BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)Nos.14469 of 2011 & 4214 of 2012
and
M.P(MD)Nos.1, 2 of 2011 & 1 of 2012

W.P(MD)No.14469 of 2011:-

S.Siva Saravana Perumal ... Petitioner

Vs.

1.The Chairman/Disciplinary Authority,
Tamil Nadu Grama Bank,
Administrative Office,
No.6, Yercaud Road,
Hasthampatti, Salem - 636 007.

2.Board of Directors/Appellate Authority,
Tamil Nadu Grama Bank,
Administrative Office,
No.6, Yercaud Road,
Hasthampatti,
Salem - 636 007. ... Respondents

(R.1 and R.2 cause title was amended vide order of this Court dated 22.01.2021 made in WMP(MD)No.13446 of 2020)

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent dated 08.02.2003 issued in the reference AIVD/823/2002 and the impugned order of the second respondent issued in the reference AIVD/899/11-12 dated 17.11.2011 and quash the same and direct the respondents to pay the salary to the petitioner in the scale as it was prior to the impugned order of the respondents together with the increments due during these period and also pay the arrears of salary on account of implementation of the impugned order of the second respondent dated 17.11.2011 issued in the reference AIVD/899/11-12 and granting such further or other relief.

For Petitioner : Mr.C.Masilamani

For Respondents : Mr.M.P.Senthil

W.P(MD)No.4214 of 2012:-

M.Kasa Mohammed ... Petitioner

Vs.

1.The Chairman,
Pandyan Grama Bank,
2/70/1, Collectorate Complex,
Virudhunagar - 626 002.

2.The Appellate Authority,
Pandyan Grama Bank,
2/70/1, Collectorate Complex,
Virudhunagar - 626 002. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the respondents in their proceedings in AIVD/900/11-12 dated 17.11.2011 and quash the same and consequently, direct the first respondent to pay all the monetary benefits to the petitioner.

For Petitioner : Mr.Ananth C.Rajesh

For Respondents : Mr.M.P.Senthil

* * * * *

COMMON ORDER

Since the issue arises in both the writ petitions are connected with each other, both the writ petitions are taken up together and disposed of by this common order.

2. The petitioners are the Manager and the Clerk-cum-Cashier and they were imposed with the punishment by the Original Authority and the same was confirmed by the Appellate Authority. Challenging the same the present writ petitions have been filed.

3. The case of the petitioners in W.P.(MD)No.14469 of 2011 and W.P.(MD)No.4214 of 2012 is as follows:

(i) The petitioners are working as Clerk-cum-Cashier and Branch Manager respectively in the respondent Bank. Some excess payments were made to an individual, who pledged her jewels and obtained jewel loan. The said mistake was noticed some time later and one officer from Audit Inspection and Vigilance Department from the respondent Bank conducted an enquiry and gave a report to the Bank by stating that the petitioners were negligent on their duty, which some other members committed wrongs in the Bank. Based on that report, the first respondent placed the petitioners under suspension vide letter dated 08.06.1999 and thereafter, the first respondent Bank issued charge memos against the petitioners. The sum and substances of charge against the petitioners was that one Noorjahan Beevi of Iruveli Village came to the Branch on 19.04.1999 to pledge her jewels and based on appraiser's certificate, the petitioners had granted a sum of Rs.19,000/- to her in her jewel account, knowing fully well that the loan was granted for Rs.9,000/-. The petitioners had passed disbursement debit cash voucher for Rs.19,000/- and only Rs.9,000/- was paid to the borrower and the balance of Rs.10,000/- was misappropriated by the petitioners for their personal gains. When the said act of misappropriation came to light, the petitioners went to Sayalkudi Branch and tampered the bank records in collusion with other staff members to conceal the act of misappropriation. Thereafter the petitioners submitted detailed explanation for the above said charges to the first respondent. However, the first respondent, without considering the genuinity of the reply submitted by the petitioners, decided to proceed with the enquiry by appointing an Enquiry Officer. The Enquiry Officer, not considering the affidavit submitted by the said borrower Noorjahan Beevi, having accepted that she had received the loan of Rs.19,000/-, had filed the enquiry report against the petitioners. Without considering the said aspect, the first respondent accepted the Enquiry Officer's report, and without considering the petitioners' explanation submitted for the second show cause notice, passed a final order on 08.02.2003 by stating that instead of dismissal from service, punished them to lowering the five stages and three stages respectively. Challenging the same, the petitioners filed an appeal before the second respondent, who is the appellate authority and he reduced the punishment of the petitioners to lowering the petitioners four stages and two stages respectively.

(ii) Aggrieved over the order of the first respondent, the petitioners preferred writ petitions in W.P.(MD)Nos.6271 of 2006 and 8253 of 2005 respectively. Both writ petitions were partly allowed by this Court and this Court remanded back the matters to the first respondent for fresh consideration. In compliance of the above said order, the first respondent issued a notice to the petitioners dated 08.11.2011 and asked them to appear before the Appellate Authority on 14.11.2011. Without giving opportunity, the second respondent passed an order justifying their earlier order, dated 28.10.2004 and the same was communicated to the petitioners on 17.11.2011. Challenging the same, the present writ petitions have been filed.

4. Learned Counsel appearing for the petitioner in W.P.(MD)No.14469 of 2011 would submit that the petitioner has no role in preparing the loan details and absolutely it is the domain of the jewel appraiser and the manager and whenever the manager and the jewel appraiser arrived at a conclusion, the petitioner's role is to disburse the amount to the borrower and except this official duty, the petitioner did not commit any guilt as alleged in the charge memo. Further, it is submitted that the denomination was not

mentioned in the payment voucher which was submitted to the borrower. Further, the original borrower viz., Noorjahan Beevi has not made any complaint before the first respondent. Based on the audit report, the charge memo was issued, which is not legally sustainable. Further, there is no loss to the Bank and in the absence of any loss, imposing punishment against the petitioner is unsustainable one and accordingly, the learned Counsel would pray for appropriate orders.

5. Learned Counsel appearing for the petitioner in W.P.(MD)No.4214 of 2012 would submit that the Original Authority as well as the Appellate Authority failed to consider the contradictions exists among the evidences adduced before the Enquiry Officer and without considering the said contradictions, mechanically accepting the Enquiry Officer's report is not justifiable one. The learned Counsel would further submit that the borrower was not examined before the Enquiry Officer and the borrower herself paid the entire borrowed amount to the Bank. Hence, no loss to the Bank. Without any loss to the Bank, imposing punishment against the petitioner is not in accordance with law and further, the allegation made against the petitioner, as if he made corrections in the loan voucher, has to be proved in the manner known to law. Without proving the said allegation, imposing the punishment by the Original Authority and modified by the Appellate Authority is *non-est* in law. Accordingly, the learned Counsel would pray appropriate orders.

6. Learned Standing Counsel appearing for the respondents would submit that after thorough consideration of the material evidences, the Original Authority arrived at a conclusion and imposed the punishment, which was modified by Appellate Authority, and the same does not warrant any interference by this Court and hence, he would pray for dismissal of the writ petitions.

7. Heard the learned Counsel appearing for the petitioners and the learned Standing Counsel appearing for the respondents and perused the materials placed on record.

8. Admittedly, the facts in the present case are not in dispute. The petitioners are working as Clerk-cum-Cashier and Branch Manager respectively in the respondent Bank. Some excess payments were made to an individual, who pledged her jewels and obtained jewel loan. The said mistake was noticed some time later in the audit inspection and one officer from Audit Inspection and Vigilance Department from the respondent Bank conducted an enquiry and gave a report to the Bank that the petitioners were negligent on their duty. Based on that report, the first respondent placed the petitioners under suspension vide letter dated 08.06.1999 and thereafter, the first respondent Bank issued charge memos against the petitioners. The sum and substances of charge against the petitioners was that one Noorjahan Beevi of Iruveli Village came to

the Branch on 19.04.1999 to pledge her jewels and based on appraiser's certificate, the petitioners had granted a sum of Rs.19,000/- to her in her jewel account, knowing fully well that the loan was granted for Rs.9,000/-. The petitioners had passed disbursement debit cash voucher for Rs.19,000/- and only Rs.9,000/- was paid to the borrower and the balance of Rs.10,000/- was misappropriated by the petitioners for their personal gains. Thereafter the petitioners submitted detailed explanation for the above said charges to the first respondent. However, the first respondent decided to proceed with the enquiry by appointing an Enquiry Officer. The first respondent accepted the Enquiry Officer's report passed a final order on 08.02.2003 by stating that instead of dismissal from service, punished them to lowering the five stages and three stages respectively and on appeal, the second respondent reduced the punishment of the petitioners from the lowering the five stages and three stages respectively to lowering four stages and two stages respectively.

9. On a perusal of the jewel loan application which was marked by the petitioner before this Court would reveal that the loan amount was Rs.9,240/- and the total market value of the jewel was Rs.11,550/-. However, in the jewel column, it is mentioned as Rs.19,000/-. The petitioners, being the cashier and the manager, without verifying the jewel loan application, mechanically cleared a sum of Rs.19,000/-, which is contrary to the Bank Standing Orders. Further it is also submitted by the cashier that the denomination was not mentioned in the payment voucher submitted to the borrower. However, it is the duty of the cashier to make denomination in the payment voucher, however, he did not discharge his duties. Though, it is not serious one, it deserves to impose punishment. Further, based on the audit report, the misappropriation was found and the said act is serious one. Though the Original Authority imposed the above stated punishment, however the Appellate Authority reduced the punishment, which is not disproportionate.

10. Once a finding is rendered by the enquiry officer, which has been accepted by the disciplinary and appellate authorities, as stated above, this Court, sitting under Article 226 of the Constitution cannot re-appreciate the evidence in toto, as if it is sitting in appeal. Once this Court finds that the procedure has been followed in the conduct of the disciplinary proceedings, unless it is shown that a fair conclusion is not reached or that the evidence has not been admitted or inadmissible evidence has been admitted which prevailed upon the disciplinary authority to come to the erroneous conclusion, this Court would not be justified in interfering with the decision arrived at by the disciplinary authority. Further, it is also evident that no extraneous considerations have influenced either the enquiry officer or the disciplinary authority. Such being the case, there being no lacunae or discrepancy, as pointed out by the Hon'ble Supreme Court, in the

conduct of the departmental proceedings, this Court, in exercise of its powers under Article 226 is not inclined to re-appreciate the evidence as if sitting in appeal over the appellate decision.

11. On a holistic consideration of the materials available on record, this Court is of the considered opinion that the findings recorded in the enquiry are just and reasonable and this Court, under the guise of judicial review, cannot conduct a roving expedition as if the matter is in appeal before this Court.

12. Insofar as the punishment awarded to the petitioners are concerned for the delinquency, it has been the consistent view of the Courts that, it is always within the domain of the Original 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 the conscience, the Courts interfere with the same, in exercise of powers under Article 226 of the Constitution of India. In ***Prem Nath Bali – Vs - High Court of Delhi*** reported in ***(2015 (16) SCC 415)***, the Hon'ble Supreme Court has 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)

13. In the case on hand, a careful perusal of the entire records relating to the enquiry as also the order passed by the disciplinary authority, as confirmed by the other authorities, it clearly transpires that the disciplinary authority has applied his mind to the enquiry report and all the other materials while imposing the punishment and on appeal, the appellate authority has appreciated the materials independently and reduced the punishment imposed by the original authority On an overall consideration of the materials, this Court is in consensus with the order passed by the original authority as confirmed by the appellate authority and the punishment imposed on the petitioners is just and reasonable considering the nature of delinquency and no sympathy can flow from this Court for such an act. Therefore, the punishment imposed on the petitioners is in no way shocking the conscience of this Court or disproportionate to the delinquency and, therefore, this Court is not inclined to interfere with the same.

14. For the reasons aforesaid, both the Writ Petitions *san* merit and, accordingly, the same is dismissed. Consequently, connected Miscellaneous Petitions are also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL

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.

+2 ccs to Mr.M.P.Senthil Advocate in CA Sr.No.11364 &11365/2021
+1cc to Mr.Ananth C.Rajesh, Advocate Sr.No.11277/2021

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