

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.12477 OF 2013

AND

M.P.NO.2 OF 2013

G.Pandithurai

.. Petitioner

- Vs -

1. The Joint Registrar of Co-op. Societies
Ariyalur Region, Ariyalur
Ariyalur District.

2. The Special Officer
R.2650, Keezhakudiyiruppu Primary
Agricultural Co-op. Bank
Keezhakudiyiruppu Village & Post
Udayarpalayam Taluk
Ariyalur District.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.624/2012 Sa.Pa., dated 30.10.2012 whereby confirming the order of termination passed by the 2nd respondent in his proceedings No.Nil, dated 29.11.2011 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits and other backwages.

For Petitioner : Mr.C.Prakasam

For Respondents : Ms.Girija, GA

ORDER

It is the case of the petitioner that he was appointed as Clery in the 2nd respondent bank in the year 1990 and discharging his duties without any blemish. Whiles, the 2nd respondent placed the petitioner under suspension on 7.2.07 and ordered for enquiry u/s 81 of the Tamil Nadu Co-operative Societies Act. Further, disciplinary proceedings and surcharge proceedings were

also taken up against the petitioner. The petitioner was visited with a charge memo, to which the petitioner submitted his explanation. The sum and substance of the allegation against the petitioner is that he granted fake jewel loans and misappropriated the amount of Rs.7,53,600/-. Surcharge proceedings was also initiated against the petitioner and other persons. While surcharge proceedings ended in an order against the petitioner and others, the departmental enquiry was proceeded with and enquiry was conducted in which the enquiry officer submitted report holding the charges proved and after obtaining explanation from the petitioner, the impugned order terminating the services of the petitioner was passed. Against the said order, appeal was filed by the petitioner u/s 153 of the Co-operative Societies Act, which was dismissed resulting in revision being filed against the same. The revisional authority also confirmed the order passed by the original and appellate authorities. Challenging the same, the present writ petition has been filed.

2. Learned counsel appearing for the petitioner submitted that though the respondent initiated surcharge proceedings and disciplinary proceedings simultaneously, as against the surcharge order, the same was successfully appealed against and it ended in favour of the petitioner. It is therefore submitted that once the surcharge order ended in favour of the petitioner, the order of termination passed in the departmental proceedings cannot be sustained. It is the further submission of the learned counsel for the petitioner that surcharge proceedings and departmental proceedings cannot be allowed to be taken up simultaneously and, two orders passed in the two proceedings would be nothing but double jeopardy, as the petitioner cannot be punished twice for the same offence. In fine, it is submitted that the order of termination deserves to be set aside and the petitioner reinstated back into service.

3. Per contra, learned Government Advocate appearing for the respondents submitted that surcharge proceedings and disciplinary proceedings are totally two different proceedings, one initiated to recover the loss/misappropriated amount and the other is initiated against the delinquency the petitioner in the discharge of his work. Therefore, mere fact that the petitioner has come out successful in the surcharge proceedings cannot be a ground to interfere with the order in the disciplinary proceedings. It is further submitted by the learned Government Advocate that in respect of the third charge, the petitioner himself has admitted his guilt and has paid the entire amount. All the factors have been properly weighed with by the authorities below, before inflicting the punishment of termination from service and, therefore no interference is warranted.

4. This Court bestowed its attention to the contentions advanced by the learned counsel on either side and perused the materials available on record.

5. The facts in issue are not in dispute. Surcharge proceedings and disciplinary proceedings were initiated against the petitioner. Though the order in the surcharge proceedings has been passed against the petitioner, however, on appeal, the same stood dismissed. A perusal of the order passed in appeal against the surcharge order reveals that the same has been dismissed on the ground of limitation. It is not an order passed on merits. Therefore, the said order cannot be taken aid of by the petitioner to canvass his claim that the departmental proceedings cannot be proceeded with.

6. Further, it is to be pointed out that surcharge proceedings are taken up with regard to the wrongful loss committed by the individual to the co-operative society. In the case on hand, the act of misappropriation has led to the surcharge proceedings, not against the petitioner alone, but against two other persons as well. Therefore, the setting aside of the order in the surcharge proceedings in the appeal will not in any way advance the case of the petitioner in the disciplinary proceedings, more so, in the present case, the appeal having been allowed on the ground of limitation.

7. The ground on which the disciplinary proceedings has been initiated is on account of the act of misappropriation committed by the petitioner. Misappropriation is a major delinquency and proof thereof definitely calls for a severe punishment. The enquiry report having indicted the petitioner and the charges levelled were said to have been proved, the disciplinary authority has inflicted the punishment of dismissal from service, which has been confirmed by the appellate and revisional authorities.

8. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the

Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

9. In the case on hand, the punishment inflicted on the petitioner is termination from service. The delinquency committed by the petitioner, as alleged, is misappropriation. The materials available on record reveal that insofar as the third charge, the petitioner had admitted the guilt and paid the entire amount. In such view of the matter, it cannot be said that the delinquency has not been proved, more so, when the petitioner himself has admitted his guilt and paid the amount. Therefore, once the petitioner has admitted his guilt and made good the loss, insofar as one of the charge is concerned, definitely, the charge levelled against the petitioner stood proved and it was open to the disciplinary authority, to inflict punishment on the petitioner, which the disciplinary authority, has done by terminating the petitioner from service.

10. Though it is the contention of the learned counsel for the petitioner that the act of surcharge proceedings and disciplinary proceedings and infliction of punishment in both the proceedings is nothing but double jeopardy, however the said contention cannot be accepted for the simple reason that while

surcharge proceedings are initiated for the purpose of recovering the wrongful loss caused by the employee, the departmental proceedings are initiated for the purpose of delinquency in service by the employee, thereby, causing wrongful loss to the bank. Both the proceedings stand on different footing.

11. It is to be pointed out that it has been the consistent view of the courts that disciplinary proceedings and criminal case can proceed simultaneously and even an acquittal in the criminal case would not absolve the petitioner of his delinquency in the departmental proceedings as both stand on different set of substantive material and one cannot be superimposed on the other. Similarly, the surcharge proceedings and the departmental proceedings stand attracted in different dimension, though the delinquency may relate to a single event. Therefore, the orders passed against the employee in a surcharge proceeding and disciplinary proceeding are separate actions and, therefore, the concept of double jeopardy, in no way, stands attracted to the case in issue.

12. The delinquency of the petitioner, having analysed by the disciplinary authority while imposing the punishment of termination from service and the same having been confirmed by the appellate and revisional authorities, this Court is of the considered view that the delinquency of the petitioner is of such a gravity that the punishment imposed on him, in no way, could be termed to be disproportionate or shocking the conscience of this Court. In such circumstances, this Court is of the considered view that no interference is warranted with the orders impugned herein.

13. For the reasons aforesaid, this petition deserves to be dismissed and, accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Joint Registrar of Co-op. Societies
Ariyalur Region, Ariyalur,
Ariyalur District.

2. The Special Officer
R.2650, Keezhakudiyiruppu Primary
Agricultural Co-op. Bank
Keezhakudiyiruppu Village & Post
Udayarpalayam Taluk
Ariyalur District.

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.31430

+1cc to the Special Government Pleader, S.R.No.31487

W.P.NO.12477 OF 2013

RLD(CO)
CS/03/11/2020