



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.7492 of 2015

T.Mohan

... Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies,
O/o. the Joint Registrar of Co-operative Societies,
Tiruchirappalli Zone,
Tiruchirappalli.

2.The Sub Registrar / Special Officer,
TY SPL 54 Alangudi Mahajanam Primary Agricultural
Co-operative Credit Society,
Anbil Via,
Lalgudi Taluk,
Tiruchirappalli District - 621 702.

3.The President,
TYSPL 54 Alangudi Mahajanam Primary Agricultural
Cooperative Credit Society,
Anbil Via,
Lalgudi Taluk,
Tiruchirappalli District ... Respondents

(The third respondent impleaded as per the order of this Court dated 21.02.2020 made in W.M.P.(MD).No.2834 of 2020)

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in connection with the impugned order of removal from service passed in his proceedings in No.Nil dated 14.12.2012 and the consequential impugned rejection of revision passed by the 1st respondent vide his proceedings in Na.Ka.151/2013/Sa.Pa. Dated 25.10.2013 and quash the same as illegal and ultravires and consequently, direct the respondents to reinstate the petitioner in service with all service and monetary benefits within a stipulated time.

For petitioner : Mr.K.Gurunathan

For 1st respondent : Mr.D.Muruganandham,
Additional Government Pleader

For respondents 2 & 3 : Mr.J.Gunaseelanmuthaiah



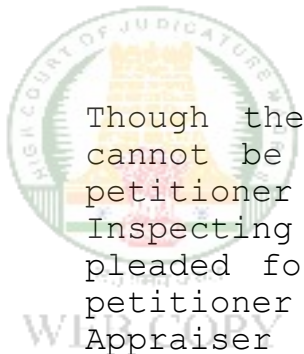
ORDER

This writ petition has been filed by the petitioner challenging the impugned orders of dismissal from service passed by the second respondent and confirmation of the same in revision by the first respondent.

2. The learned counsel for the petitioner submitted that the petitioner joined in the 2nd respondent Society as Salesman on 26.01.1979 and subsequently, promoted as Assistant on 01.06.2004. While the petitioner had four more years of service, on 18.06.2012 an inspection was conducted and he was placed under suspension for the reason that two loans were given to two individuals on fake jewels. Though the role of the petitioner was only to an extent of making vouchers and it was not to find the genuineness of the gold, the petitioner, on compulsion and threatening, gave a statement admitting guilt. The borrower also repaid the loan amount. There is no loss to the society. While so, even before the report of enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 for such inspection, the second respondent issued a charge memo alleging two charges. They are : (a) the petitioner abetted to cause loss to the society by giving loans on fake jewels; and (b) He has committed dereliction of duty by giving loans on fake jewels and brought disrespect to the society.

3. The learned counsel for the petitioner would further submit that though the petitioner has stated that he is not responsible for granting loans on fake jewels as he is only an Assistant in the Society and it the duty of the gold appraiser to verify the jewels and the Secretary of the society is the sanctioning authority for the loans and that the Enquiry Officer only based on the admission of guilt by the petitioner, has held that the charges are proved. The Disciplinary Authority ie., the second respondent also has dismissed him from service, only based on his admission of guilt. The Revisional Authority viz., the first respondent herein also, only based on the admission of guilt by the petitioner, has confirmed the punishment of dismissal from service. The respondents have imposed only minor punishment to the Secretary, who sanctioned the said loans and permitted him to retire from service. The petitioner alone has been discriminated and there is disparity in punishment. Hence, challenging the above said orders, the petitioner has filed this writ petition. Thus, he prayed to allow this writ petition.

4. The learned counsel appearing for the respondents in unison submitted that the petitioner/Assistant and the Secretary of the Society were the custodian for the jewels in the society. The petitioner being an Assistant is next to the post of Secretary in the Society. The petitioner was fixed with certain duties and responsibilities in distribution of jewel loans in the Society.



Though the amount was stated to be repaid by the borrowers, it cannot be stated that there was no irregularity committed. The petitioner has voluntarily admitted his guilt not only before the Inspecting Officials but also before the Enquiry Officer and only pleaded for leniency in awarding punishment. The attempt of the petitioner to shift the liability/responsibility as against the Gold Appraiser and Secretary in this occurrence has no basis at all. Though the petitioner admitted his guilty, the Secretary of the Society was also imposed with punishment of stoppage of increment for three years on 26.11.2012. The petitioner is guilty of proved charges and as the charges are grave in nature, he was dismissed from service and the same was confirmed by the revisional authority. There is no need to interfere with the impugned orders. Thus, he prayed to dismiss this writ petition.

5. Heard the learned counsel for both sides and perused the records carefully.

6. It is seen that the petitioner had been working only as an Assistant. As stated by the respondents, the petitioner could be a joint custodian for the jewels in the society, along with the Secretary, as rightly stated by the petitioner, he was not authorised to find as to whether the jewels produced by a loan seeker is a genuine one or not. It is the duty of the Gold Appraiser to find out whether the jewels produced are genuine one or bogus one. At the same time, it is not in dispute that the petitioner is not the sanctioning authority for the loan. In this case, though the Gold Appraiser and the Secretary played a vital role rather than the petitioner in sanction of loans on bogus jewels, it is seen that the Secretary has been imposed only a minor punishment of stoppage of increment for three years and thereafter, he was permitted to retire from service on attaining the age of superannuation. There is no whisper as to the action taken against the Gold Appraiser. There is no loss to the society as the amount has been repaid by the persons those who obtained loans on fake jewels. According to the petitioner, he has admitted his guilty on threatening of the Inspecting officials to arrest him by giving criminal complaint. Merely because, the petitioner had admitted his guilt, he cannot be imposed with a major punishment of dismissal from service. Thus, there is a discrimination in imposing punishment.

7. In the case of **Rajendra Yadav Vs. State of M.P. and others**, reported in **(2013) 3 MLJ 101 (SC)**, the Hon'ble Supreme Court has held in paragraph Nos.12 to 14 as follows;

"12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the



same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, ie., lesser punishment for serious offences and stringent punishment for lesser offences.

13. The Principle stated above is seen applied in few judgments of this Court. The earliest one is Director General of Police and others v. G.Dasayan (1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The disciplinary authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principal of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In Anand Regional Coop. Oil Seeds growers' Union Ltd., v. Shaileshkumar Harshadbhai Shah (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which others were given the benefit.

14. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant, is therefore, to be reinstated from the date on which



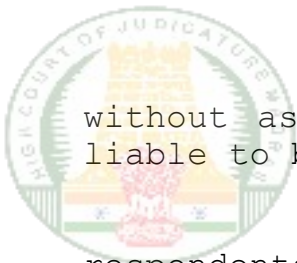
consequent benefits as was given to Arjun Pathak.
Ordered accordingly."

8. The above decision is squarely applicable to this case, as in this case also, as stated above, the Secretary of the Society has imposed only lesser punishment and the Gold Appraiser has not imposed with any punishment, but, the petitioner has been imposed with major punishment of dismissal from service. Therefore, the impugned orders are liable to be interfered with on the ground of disparity in imposing punishment.

9. A perusal of record shows that the Inspecting Officials, who conducted inspection on 18.06.2012 and found sanction of two loans on fake jewels, has submitted a report only on 24.09.2012, whereas even before the recommendation of the Inspecting officials to take action against the petitioner, the second respondent has issued the charge memo on 14.07.2012. It is not known as to how and on what basis such charge memo has been issued even before the receipt of such report of the Inspecting officials under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. However, in the report of the Enquiry Officer, it is stated that the action has been initiated against the petitioner only based on the recommendation of the Inspecting Officials under Section 81 of the Act. It is seen that the petitioner has pleaded guilty even before the Enquiry Officer and sought for some leniency under the impression that he would be given lesser punishment. But, only on the basis of such admission, the Enquiry Officer held that all the charges are proved and the Disciplinary Authority as well as the Revisional Authority have dismissed the petitioner from service. Mere admission of guilt by the delinquent would not be sufficient for imposition of major punishment. There must be some materials to prove the charges against the delinquent for imposition of major punishment. There was no independent finding or examination of the members or even the co-delinquents in this case.

10. In the case of **Canara Bank rep. by its General Manager v. Presiding Officer, Industrial Tribunal, Chennai and another**, reported in **(2008) 2 MLJ 414**, a Hon'ble Division Bench of this Court has held that in a case of domestic enquiry, where the theory of preponderance of probability is applied, it is not as if guilt could be admitted based upon which service can be terminated. There should be enough material against the delinquent in proof of the charge levelled against him.

11. The above dictum is squarely applicable to this case, as in this case, as stated earlier, the charges are stated to be proved only based on the admission of guilt by the petitioner and not on merits by the Enquiry Officer. Based on the report of the Enquiry Officer and on the basis of admission of guilt by the petitioner, the Disciplinary Authority has dismissed the petitioner from service and the same was confirmed by the Revisional Authority,



without assigning any reason. Therefore, the impugned orders are liable to be set aside.

12. At this juncture, the learned counsel for the respondents submitted that the petitioner may be imposed punishment on par with punishment imposed on the Secretary. It is stated that during the pendency of this writ petition, the petitioner has attained the age of superannuation. Considering the fact that the petitioner has already attained the age of superannuation and also considering the mental agony undergone by the petitioner for these long years, this Court is not inclined to impose punishment on the petitioner on par with the Secretary.

13. In view of the above, the impugned orders are set aside. The respondents are directed to treat the petitioner as on duty from the date of suspension till the date of his superannuation and to grant all service and monetary benefits within a period of twelve weeks from the date of receipt of a copy of this order.

14. This writ petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar (Crl side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg

To

1. The Joint Registrar of Co-operative Societies,
O/o. the Joint Registrar of Co-operative Societies,
Tiruchirappalli Zone,
Tiruchirappalli.

2.The Sub Registrar / Special Officer,
TY SPL 54 Alangudi Mahajanam Primary Agricultural
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3.The President,
TYSPL 54 Alangudi Mahajanam Primary Agricultural
Co-operative Credit Society,



Anbil Via,
Lalgudi Taluk,
Tiruchirapalli District

+1 CC to M/s.K.GURUNATHAN, Advocate (SR-7497[F] dated 21/02/2020)

+1 CC to M/s.K.GURUNATHAN, Advocate (SR-6634[F] dated 17/02/2020)

+1 CC to M/s.J.GUNASEELAN M,UTHIAH, Advocate (SR-6958[F] dated 18/02/2020)

+1 CC to M/s.SPL.GP (SR-7800[F] dated 24/02/2020)

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