

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.NO.211 OF 2022
AGAINST
W.P.NO.12477 OF 2013

G.Pandithurai

... Appellant/Petitioner

.Vs.

1. The Joint Registrar of Coop. 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/Respondents

PRAYER:-

Writ Appeal filed under Clause 15 of Letter Patent Act, to
set aside the order dated 23.09.2020 in W.P.No.12477 of 2013.

PRAYER IN W.P.NO.12477 OF 2013:-

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 Appellant : Mr.C.Prakasam
For Respondents : Mr.S.Prabhakaran
(R1 and R2)
Government Advocate

J U D G M E N T

S.VAIDYANATHAN.,J
AND
MOHAMMED SHAFFIQ.,J

The Present Appeal has been preferred against the order of the learned Single Judge dated 23.09.2020, made in W.P.No.12477 of 2013, in dismissing the Writ Petition.

2. The Writ Petitioner is the Appellant herein. The case of the Appellant/Writ Petitioner is that he was appointed as a Clerk in the Second Respondent Bank in the year 1990 and the 2nd respondent placed him under suspension on 07.02.2007 and ordered for enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act. According to the Appellant/Writ Petitioner, both the disciplinary proceedings and the surcharge proceedings have been simultaneously taken against the Appellant/Writ Petitioner, based on which a Charge Memo was issued on the allegation that the Appellant/Writ Petitioner has granted fake jewel loan, thereby misappropriated a sum of Rs.7,53,600/-, which was duly established in the enquiry, as a result of which, the Appellant/Writ Petitioner was dismissed from service vide order of the Second Respondent dated 29.11.2021. As against the said order, Appeal was filed by the Appellant/Writ Petitioner under Section 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 said orders, the Writ Petition was filed which was dismissed by the learned Single Judge vide order dated 23.09.2020, which is impugned in this Writ Appeal.

3. The learned counsel for the Appellant/Writ Petitioner submitted that the Departmental Proceedings and the Surcharge proceedings cannot go simultaneously and as the Surcharge Proceedings successfully ended in favour of the Appellant/Writ Petitioner, the order of termination passed in the departmental proceedings needs to be interfered with. He further submitted that the Appellant has not misappropriated any money and as the Appellant/Writ Petitioner being the clerk has no power to sanction loan and he has only filled the loan application as

directed by superiors, due to which he caused up with the problem and once the Writ Petitioner/employee himself admits the guilt, there is no necessity to conduct enquiry.

4. The learned Government Advocate appearing for the Respondents submitted that it is not the case that the employee sanctioned the loan and that he has aided the other officials to commit misappropriation by creating fake records. He further submitted that all the charges have been duly proved and the Appellant/employee has admitted the 3rd charge before the Enquiry Officer, has been duly recorded by the learned Single Judge. Therefore it is not correct on the part of the Appellant/Writ Petitioner to contend that the Departmental Proceedings and the Surcharge Proceedings cannot go simultaneously as both are independent to each other. He further submitted that even after acquittal, the Departmental Proceedings can go on, but, in this case as a detailed enquiry has been conducted, wherein the Appellant/employee admitted the charges, there is no need to interfere with the order of the learned Single Judge.

5. Heard both sides. Perused the records.

6. It is not in dispute that the Writ Petitioner was appointed as a Clerk in the year 1990 and was suspended on 07.02.2007 and pursuant to the charge memo he was dismissed from service after a detailed enquiry. A reading of the order passed by the learned Single Judge would go to show that the employee has admitted his guilt in the enquiry.

7. Though Mr.C.Prakasam, learned counsel appearing for the Appellant submitted that the Appellant was forced to accept the guilt in the enquiry, there is no averment either before the Appellate authority or before the Disciplinary authority to that effect. Apart from that detailed enquiry has been conducted, in which the charges levelled against the Writ Petitioner were duly proved. A learned Single Judge of this Court in the case of S.K.Raman Versus The Management of Kundah Rural Cooperative Agricultural Society Ltd., represented by its Special Officer and another reported in 1987 1 LLJ 487, held that enquiry should be held even if an employee admits the misconduct and gives a statement of admitting the misconduct. If he admits the guilt before the Enquiry Officer, the same can be taken as a gospel truth.

8. In the present case on hand, the employee has admitted his guilt, a detailed enquiry has also been conducted. As rightly held by the learned Single Judge, surcharge proceedings are initiated for the purpose of recovering the wrongful loss caused by the employee, whereas the departmental proceedings are initiated for the purpose of delinquency in service by the

employee, so as to cause loss to the Bank. As both the proceedings stand on a different footing, the contention that Surcharge Proceedings and Departmental Proceedings cannot go simultaneously, cannot be accepted.

9. In the light of the same, we are of the view that order of the learned Judge confirming the order of the Original Authority as affirmed by the Appellate Authority is perfectly valid and there are no grounds to interfere with the same.

10. In such view of the matter, this Writ Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Registrar of Co-op. Societies,
Ariyalur Region, Ariyalur,
Ariyalur District.
2. The Special Officer,
R.2650, Keezhakudiyiruppu Primary
Agricultural Coop Bank,
Keezhakudiyiruppu Village & Post,
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Ariyalur District.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.11029

+1cc to the Government Pleader, S.R.No.11535

W.A.NO.211 OF 2022

AJS(CO)
PBS/21/03/2022