



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.07.2020**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.7393 of 2020

and

WMP(MD) Nos.6844 to 6846 of 2020

(Through Video conferencing)

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Packiyalakshmi

...Petitioner

-Vs-

1.Joint Registrar/Managing Director,
The Central Co-operative Bank limited
(A.314/2690) Head Office,
No.4, M.G.R.Maligai,
Thiruvananthapuram Road,
Vannarapettai, Tirunelveli District.

2.C.Baskaran,
Assistant General Manager/Domestic
Enquiry Officer,
The Central Co-operative Bank limited
(A.314/2690) Head Office,
No.4, M.G.R.Maligai,
Thiruvananthapuram Road,
Vannarapettai, Tirunelveli District.

...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India,praying to issue a writ of Certioraried Mandamus, calling for the records pertaining to the impugned charge-memo issued by the 1st respondent vide proceedings in Na.Ka.No.33/2020/E1(2) dated 24.02.2020 and quash the same as illegal and consequently direct the 1st respondent to reinstate the petitioner into service with all monetary and attended benefits within a stipulated time that may be fixed by this Hon'ble Court.

For Petitioner : Mr.R.Karunanidhi

For Respondents : Mr.D.Shanmugaraja Sethupathi
for R1

ORDER

The prayer in this writ petition is for a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned charge-memo issued by the 1st respondent vide proceedings in Na.Ka.No.33/2020/E1(2) dated 24.02.2020 and quash the same as illegal and consequently direct the 1st respondent to reinstate the



petitioner into service with all monetary and attended benefits within a stipulated time that may be fixed by this Court.

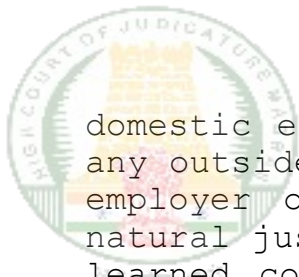
2.The petitioner was working as Assistant Manager of the 1st respondent bank. While so, on 24.02.2020, a charge memo was issued against her interalia stating the imputation of charges and an enquiry also has been contemplated. Based on this disciplinary proceedings, the petitioner has also been placed under suspension from February 2020 onwards. The petitioner challenging the said charge memo has filed this writ petition.

3.Heard Mr.R.Karunanidhi, learned counsel appearing for the petitioner, who would make three fold submissions stating that first of all, the documents to be relied on by the employer side have not been furnished to the petitioner, despite request is being made in this regard. The second ground according to the learned counsel appearing for the petitioner is that though a request was made to permit the petitioner to engage a lawyer to represent her case before the Enquiry Officer, that was denied and thirdly, the learned counsel appearing for the petitioner would submit that from the date of suspension till the date, no subsistence allowance has been paid. By raising all these grounds, the learned counsel appearing for the petitioner would submit that the enquiry contemplated by the respondents are not appears to be proceeded in accordance with law. Therefore, the very charge itself has to be quashed and that is the reason why the present writ petition has been filed.

4.On the other hand, Mr.D.Shanmugaraja Sethupathi, the learned counsel appearing for the 1st respondent would submit that so far, the documents sought for by the petitioner is concerned, whatever documents the petitioner sought for would be served on her, if those documents are relied on by the respondents. If the documents are not relied on by the respondents, it cannot be required to be served or furnished to the petitioner. Therefore, he would say that all those documents which are going to be relied on by the employer side would definitely be served or furnished to the petitioner.

5.Insofar as the allegation made with regard to the non payment of subsistence allowance is concerned, the learned counsel appearing for the 1st respondent would submit that calculating the subsistence allowance till May 2020, the amount has been deposited in the bank account of the petitioner on 02.06.2020 and the said factor can very well be verified by the petitioner and thereafter from June 2020 onwards, the respondents would continue to pay the subsistence allowance further without fail till the completion of the enquiry.

6.So far as the grievance of the petitioner with regard to the permission seeking for to engage a lawyer on her behalf is concerned, the learned counsel appearing for the 1st respondent would submit that the law is well settled in this regard to state that in



domestic enquiry, the employee is not entitled to have a lawyer or any outside person to represent and if such a denial is made by the employer or Enquiry Officer, that would not amount to denial of natural justice principle and in order to substantiate the same, the learned counsel has relied on the decision of the Hon'ble Supreme Court in **1993 (2) SCC 115 - Crescent Dyes And Chemicals Ltd. vs Ram Naresh Tripathi**, where, he relied on para 15, which reads thus:

'15. In the third case the management, The Dunlop Rubber Company, dismissed certain workmen after a domestic enquiry finding them guilty of 'go slow' action. An industrial dispute was raised wherein the Industrial Tribunal found that the dismissal of the workmen could not be sustained since there was denial of natural justice inasmuch as the workmen were not allowed to be represented by a person of their choice. On the Tribunal setting aside the orders of dismissal the company appealed to this Court by special leave. This Court held that there was no denial of natural justice because the workmen had asked for being represented by a member of a union which was not recognised since the Standing Orders clearly provided that only a representative of a registered and recognised union could assist the workmen in the enquiry; there was no absolute right to representation as such except that recognised by the Standing Orders.

16. It is, therefore, clear from the above case law that the right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or Standing Orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent. In the instant case the delinquent's right to representation was regulated by the Standing Orders which permitted a clerk or a workman working with him in the same department to represent him and this right stood expanded on Sections 21 and 22(ii) permitting representation through an officer, staff-member or a member of the Union, albeit on being authorised by the State Government. The object and purpose of such provisions is to ensure that the domestic enquiry is completed with despatch and is not prolonged endlessly. Secondly, when the person defending the delinquent is from the department or establishment in which the delinquent is working he would be well conversant with the working of that department and the relevant rules and would, therefore, be able to render satisfactory service to the delinquent. Thirdly, not only would the entire proceedings



be completed quickly but also inexpensively. It is, therefore, not correct to contend that the Standing Order or Section 22(ii) of the Act conflicts with the principles of natural justice.''

7. By relying the said decision, the learned counsel appearing for the 1st respondent would submit that the petitioner can very well put forward her case before the Enquiry officer by whom all particulars would be given to the petitioner and the documents to be relied on by the respondents side also would be supplied to the petitioner. Therefore, the petitioner may not have any grievance against the Enquiry Officer or the respondents, especially, the 1st respondent and also against the 2nd respondent, who is the Enquiry Officer and therefore, no interference is called for in the impugned charge memo, he contended.

8. I have considered the submissions made by both sides and have perused the materials placed before this Court.

9. Insofar as the furnishing of documents is concerned, it has been made clear by the 1st respondent across the bar and his submission as has been stated above is recorded hereby and accordingly, whatever documents should be relied on by the respondents i.e. the employer shall be furnished to the petitioner and after giving an opportunity to go through those documents by way of furnishing them, the Enquiry Officer shall proceed to conduct an enquiry.

10. So far as the subsistence allowance issue is concerned, it has been made clear that on 02.06.2020, the due upto May 2020 was paid and from June 2020, every month will be paid without fail. The said submission of the respondents' counsel also is recorded and accordingly, there shall be a direction that the subsistence allowance to the petitioner till the completion of the enquiry shall be paid without fail every month regularly.

11. So far as the grievance of the petitioner for permitting her to engage a counsel is concerned, as has been rightly pointed out by the learned counsel appearing for the respondents that the law is well settled and it is not a matter of right for an employee to seek for assistance of a legal person during the domestic enquiry and if at all the employer or Enquiry Officer permitted, there can be no impediment, but, at the same time, since as a matter of right, the employee cannot claim such a right, no other direction can be issued by this Court in that regard.

12. Therefore, this Court feel that there is no plausible reason available for the petitioner to successfully challenge the impugned charge memo and in fact, pursuant to the charge memo, Enquiry Officer was appointed and he had a first enquiry on 12.06.2020. According to the learned counsel appearing for the 1st respondent,



the Enquiry Officer was allegedly abused by the petitioner and therefore, the said Enquiry Officer recuses himself from the proceedings with the enquiry. Therefore, in his place i.e., the 2nd respondent's place, yet another Enquiry Officer has to be appointed and on appointment, he may proceed further with the enquiry and at any rate, immediately after receiving the enquiry report under Section 81 of Tamil Nadu Co-operative Societies Act, which is already pending before the authority, the enquiry has to be completed within a period to be stipulated by this Court and final decision with regard to the disciplinary proceedings initiated against the petitioner would be taken.

13. In view of the said stand taken by the learned counsel appearing for the 1st respondent and by taking into account the aforesaid discussion and factual matrix, this Court is inclined to dispose of this writ petition, with the following direction:

"(i) The 1st respondent or the Enquiry Officer, who appointed in this regard, shall furnish the documents to be relied on by the employer side to the petitioner then and there and after giving an opportunity of having such documents, the Enquiry Officer shall proceed against the petitioner.

(ii) Since the subsistence allowance upto May 2020 has already been paid, there shall be a direction to the 1st respondent to continue to pay the subsistence allowance from June 2020 till the completion of the enquiry.

(iii) So far as the request of engaging a lawyer on her behalf by the petitioner is concerned, that liberty can not be given in view of the settled legal position. Therefore, that request is liable to be rejected. Accordingly, is rejected.

(iv) The 1st respondent shall appoint a fresh Enquiry Officer immediately within one week from the date of receipt of a copy of this order and such newly appointed Enquiry Officer shall proceed with the enquiry without any delay and at any rate, he should complete the enquiry within a period of three months from the date of his appointment.

(v) In the meanwhile, the authority, who is conducting the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act shall complete the same within a reasonable period and shall file a report to the concerned authority and after receipt of the same, final decision can be taken by the 1st respondent by concluding the disciplinary proceedings initiated against the petitioner. The total outer limit of period for completion of the disciplinary proceedings is six months from the date of receipt of a copy of this order."



14. With these directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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/ /2020

Sub Assistant Registrar(CS)

Arul

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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(A.314/2690) Head Office,
No.4, M.G.R.Maligai,
Thiruvananthapuram Road,
Vannarapettai, Tirunelveli District.

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AP (29.07.2020) 6P-2C