.2009.

11. The learned counsel for the 1st and 2nd respondents further submits that the charges levelled against the Petitioner are grave in nature and therefore, on the basis of the findings of the enquiry officer, wherein the charges are found to be proved, the punishment imposed removing him from service, which is just and proper.

12. Heard both sides and perused the records carefully.

13. To appreciate the submissions of the learned counsel appearing for both sides, it is appropriate to refer to the charges set out against the Petitioner.

Charge 1 relates to fabrication of records in issuing loans to farmers/members of Cooperative Society and misappropriation of Rs.2,68,875/-;

Charge 2 relates to irregularities committed in sanctioning KCC loans and swindling of Bank funds to the tune of Rs.4,69,155/-;

Charge 3 relates to non insistence of necessary documents from the members of the Bank and misappropriation of Rs.4,36,280/- of the Bank funds;

Charge 4 relates to misappropriation of Bank funds to the tune of Rs.28,000/- by creating false records;

Charge 5 relates to irregularities committed in sanctioning loans thereby causing financial loss to the bank;

Charge 6 relates to issuing loans without insisting for guarantor's signature in the application for loan.

Charge 7 relates to failure to do his duty by not preparing internal audit in respect of financial years 2001-2002 and 2002-2003.

14. It is stated in the counter affidavit filed by the 1st respondent that reasonable opportunity was provided to the Petitioner to submit his explanation before the Enquiry Officer and thereafter only, the Enquiry Officer gave his report on 30.09.2008. Subsequently, a second show cause notice was issued on 08.06.2009 to the Petitioner by enclosing a copy of the Enquiry Report, directing him to submit his explanation about the proposed punishment. The Petitioner gave his remarks on 29.06.2009 and thereafter, personal hearing was provided to him on 04.08.2009. As such, after taking into consideration the explanation, remarks and based on the records, the 2nd respondent passed an order of dismissal of the Writ Petitioner on 10.08.2009. Therefore, the contention of the Writ Petitioner that the impugned order passed is in violation of principles of natural justice is not correct.

15. As far as the ground raised by the Petitioner that on the same set of allegations in the criminal case and the same ended in acquittal, it is submitted by the learned counsel for the respondents that on the basis of order of acquittal in a criminal case, the Petitioner cannot seek to exonerate him from the disciplinary proceedings initiated against him as it is initiated for his dereliction of duty. Therefore, the impugned order is not in violation of Section 77 of TNCS Act. In support of the said contention, the learned counsel for the respondent relied on the following decision of the Honourable Supreme Court in the case of Lalit Popli Vs. Canara Bank, (2003) 3 SCC 583, wherein, the Honourable Supreme Court has held as under:

> "16. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See State of Rajasthan v. B.K. Meena.) In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of proof beyond doubt has no application. Preponderance of probabilities and some material on record are necessary to arrive at

the conclusion whether or not the delinquent has committed misconduct. "

The learned counsel for the Petitioner has not placed any materials before this court to establish that the charges in the criminal case and the allegations in the disciplinary proceedings are one and the same. Further, the enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf and the same is not as high as in an offence in criminal charge. In the decision reported in Deport Manager, A.P. SRTC Vs. Mohd. Yousuf Miya, (1997) 2 SCC 699, the Apex Court has held as under:

> "8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded

is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act."

The standard of proof was different from criminal trial and the departmental proceedings and there was preponderance of probabilities against the petitioner and therefore, the Enquiry Officer, had rightly come to the conclusion that the charge was established. The Disciplinary Authority as well as the Revisional Authority have taken into consideration the gravity of the charge framed against the petitioner and therefore, imposed the penalty of 'dismissal from service' on him. Therefore, the impugned punishment imposed on the petitioner, on the basis of proved misappropriation and irregularities committed by him and causing financial loss to the Bank, cannot be found fault with notwithstanding discharge and acquittal by the Criminal Court.

16. As far as the other contention of the Petitioner, that non-payment of Subsistence Allowance to the Petitioner, pending enquiry, would vitiate the disciplinary proceedings is concerned, it is relevant to refer to the Judgment of the Honourable Supreme Court reported in (2004) 1 SCC 281 [Indra Bhanu Gaur Vs. Committee, Management of M.M.Degree College and others], wherein it is held that it is ultimately a question of prejudice. In paragraph 7 of the said decision, it is held as follows:-

" 7. From the Judgment of the High Court, in the writ petition it appears that there is no reference to the alleged infirmity on account of subsistence allowance having not been paid. There was also no specific finding recorded for the question of bias as alleged presently. We find that there was total lack of cooperation from the appellant as the factual background highlighted above would go to show. Ample opportunity was granted to the appellant to place case. He did not choose to do so. It is only a person who is ready and willing to avail of the opportunity given, who can make a grievance about denial of any opportunity and not a person like the appellant who despite repeated opportunity given and indulgence shown exhibited defiance and total indifference to extending cooperation. Therefore, on that score the appellant cannot have any grievance. So far as the effect of not paying the subsistence allowance is concerned, before the authorities no stand was taken that because of non-payment of subsistence allowance, he was not in a position to participate in the proceedings, or that any other prejudice in effectively defending the proceedings was caused to him. The appellant could not plead or substantiate also that the non-payment was either deliberate or to spite him and not due to his own fault. It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as absolute proposal in law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings."

It is stated by the 1st respondent that as per clause 29(4) of Common Cadre Service Regulations, no payment of subsistence allowance shall be made unless the member has furnished a certificate of non-employment and authority passing the order of suspension is satisfied that the suspended employee was not engaged in any other employment, business, profession or vocation and other employment and that he had not earned remuneration during the period of his suspension. In this regard, the learned counsel for respondents 1 and 2 relied on the decision of a Division Bench of this Court reported in 2007 (5) CTC 392 [M.Kanagasabapathy Vs. 1. The Special Officer, S-390, Pothanoor Primary Agricultural Cooperative Bank Ltd., Pothanoor, Paramathivelur Taluk, Namakkal District and others].. As rightly contended by the learned counsel for the Respondents, Payment of Subsistence allowance pending disciplinary proceedings is governed by special enactment viz., Tamil Nadu Payment of Subsistence Allowance Act, 1981 and the Petitioner has not satisfied the respondents as regards claiming benefits under Tamil Nadu Payment of Subsistence Allowance Act. Thus, it is submitted that prejudice in non payment of subsistence allowance is to be not only pleaded but proved. Therefore, the ground raised by the learned counsel for the Petitioner that the impugned order is not sustainable on the ground of non payment of subsistence allowance, is to be rejected.

17. The learned counsel for respondents reiterating the submissions made in the counter affidavit also stated that the charges regarding misappropriation in crop loan and fabricating the records is concerned, the Petitioner being the Secretary failed to comply with the procedures contemplated in clause (v) of Section 41 of TNCS Act and thereby committed serious misconduct and that the charge of issuing loans to members under KCC Scheme, without obtaining mortgage deed, is held to have been proved.

18. The learned counsel for the respondents further submitted that in respect of Sudalaimuthu, who worked as Senior Clerk and involved in the charges of irregularities in issuing jewel loan is concerned, the amount misappropriated was stated to be recovered from him and he was awarded with the punishment of reduction in rank. It is also submitted that in respect of the charges framed against the Petitioner, ample opportunity was granted to him to place his case before the Enquiry Officer, but the Petitioner has not availed the said opportunity given, who neither put forth his grievance nor cross examined. There was complete absence of any substantial evidence, either oral or documentary, on the side of the Petitioner so as to quash the charges levelled against him and therefore, on the basis of the findings of the Enquiry Officer, in respect of proven charges as regards, the alleged irregularities, the punishment of dismissal from service imposed against him cannot be said to be an order passed in violation of principles of natural justice.

19. Taking into consideration of the entire records placed before this Court and the decisions cited on the side of respondents, this court is of the view that the Petitioner, being the Secretary of respondent Cooperative Society is aware of the procedures to be followed in issuing loans to the members of the Cooperative Society, however, failed to comply with the same and thereby committed serious misconduct. In such circumstances, the contention raised by the learned counsel for the Petitioner that one Sudalaimuthu who was working as Senior Clerk and found involved in misappropriation charges, was reinstated into service and so, the punishment imposed in his case is perverse, cannot be acceptable, for the reason that the enquiry officer, after finding that the charges are proved against the Petitioner, forwarded the Inquiry Report. Based on the said report, the impugned dismissal order was passed by the 2nd respondent after calling for explanation from the

Petitioner. Further, it is apparent that the Revisional Authority, after considering the materials before him, found that the punishment of dismissal from service is proper punishment. Since the charges levelled against the Petitioner are grave in nature, the order of dismissal passed against the Petitioner cannot be said to be non-est in the eye of law.

20. A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring authority has based its conclusions on materials available on record, after considering the defence put forth by the appellant and as such, the punishment imposed in the impugned order, in the considered opinion of this court, have been taken in a reasonable manner and objectively. In other words, the conclusion arrived at by the inquiring authority is based on valid materials and this court does not find any fault with the said findings of the Enquiry Officer.

21. Considering the gravity of charges framed against the Writ Petitioner and also considering that all charges are relating to misappropriation and fabrication of records which caused loss to the Cooperative Society, this Court is of the considered view that the punishment imposed by the disciplinary authority as affirmed by the Revisional Authority is perfectly in order and the same does not require any interference.

22. For the foregoing reasons, the Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Additional Registrar of Cooperative
   Societies (Sales, Planning and Development)
   N.V.N.Natarajan Maaligai
   Kilpauk, Chennai-10

2. The Joint Registrar of Cooperative Societies/
   Common Cadre /Standing Committees Chairman, Tuticorin Region
   Tuticorin

3. The Special Officer
   Korampallam Primary Agricultural Cooperative Thrift Society
   Korampallam, Tuticorin District

+1 cc to M/s.R.Prem Narayan, Advocate, S.R.No.31471

+1 cc to the Spl. Govt. Pleader (CO-OP) Advocate, S.R.No.31974

+1 cc to M/s.J.Raja Kalifulla, Advocate, S.R.No.31568

WP.704 of 2011

RSI(CO)
SSM(03/07/2019)