# IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

CORAM

**THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.P.No.18870 of 2010**

1. K.Karthikeyan (Deceased)
2. Smt.K.Amutha
3. Mr.K.Vignesh Raj
4. Smt.Ambujam ... Petitioners

*(P2 to P4 substituted as LRs to Deceased Sole Petitioner vide order dated 12.04.2022 made in W.M.P.No.3269 of 2022 in W.P.No.18870 of 2010 by DBCJ)*

Vs.

-

1.The Tamil Nadu Grama Bank
Rep.by its Chairman & Disciplinary Authority
Head Office,
6, Yercaud Road, Hasthampatti,
Salem - 636 007.

2.The Board of Directors
Tamil Nadu Grama Bank
Head Office,
6, Yercaud Road, Hasthampatti,
Salem - 636 007. ... Respondents

*(R1, R2 Cause Title Amended Vide Order Dated 12.10.2022. Made in WMP.No.25380 of 2022 in W.P.No.18870 of 2010 by NMJ)*

**Prayer :** This Writ Petition has been filed under Article 226 of the Constitution of India to issue writ of Certiorarified Mandamus to call for the records from the files of the Respondents pertaining to their impugned orders (i) bearing PGB/VIG/OF/SPK:1/10-11 dated 27th April 2010 imposing the punishment of "Compulsory Retirement from service..." as per regulation No:38 (1) (b) (iii) of Pallavan Grama Bank (Officers and Employees) Service Regulations 2007 issued by the 1 st respondent (ii) the order of the 2 nd Respondent bearing No.PGB/VIG/46/2010-11 dated 10.07.2010 and quash the same and consequently direct the respondents to reinstate the petitioner in service with continuity of service, with back wages and with all other attendant and consequential benefits.

For Petitioner : Mr.K.M.Ramesh

For Respondents : Mrs.Rita Chandrasekar
for Mr.Aiyar & Dolia for R1 & R2.

**ORDER**

The writ petition is filed challenging the proceeding of the 1st Respondent dated 27.04.2010 imposing punishment of Compulsory Retirement from Service to the petitioner and order of the 2nd Respondent (Appellate Authority) dated 10.07.2010 upholding the above punishment, on the ground that the orders suffers from the vice of being a non~speaking order.

2. **FACTS OF THE CASE:**

The Petitioner joined the services of Respondent Vallalar Bank (now amalgamated with Tamil Nadu Grama Bank) as Officer on 15.03.1990 and served for nearly 20 years. On 30.08.2006 the petitioner was issued with a charge sheet alleging irregularities in sanctioning loans committed by the petitioner while working as Manager-in-Charge in the Valathy Branch of Respondent Bank. Meanwhile, on 31.08.2006 the Vallalar Grama Bank and Adhiyaman Grama Bank was amalgamated as “Pallavan Grama Bank” (now called as Tamil Nadu Grama Bank”). The petitioner submitted a reply dated 09.10.2006 to the said charge sheet refuting all the allegations which read as follows:

> *“At the outset, I respectfully submit that I was not the designated Branch Manager of Valathy Branch during the relevant point of time. The regular Manager, Mr.J.B.Pon Prabhakar was transferred and relieved. The relief in this case was so sudden i.e., he was relieved on 01.12.2001 at the instructions of the Charmian and on that day I could only tally the jewel packets and could not take charge of the documents and other records. After he was relieved from the branch, I was taking care of the routine of the branch expecting the posting of an incoming Branch Manager. Months rolled on, in this fashion but no Manager was posted. After nearly 4 months period was over, I was instructed to sanction the loans by Head Office. At the same time, no order was issued to me nominating me as the Manager-in-charge of the Branch. This is the background under which I have discharged the Managerial duties of our Valathy branch and hence I request that my reply may please by viewed accordingly. 2. Coming to the loan sanction to Mr.P.Elango, I respectfully submit that Mr.P.Elango is the brother of the President of the Valathy Village. He owns more than 10 acres of land in his name and that of his family members. He is a valued client of our branch and a man of high social standard. Through his good offices, the branch was able to get deposits and hence his connection was very much counted upon for business development. Taking these factors into account and considering the land holdings, the two KCC loans of Rs.25,000/- and Rs.30,000/- were sanctioned in a gap of more than two years. The monsoon failure and the crop*

*failure were also the reasons that made us to sanction the second loan. The pressure work in the branch was very heavy and hence while handling the application form, filling up of few columns would have slipped out attention. Mrs.Poongavanam w/o Mr.Powan was sanctioned KCC loan of Rs.23,300/- during the previous Manager's period The volume of the advance portfolio was such that I could Manger's period. The volume of the advance portfolio was such that I could not keep tract of this sanction while considering the facilities to Mr.P.Elango."*

3. Thereafter, on 11.08.2008 the Respondent Bank initiated a departmental enquiry against the petitioner whereby 18 charges were framed, of which 16 related to irregular sanction of loans. In defence, the Petitioner submitted 43 documents while, the Respondent submitted 42 documents along with two management witnesses in support of their contention. All the 16 charges relating to sanction of loan was held to be proved and punishment of "Compulsory Retirement from Service" under Regulation 38 (1) (b) (iii) of Pallavan Grama Bank (Officers and Employees) Service Regulations, 2007 was imposed with effect from 28.04.2010 by the 1st respondent.

4. Subsequently, on 24.05.2010 the petitioner preferred an appeal before the Members of the Board viz., 2nd Respondent and the appeal was rejected by the Board vide order dated 19.06.2010 with the following observations:

*.."The Appellate authority i.e. Board of Directors excluding the Chairman/Disciplinary Authority has carefully considered all the materials related to the enquiry along with*

*the appeal preferred by the appellant Shri K Karthikeyan and has concluded withe following decision: The lapses committed by him are of serious in nature. The charges cannot simply be considered as procedural lapses. Further, charges where DA concurred with the findings of IA are adequate to impose the capital punishment. Posting as Branch Manager cannot be considered as considered as certificate of conduct and the same will not nullify the charges. Hence his appeal is rejected and thus disposed of."...*

It is challenging the aforesaid orders of the 1st and 2nd Respondent, the petitioner had preferred this Writ Petition.

**5. CASE OF THE PETITIONER:**

a) That the order of the Appellate Authority stands vitiated for being non speaking order as it is made without assigning any reasons nor granting an opportunity of hearing.

b)That the orders imposing punishment of compulsory retirement from service by the 1st respondent and confirmation of the same by the 2nd respondent/Appellate Authority in appeal stands vitiated inasmuch as there is no documentary evidence on record in support of the charges of irregularities in sanctioning loans.

c) That the Chairman of the Bank who imposed the punishment on the petitioner in the capacity of Chairman-cum-Disciplinary Authority is also the Chairman of the Board of Directors. The Appeal before the Board of Directors will be placed and presented before the very same Chairman-cum

-Disciplinary Authority for consideration. The procedure adopted reduces the remedy of Appeal wholly ineffective and an empty formality.

**6. CASE OF THE RESPONDENTS:**

a) That the order of the 2nd respondent/Appellate Authority, unlike the original authority order need not contain elaborate reasons moreso when the order appealed is being confirmed.

b) That the petitioner granted loans without complying with the procedures/norms stipulated. The charge of irregularities in sanctioning of loans is serious and thus the punishment of compulsary retirement from service is justified.

c) That the Disciplinary Authority had granted adequate opportunity to the petitioner including cross examination of the management witnessess thus the writ petition challenging the orders of the 2nd respondent/Appellate Authority is lacking merits and liable to be setaside.

7. Heard both sides and perused the materials available on record.

8. It was made clear that the challenge is confined to impugned order of the appellate authority being non-speaking. In response to which it has been submitted by the learned counsel for the respondent that Appellate Authority unlike the Disciplinary Authority need not set out elaborate reasons if it were to confirm the order of the Disciplinary Authority and it would be adequate to

furnish the reasons necessary for disposing of the appeal. Reliance was sought to be placed by the learned counsel for the respondent on the judgment of the Hon'ble Supreme Court in ***"Oriental Bank of Commerce and Anr Vs. R.K.Uppal (2011) 8 SCC 695"*** relevant paragraphs read as follows:-

> *"26. However, personal hearing may not be required where the appellate authority, on consideration of the entire material placed before it, confirms, reduces or sets aside the order appealed against. Regulation 17 of the 1982 Regulations does not require that in all situations personal hearing must be afforded to the delinquent by the appellate authority. The view taken by the Full Bench of Punjab and Haryana High Court in Ram Niwas Bansal2 is too expansive and wide and cannot be held to be laying down correct law particularly in the light of the judgment of this Court in Mahendra Kumar Singhal4. We answer this question accordingly. 27. The High Court has faulted the order of the appellate authority also on the ground of it being a non-speaking order. Is it so? We have carefully perused the order of the appellate authority and we find that the order dated 4-6-2004 cannot be labelled as a non-speaking order. The order does not suffer from the vice of non-application of mind. The appellate authority has addressed the points raised in the appeal and critical to the decision, albeit briefly. It is true that the appellate authority must record reasons in support of its order to indicate that it has applied its mind to the grounds raised but it is not the requirement of law that an order of affirmance by the appellate authority must be elaborate and extensive. Brief reasons which indicate due appl ication of mind in the decision-making process may suffice."*

9. Learned counsel for the petitioner would also place reliance on the above judgment from paras 28 to 29 and submit that as a matter of fact in that particular case reasons were available and therefore the Hon'ble Supreme Court

has rejected the submission of the order being non-speaking order. Learned counsel for the petitioner also placed reliance on the judgment of Hon'ble Supreme Court in the case of Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney, (2009) 4 SCC 240, and the following paragraphs:

*.."5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover case (1995) 6 SCC 279 has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.*

*6. The view we are taking was also taken by this Court in Divl. Forest Officer v. Madhusudhan Rao [(2008) 3 SCC 469 and in M.P. Industries Ltd. v. Union of India [AIR 1966 SC 671]. 7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.*

*8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in S.N. Mukherjee v. Union of India [(1990) 4 SCC 594 : 1990 SCC (Cri) 669] , is that people must have confidence in the judicial or quasijudicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.*

*9. No doubt, in S.N. Mukherjee case [(1990) 4 SCC 594 : 1990 SCC (Cri) 669] it has been observed that: (SCC p. 613, para 36) "36. ... The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."*

*The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one-line orders stating that they agree with the view of the lower authority."*

It appears that on a reading of the impugned order on which reliance is placed by both the learned counsel for the petitioner as well as the respondent, the impugned order suffers from vice of non-speaking order, it does not set out any reason but would only contain the conclusion. There is a distinction between conclusions and reasons, what is set out in the impugned order is merely the conclusions and there are no reasons set out in support of the above conclusion that has been arrived at.

10. In view of the above reasons, the impugned order dated 10.07.2010 passed by the 2nd respondent confirming the order of the 1st respondent dated 27.04.2010 is set aside with a direction to the 2nd respondent/Appellate Authority to hear the matter and pass orders after granting the petitioner an opportunity of being heard. The Appellate Authority

shall dispose of the appeal within a period of eight (8) weeks from the date of receipt of a copy of this order.

11. It was also submitted by learned counsel for the petitioner that the punishment imposed is one of the compulsory retirement and assuming the petitioner fails in the appeal, the petitioner (Legal Heirs) would neverthless be eligible to retirement benefits, which the respondents may release. It is open to the petitioner (Legal Heirs) to submit a representation with regard to the retirement benefits. If any such representation is made to the respondents, such representation shall be disposed of within a period of six (6) weeks from the date of receipt of such representation in accordance with law.

12. This writ petition stands disposed of with the above directions. No costs.

**21.12.2022**

Index:Yes/No
Speaking/Non speaking order
***nst***

To:

1.The Tamil Nadu Grama Bank
Rep.by its Chairman & Disciplinary Authority
Head Office,
6, Yercaud Road, Hasthampatti,
Salem - 636 007.

2.The Board of Directors
Tamil Nadu Grama Bank
Head Office,
6, Yercaud Road, Hasthampatti,
Salem - 636 007.

**MOHAMMED SHAFFIQ.J,**
***nst***

**W.P.No.18870 of 2010**

**21.12.2022**