IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 11136 of 2014
Decided on: 21.08.2019

Joginder Singh

...Petitioner

Versus

State of Punjab & Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. A.S. Khaira, Advocate
for petitioner

Ms. Ambika Bedi, AAG Punjab.

Mr. Ashwani Prashar, Advocate
for respondents No.3 and 4.
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ARUN MONGA, J.

1. Assailed herein, *inter alia, is* a punishment order passed by the Board of Directors of Ludhiana Central Cooperative Bank Limited(for brevity, Bank) vide its resolution dated 26.04.2011, conveyed to the petitioner vide letter dated 18.05.2011(Annexure P-7). An appeal preferred against the same was dismissed vide order dated 30.12.2011(Annexure P-10) passed by the Deputy Registrar(Banking) Cooperative Societies, Punjab and the Appellate order was in turn reaffirmed by the Revisional Authority vide order dated 21.08.2012(Annexure P-11).

2. Facts though not in dispute, but are of some relevance before adverting to the adjudication of the impugned orders. The petitioner was working as a Clerk in the Bank and at the relevant time i.e. 1996 to 1999 he was assigned the duties of a Cashier at Pakhowal branch of the Bank.

Several cases of embezzlement were discovered in the said branch wherein the Branch Manager and the Secretary of the Pakhowal Cooperative Agricultural Services Society were alleged to be involved. Certain collateral arbitration proceedings were also instituted by the Bank against the petitioner as well as the then Branch Manager for recovery of losses suffered by the Bank. Vide an award dated 25.11.2002(Annexure P-1) the Branch Manager was though held liable for recovery of the amount qua which the claim was filed against the petitioner as well as Branch Manager, but the arbitrator gave a finding that the Bank failed to prove that the petitioner being a Cashier was also guilty of embezzlement of any amount. Based on the said finding, the arbitration claim against the petitioner was dismissed vide the award, *ibid.* The relevant finding qua the petitioner for ready reference is as below:-

> *"After considering the above said facts, perusal of the record submitted by first party and statements of witnesses, I am giving this decision that in the year 1998-99, Shri Om Parkash Verma was working in Ludhiana Central Cooperative Bank Ltd. as a Manager and Shri Joginder Singh was working as a Cashier. Duty of Joginder Singh was on cash. The first party has failed to prove that Shri Joginder Singh, Cashier is guilty of embezzlement of any amount or making any bogus entry pertaining to any amount of this case file. The First Party has stated in its statement that without depositing the amount received from members of the Society in the Bank recovery was entered in their personal accounts in the Bank. Respondent No.1 Shri Om Parkash Verma has confirmed these bogus credit entries and in view of these bogus entries, Respondent No.1 under the orders sanctioned more loans to the members. Though this loan could not be sanctioned till earlier loan was recovered. Second Party has failed to prove wrong statement of First Party. Therefore, I order that Shri Om Parkash Verma*

son of Sadhu Ram, Second Party, resident of Mohalla Borian, Raikot, District Ludhiana will pay principal of Rs.81,045/- as interest 27,131/- total 1,08,426/- and expenditures of Rs.250/- till 31.12.2000 to First Party Central Cooperative Ltd., Ludhiana."

3. Against the award rendered by the Arbitrator, an appeal was preferred by the Bank, but the same was dismissed and no further proceedings were initiated to challenge the award and the same has since attained finality.

4. In the above background, a charge-sheet dated 17.02.2001 (Annexure P-2) was issued to the petitioner, wherein following charges were levelled against the petitioner:-

"1. The recovery of STA loan of the Pakhowal CASS members by not entering the same in the day cash bank book for committing embezzlement of Rs.6,90,468.00 of bank funds.
2. By not entering the recovery of consumption loan in the cash book/ day book of the bank committed embezzlement of Rs.3,31,605 of the bank.
3. By not attaching the prescribed document in the NSC loan and by making payment of loan, embezzlement of Rs. 55,000.00 of bank funds.
4. The recovery received from the debtors of branch Pakhowal by entering late in the books of the banks misuse of Rs.2,25,5000.
5. While working in branch Pakhowal (a, b & c) to commit serious negligence while performing bank duty.
6. For giving ST loan to debtor members of the Pakhowal CASS Society to make fake entry in the branch in the accounts of members.
7. By making fake entries at branch Pakhowal in the accounts of debtors of loan cash credit revolving limit, making wrong overdraft payments.

8. To commit embezzlement/ fraud of Rs.24,75,739.25 paise while working in Branch Pakhowal.

9. By not receiving the recovered amount of loan and by not receiving interest of Rs.28,277/- to cause financial loss to the bank.

10. By not entering the recovered amount of Rs.4,73,706 in the concerned heads to violate the instructions.

11. While working in Branch Pakhowal to commit temporary embezzlement and to cause financial loss of Rs.35,653.00 to the bank.

12. To commit negligence in performing Bank duty.

13. To erode the bank branch and to cause financial loss to the business."

5. Reply dated 25.08.2001(Annexure P-3) filed by the petitioner to the charge-sheet did not find favour and enquiry proceedings were initiated and the petitioner was eventually indicted by the Enquiry Officer after recording the statements of witnesses and following the due procedure vide enquiry report dated 30.10.2009(Annexure P-5).

6. Based on the enquiry report(supra), a show cause notice dated 11.03.2010(Annexure P-6) was issued to the petitioner. The petitioner filed his objections/ reply to the show cause notice and was also accorded an opportunity of hearing by a 3 Members Committee constituted by the Bank, which also submitted an independent report in the following terms:-

> *"Official has not presented any solid proof/ facts in his favour. Therefore after consideration of whole case recommendation is made to uphold the decision taken by the administrator of the Bank vide resolution No.12 dated 24.02.2010 for proposed punishment of dismissal of service of Sh. Joginder Singh Clerk,"*

7. On the basis of above recommendations, Board of Directors of the Bank agreed with proposal of the Administrator dated 23.02.2010 and

vide resolution dated 26.04.2011 dismissed the petitioner from service and order was passed in this regard by the District Manager of the Ludhiana Central Cooperative Bank Limited, Ludhiana on 18.05.2011. Hence the writ petition.

8. In the return filed by the Bank, the stand taken is that after considering the defence of the petitioner, taking into account the findings of the enquiry report indicting him of all the charges, except Charge No.5(c), 9, 10 and 12, whereby, the petitioner was held guilty of embezzlement and mis-utilization of funds to the tune of Rs.6,90,468, Rs.3,31,605/- and Rs.55,000/-, the petitioner has rightly been awarded the punishment of dismissal from service. In the premise, dismissal of writ petition has been sought stating that there has been no violation of any procedure or the applicable provisions of law governing the terms and conditions of service of the petitioner.

9. After hearing learned counsel appearing for the respective parties and having perused the pleadings along with relevant record I am of the opinion that the writ petition is devoid of merits and is liable to be dismissed for the reasons stated hereinafter.

10. The basic foundation of the argument on behalf of petitioner is that having once exonerated by the Arbitrator vide his award dated 25.11.2002(Annexure P-1), wherein principal amount of Rs.81,045/- along with interest of Rs.27,131/- and costs of Rs.250/-(total Rs.1,08,426/-), claimed by the bank in the arbitration proceeding was awarded, to be recovered from the Bank Manager alone, by observing that Bank had failed to prove its case against the petitioner herein. A simple comparison/ perusal of the award viz-a-viz the charges framed against the petitioner vide charge-

sheet dated 17.02.2001 reflects the fallacy of the argument of learned counsel for the petitioner. While the arbitration proceedings were instituted merely for claiming of principal amount of Rs.45,000/- along with interest and the charges, on the other hand, pertain to embezzlement of varying amounts of the magnitude i.e. Rs. 6,90,468/-, Rs. 3,31,605/-, Rs. 55,000/-, Rs. 2,25,500/-, Rs. 24,75,739.20, Rs.28,277/-, Rs.4,73,706/- and Rs.35,653/-. The entire edifice of the petitioner's argument, therefore, collapses.

11. Another aspect of the matter is that, even though the petitioner relies on the arbitration proceedings, but he has neither appended the claim petition of the arbitration proceedings nor has he otherwise appended any other documents to show as to what were the allegations/ charges against the petitioner qua the amount claimed in the arbitration proceedings. In any case, assuming that the petitioner was not liable for the amount claimed by the Bank, the same has no bearing on the charges framed per charge sheet herein. Neither the said amount is reflected in the charge-sheet nor even otherwise, it can be construed that if he is not guilty of embezzlement qua the amount claimed in the arbitration proceedings, then his guilt is automatically not established qua the other charges of embezzlement.

12. The next argument of learned counsel for the petitioner is that the petitioner was not accorded personal hearing before being awarded the punishment and there has been a violation of his rights inasmuch as the enquiry was not conducted in a fair manner by denying him the opportunity to cross-examine witnesses. The record of the case, however, reflects to the contrary. After issuance of charge-sheet, petitioner was granted due opportunity of filing his objections/ reply, which he did. The same were

considered but found unsatisfactory and it was thereafter, an Enquiry Officer and Presenting Officer were appointed by the Bank. During course of enquiry, the petitioner was granted due opportunity to submit his defence statement. He was also granted opportunity to cross-examine the official witnesses and he did so. The witnesses relied upon by the peittioner, as per list of witnesses, also deposed before the Enquiry Officer. After adducing entire evidence and upon due appreciation thereof, the Enquiry Officer indicted the petitioner of all the charges of commission of embezzlement, except charges No.5(c), 9,10 and 12.

13. The main charges which stood proved, *inter alia,* are/ were of embezzlement and mis-utilization of funds of the Bank to the tune of Rs.6,90,468/-, Rs.3,31,605/- and Rs.55,000/-. The enquiry report was considered by the Administrator of the Bank and before passing of punishment order, it was decided to grant opportunity to the petitioner to show cause and afford him an opportunity to give his objections on the enquiry report. Accordingly, a show cause notice dated 11.03.2010 (Annexure P-6) along with copy of enquiry report was served on the petitioner. The petitioner duly responded to the same and submitted his objections/ replies. A Committee of Three Directors from the Board of Directors of the Bank was constituted for the purpose of affording an opportunity of hearing to the petitioner. He was heard by the Committee on 23.02.2011, as reflected from the Committee Proceedings(Annexure R-3/1). The Committee recorded that the petitioner did not produce any convincing evidence on the hearing and, therefore, he was granted one more opportunity to be heard on 05.03.2011. On 05.03.2011, petitioner again appeared before the Committee, but did not produce any new material

except his earlier replies/ objections, which were submitted along with show cause notice. The Committee, after going through the same, recommended that the punishment proposed by the Administrator vide resolution dated 24.12.2011 be upheld as per candid findings contained at Annexure R-3/2.

14. It was after following the aforesaid due procedure that the Board of Directors of the Bank in its meeting on 24.04.2011 vide agenda item No.5 discussed the matter of punishment to be awarded to the petitioner, which led to the passing of resolution by the Board of Directors, resolving to dismiss the petitioner from services of the Bank by agreeing with the punishment proposed by the Administrator. There is, thus, no infirmity of any kind, as alleged by the petitioner in the petition and also by his counsel in the course of arguments. The factual assertions denied by the respondents in their return are duly supported by relevant record annexed therewith. Neither any replication has been filed to controvert the factual assertions in the written statement nor even otherwise, any plausible explanation was put forth in the course of hearing either to the said documents or to the assertions contained in written statement.

14. Therefore, I find no ground to interfere. The writ petition is accordingly dismissed in view of my discussion and reasons contained therein.

15. No order as to costs.

(ARUN MONGA)
JUDGE

August 21, 2019
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1. Whether speaking/ reasoned: Yes/ No
2. Whether reportable: Yes/ No