



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.04.2022

Pronounced on : 06.06.2022

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.20693 of 2010

T.Rajendran

... Petitioner

Versus

1. The Registrar of Co-operatives,
Kilpauk,
Chennai - 10.
2. The Joint Registrar of Co-operative Societies,
Vellore Region,
Vellore.
3. The Joint Registrar of Co-operative Societies,
Thiruvannamalai Region,
Thiruvannamalai.
4. The Special Officer cum Joint Registrar,
Thiruvannamalai District Co-operative Bank,
No.9, 6th Street, Gandhi Nagar,
Thiruvannamalai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in his proceedings in Na.Ka.No.2807/09 A-2, dated 10.09.2009 passed in Revision Petition No.4/2009 (A2) and quash the same and also direct the fourth respondent to disburse all the retirement benefits together with interest at the rate of 12% per annum from the date of the retirement within a time frame fixed by this Hon'ble Court.

For Petitioner : Mr. G. Ilamurugu

For Respondents: Mr. M. S. Palaniswamy



O R D E R

The petitioner is a retired employee of the fourth respondent/Co-operative Bank. He has filed the present Writ Petition challenging the order of the second respondent dated 10.09.2009 passed in the revision preferred by him against the order of punishment dated 11.11.2008.

2.The brief facts leading to the filing of the Writ Petition is that the petitioner was issued with a charge memorandum dated 22.06.2007 containing one charge. The charge against the petitioner is that when he was working as a Manager of Gandhi Nagar Branch, he was transferred to Thanipadi Branch, but he did not properly hand over the registers and documents relating to the salary loans, small commercial loans to women and other loans and thus, committed dereliction of duties and responsibilities. In the statement of the imputation of misconduct, it is mentioned that the petitioner, when transferred from Gandhi Nagar Branch and transferred to Thanipadi Branch, did not hand over the documents relating to the salary loans. Upon ordering of 100% inspection of all the loans given by the Gandhi Nagar Branch, it was found that he had not handed over the loan application and documents in respect of the loan Nos.1, 7, 13, 14, 20, 22, 42, 77 and 166, totally, nine loans. Further, in respect of the salary loans, in which, installments were not paid, no action was taken. As per the communication dated 20.06.2007 of the Gandhi Nagar Branch Manager, the petitioner has not handed over the bonds in respect of 54 loans for women, small business loans, the ledgers in respect of 36 loans, 33 ledgers & bonds in respect of revamped loans for women, ledgers and bonds relating to DIR loans, bonds relating 22 small short term loans for Government employees, loan No.3 of self-help group documents, money loan to self-help group loan Nos.21, 22, 23, 24, 29 and 31, totally six loans and documents, and documents relating to loan against deposits bearing loan Nos.1151, 1175 and 854, Jewel loans Nos.1688, 1724, 1872, 1947, 2020, 2034, 2068, 2091, 2084 and 2420 and its documents, for the period of one year, and thus, failed to perform his duties and responsibilities.

3.The petitioner submitted his detailed explanation on 28.06.2007 denying the charge and submitted that all the documents were packed in gunny bags and kept in the godown during the shifting of the branch and therefore, that the documents were not handed over. Further, the majority of the documents were found and was handed over after the initiation of inquiry. The Manager of the bank never issued any communication and asked him about the documents. Therefore, the petitioner would submit that there was no act of willful dereliction of duty on his part.



4. However, his explanation was not accepted and a Domestic Inquiry was ordered on 30.06.2007 and after the inquiry, the Inquiry Officer submitted his report on 03.01.2008. A second show-cause notice dated 07.07.2008 was issued to the petitioner duly enclosing the inquiry report. The petitioner submitted his further explanation on 21.07.2008. Thereafter, considering the inquiry report, further explanation and all the documents on record, by order dated 11.11.2008, the fourth respondent passed an order, holding that the petitioner is guilty of the charge and imposed the punishment of recovery of Rs.2,08,408.05/- from the petitioner being the monetary loss caused to the society on account of the inaction of the petitioner. Pursuant thereto, by a separate order dated 14.11.2008, from the retirement benefits due to the petitioner, a sum of Rs.2,08,408.05/- was recovered. Aggrieved by the order of punishment, the petitioner filed Revision Petition and by the impugned order dated 10.09.2009 the revision filed by the petitioner was rejected, as against which, the present Writ Petition is filed.

5. Heard Mr. G. Ilamurugu, Learned Counsel for the petitioner, and Mr. M. S. Palaniswamy, Learned Counsel appearing for the respondents.

6. The argument of the Learned Counsel for the petitioner is two-fold. First, it is the submission that as far as the charge is concerned, the petitioner has given a valid explanation. In the Domestic Inquiry, the same is not at all considered and despite overwhelming evidence on record to show that the documents were kept in a gunny bag during the process of shifting the office, the petitioner was found guilty of not handing over the documents. Therefore, it is his contention that the finding of the Inquiry Officer as well as the Disciplinary Authority and Revisional Authority are perverse in nature.

7. The second contention of the Learned Counsel for the petitioner is in any event, in the charge memorandum, the quantum of loss i.e., Rs.2,08,408.05/- is not at all mentioned. Neither in the process of Domestic Inquiry nor in the inquiry Officer's report, the quantum was mentioned. As a matter of fact, by separate proceedings dated 04.02.2019, action was initiated not only against the petitioner but, totally against seven officials for surcharge proceedings in order to recover the loss arising out of the very same loans. But, however, the surcharge proceedings were dropped, after finding that there is no willful misconduct or negligence on the part of the employees by order dated 21.06.2019. In view of the same, mulcting the entire liability on the part of the petitioner alone is incorrect in law and it would amount to undue enrichment just because the petitioner was facing the disciplinary inquiry.



8. Opposing the above submission, Mr.M.S.Palanisamy, the Learned Counsel for the respondent would submit that the charge read with the imputation of misconduct was specific in respect of not handing over the loan documents. Whether kept in a gunny bag or otherwise, it was the duty of the Manager, if transferred to handover all these documents to the incumbent and the incumbent will not know what documents have not been handed over to him until a later point of time after the inspection or audit. This apart even after the issue of a charge memorandum all the documents were not found in the gunny bag negligently kept by the petitioner. Therefore, this is the case of the employee willfully colluding with the borrowers, so that, no action has been taken against them and thereby, the loss has been caused.

9. He would submit that on perusal of the report of the Inquiry Officer, it would be clear that each and every aspect has been analyzed in detail after examining the evidence of the management witness and documents produced and marked and explanation given by the delinquent. Therefore, no interference is warranted on the well-considered finding in the Domestic Inquiry, which was conducted, in accordance with due procedure and the finding was given after a detailed appraisal of evidence in respect of each and every type of loan and document, which were not handed over. The inquiry Officer had also taken into account that on 16.05.2007 clear-cut details have been given by the incumbent manager, in respect of the documents which are not handed over by the petitioner. After 100% verification of the documents complained of, it was concluded that the petitioner did not hand over the documents and slowly documents were forthcoming from the petitioner in a phased manner, that too, not all the documents. In the meanwhile, limitations in respect of filing of dispute, in respect of the said loans got expired and therefore, the society suffered loss. Therefore, considering all these aspects the punishment has been rightly imposed.

10. As far as the second contention, the Learned Counsel for the respondent would state that the petitioner himself has produced the communication dated 15.04.2009 where under clear-cut details of heads under which the amount of Rs.2,08,408.05/- was recovered is given. As a matter of fact, the Inquiry Officer has dealt with it in detail and the Tabular column is also given in the revision order. Therefore, merely because the total sum was not mentioned in the charge it cannot be said that ordering of recovery of the said sum as punishment is erroneous in law. The same is correct and reflects the actual amount of loss caused by the petitioner.



11.He would submit that as far as the surcharge order is concerned, it is in respect of a subsequent 81 inquiry ordered in the year 2017, in respect of 334 loans. For some period of time, the petitioner was also a manager in respect of these transactions. The same has no connection whatsoever with the loss recovered by the impugned order. Therefore, he would submit that the dismissal of surcharge proceedings as got no nexus with the present case.

12.I have considered the rival submissions made on behalf of both sides and perused the material records of the case.

13.As far as the first contention raised in the Writ Petition with respect to the findings regarding the guilt as to the charge is concerned, a perusal of the inquiry report reveals that by duly appraising of the oral and documentary evidence on record, the Inquiry Officer has come to the conclusion that the charge is proved. The Disciplinary Authority has considered the finding of the Inquiry Officer and further explanation made by the petitioner and then arrived at the finding that the charge is proved and accepted the findings in the inquiry report and imposed punishment to the petitioner. The Revisional Authority has also once again re-appreciated the entire evidence on record and come to the same conclusion. This court can interfere only if it is shown that the procedure adopted by the respondents is illegal or the finding arrived at is perverse in nature.

14.On a perusal of the inquiry report and the evidence on record, it would be clear that as a matter of fact these documents were not handed over and the petitioner was handing over these documents on a piecemeal basis after the inquiry proceedings started. Thus, it is difficult to hold that the finding of guilt by the inquiry Officer or the Disciplinary Authority is perverse in nature and therefore, no interference can be made in the finding of the guilt of the charge as against the petitioner. Therefore, the first limb of the argument of the learned counsel for the petitioner is rejected.

15.As far as the second limb of the argument is concerned, it is true that the sum of Rs.2,08,408.05/- is not specifically mentioned in the charge or in the statement of the imputation of misconduct. But, however, in the statement of the imputation of misconduct, the numbers of loans, for which the petitioner did not handover the documents are exactly given. The statement of the imputation of misconduct is extracted in the earlier part of the Judgment in full. The petitioner knew exactly what are the loans for which the loss is recovered from him. This apart immediately after the order of punishment itself, a specific order has been passed on 14.11.2018 for recovery of a sum of Rs.2,08,408.05/-. When the petitioner had queried about the



details for which the loss is fixed, the details are furnished to him in the order dated 15.04.2009. It is the contention of the petitioner that in respect of the very same loans, surcharge proceedings were initiated that too against seven persons and the same has failed, therefore, recovery of the entire loss from the petitioner alone is bad.

16. In this context, this Court went through the surcharge proceedings. It is seen that the said inquiry itself was initiated in the year 2018 with reference to the 81 inquiry in respect of 334 loans ordered to be inquired in the year 2017. The number of the loan amounts, the categories, and the total amount due, etc., do not match with the facts and figures mentioned in the order dated 15.04.2009. Therefore, I am inclined to accept the submissions made by the learned counsel for the respondents that the surcharge proceedings, which were subsequently taken, do not relate to the subject matter of the charge memorandum. Even, if it is related, once the amount has been already recovered from the petitioner in the year 2009 itself, belatedly in the year 2018 surcharge proceedings cannot be initiated for the same loans. If initiated, it is only the said proceedings, which have to be held as invalid and not the earlier order of recovery passed against this petitioner. Therefore, the said ground of attack is also without any merits and hence rejected.

17. For all the above, the Writ Petition fails and is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar of Co-operatives,
Kilpauk,
Chennai - 10.
2. The Joint Registrar of Co-operative Societies,
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Vellore.



3. The Joint Registrar of Co-operative Societies,
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4. The Special Officer cum Joint Registrar,
Thiruvannamalai District Co-operative Bank,
No.9, 6th Street, Gandhi Nagar,
Thiruvannamalai.

+lcc to Mr. G. Ilamurugu, Advocate, S.R.No.32240

+lcc to Mr. M. S. Palaniswamy, Advocate, S.R.No.32265

+lcc to the Special Government Pleader, S.R.No.32561

W.P.No.20693 of 2010

SKM(CO)
CT 13/06/2022