



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.12.2021

Pronounced on : 12.01.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.1919 of 2013

WEB COPY

Somanathan

... Petitioner

vs.

1.The Tamil Nadu Grama Bank,
represented by its Chairman,
Head Office, No.6,
Yercaud Road, Hasthampatti,
Salem - 636 007.

2.The Board of Directors cum
Appellate Authority,
Tamil Nadu Grama Bank,
Salem.

3.The Chairman,
The Disciplinary Authority,
Pandyan Grama Bank,
Administrative Office,
Virudhunagar.

... Respondents

***(R1 and R2 cause title amended, vide
Court order, dated 26.08.2021, in W.M.P.
(MD)No.11751 of 2021 in W.P.(MD)No.
1919 of 2013)***

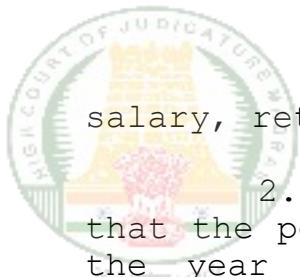
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings, dated 04.01.2012, of the third respondent and 31.08.2012 of the second respondent, which was communicated to the petitioner by the proceedings, dated 26.09.2012, by the first respondent, to quash the same and consequently to direct the respondents to pay the arrears of the salary, retirement benefits and all other benefits.

For Petitioner : Mr.G.Sridharan

For Respondents : Mr.K.Srinivasa Murthy
for Mr.N.G.R.Prasad

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings, dated 04.01.2012, of the third respondent and 31.08.2012 of the second respondent which was communicated to the petitioner by the proceedings, dated 26.09.2012, by the first respondent and consequently to direct the respondents to pay the arrears of the



salary, retirement benefits and all other benefits.

2.The brief facts of the case as stated in the affidavit is that the petitioner had joined as Clerk in first respondent Bank in the year 1977. Then, he was promoted, during his tenure in Manamadurai as an Officer. He sanctioned various types of loans mainly to the Women Welfare Self Help Groups. A complaint was preferred by the self-help group (in short SHG), when the petitioner was handling the advance portfolio. The petitioner's contention is that he declined loan to some of the groups, based on their previous antecedents and the history of simultaneously availing loan in various Banks and their failure to repay the loan amount and hence the SHG gave a false complaint against the petitioner. From July 2006 onwards, the petitioner was vested with cash and counter works and the advance portfolio was handed over to one R.V.Rengasamy. The third respondent issued a charge sheet, dated 09.08.2007, for seven charges committed from 06.03.2006 to 09.06.2007 at Manamadurai Branch and the said seven charges are extracted hereunder:

"STATEMENT OF IMPUTATIONS:

It is reported that during your tenure at Manamadurai branch, you had committed the following misconducts:

1) You demand and accepted illegal gratification of Rs.3000/- each for a SHG, from Mrs.Gandhimathi, CCO PERD, Manamadurai for considering the SHG loan proposals favourably for the following SHG groups, namely,

a) Angalaparameshwari SHG-Manambakki [Loan No.8/06]

b) Roja SHG-Manambakki [Loan No.14/06]

c) Munishwarar SHG-Manambakki [Loan No.7/06]

d) Vetri Mahalir SHG-Thambilikkan [Loan No.10/06]

e) Thamarai Mahalir SHG-Annamalai Nagar [Loan No. 54/06]

f) Annai Theresa SHG-Mettankadu

g) Kayathiri Mahalir SHG-Theerthankulam

h) Pothigai Mahali SHG-Manamadurai [Loan No.61/06]

2) You demanded and accepted illegal gratification of Rs.3000/- from Ms.Jeyanthi, CCO, PERD, for considering favourably the SHG loan proposals of Vaigai Mahalir SHG, Agraharam, Manamadurai.

3) You demanded and accepted illegal gratification of Rs.3000/- from Mr.P.M.Lingaraj, CCO, PERD, Manamadurai for considering favourably the SHG loan



proposals of Roja Mahalir SHG of Melapidavoor Village [Loan No.SHG 45/06] and Ayyanar Mahalir SHG of A.Villakulam [Loan No.SHG 46/06]

4) You demanded and accepted illegal gratification from Mrs.P.Shanthi, Accountant, DHAN Foudation for Rs.150/- for each member of Kalanjiyam Groups sponsored by DHAN Foundation in Manamadurai area, when the Kalanjiyam members approached you for SHG loans.

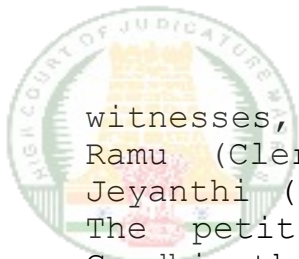
5) You demanded and accepted illegal gratification from Mrs.A.Thanaseeli-SMSSS, CCO, Manamadurai for considering favourably the SHG loan proposals of Sakthi Mahalir Kulu of Surasangu Thevar Compund, Manamadurai.

6) You demanded and accepted illegal gratification from Miss.Malathi, Representative, Malarmugam I Group, of Theena Pudukottai Village, to the tune of Rs.150/- from 17 members of Malarmugam SHG, when she approached you for availing financial assistance of SHG.

7) You had also used sexually coloured remarks ["ஞாயிற்றுக் கிழமை 12 மணிக்கு வா"] against Miss.Malathi, Representative, Malarmugam I Group, of Theena Pudukottai Village, while dealing with her officially in the matter of recommending SHG loan proposals for sanction."

3.The petitioner submitted an explanation on 17.10.2007. The Enquiry Officer has held the charges Nos.1,2,4 and 5 not proved but charges Nos.3,6 and 7 are proved, vide enquiry report, dated 17.06.2011. The disciplinary authority without assigning any reasons has deviated from the enquiry report and held all the charges are proved. The petitioner submitted a detailed explanation on 21.07.2011 and then vide order, dated 04.01.2012 the punishment of dismissal was imposed on the petitioner. The petitioner preferred an appeal and the appeal was dismissed on 26.09.2012. Aggrieved over the same, present writ petition is filed.

4.The respondents have filed a detailed counter affidavit and has stated that between 06.03.2006 and 09.06.2007, the petitioner has committed certain irregularities. Therefore, the charge sheet dated 09.08.2007 and the petitioner submitted a reply on 17.10.2007. Since the same was not satisfactory, an Enquiry Officer was appointed. The contention of the respondent is that several complaints were received against the petitioner from the self-help groups. Thereafter enquiry was conducted and in the enquiry, seven

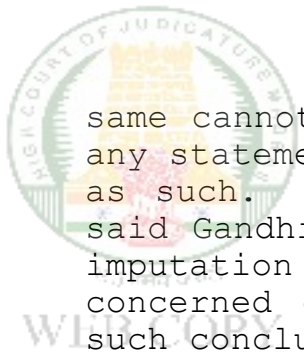


witnesses, namely Mariappan (Investigator), Suresh Babu (Clerk), Ramu (Clerk), R.V.Rangasamy (Officer), Syed Sulaiman (Manager), Jeyanthi (Coordinator) and Gandhimathi (Coordinator) were examined. The petitioner cross examined one of the witnesses, namely, Gandhimathi. The Enquiry Officer found that the petitioner is guilty of some of the charges and not guilty regarding other charges. The disciplinary authority served a disagreement note, dated 08.07.2011, to the petitioner for his comments and the petitioner, vide letter dated 21.07.2011, submitted his comments to the Enquiry Officer's findings as well as disagreement note. Again, the disciplinary authority sent the disagreement note along with a letter, dated 20.10.2011 and the petitioner submitted his comments on 08.11.2011. Thereafter, the disciplinary authority issued a show cause notice, dated 01.12.2011, for imposing the punishment of dismissal. The petitioner submitted his reply on 26.12.2011. After considering the reply, the disciplinary authority imposed the punishment of dismissal from service vide order, dated 04.01.2012. Aggrieved over the order, the petitioner preferred an appeal to the Board of Directors. The appellate authority by an order, dated 31.08.2012, confirmed the order of the disciplinary authority. Therefore there is no ground for judicial interference.

5. Heard Mr.G.Sridharan, learned Counsel appearing for the petitioner and Mr.K.Srinivasa Murthy, learned Counsel appearing for the respondents.

6. The affidavit, counter affidavit, enquiry report and materials produced are perused. It is seen that the enquiry officer has held that the imputations 1, 2, 4 and 5 are not proved i.e., the allegation of illegal gratification given by Gandhimathi, Jeyanthi, Shanthi and Thanaseeli are not proved. The enquiry officer has held the imputations 3, 6 and 7 are proved i.e., the allegation of illegal gratification given by Lingaraj, Malathi and sexual allegation of Malathi are proved.

7. As far as imputation 1 is concerned the enquiry officer has held the same is not proved. The enquiry officer has stated the reason that out of 14 groups only three groups is related to this charge, filling of loan documents and preparation of vouchers is the part of duty of advance officer and this cannot be evidence to prove the charge and Gandhimathi refused to submit for cross examination. But, the disciplinary authority has differed from the Enquiry Officer's report and the reason stated is that the said Gandhimathi was produced as a management witness and she appeared before the Enquiry Officer and she stood by her written statement and has deposed that she has paid Rs.3,000/- per group. The investigating Officer has also deposed about the bribe collected by delinquent. But the fact remains that the said Gandhimathi refused to undergo cross examination. Unless the cross examination is conducted, the truth cannot be elicited. Since she has refused to cross examine



same cannot be stated as proved. As per the law of evidence, unless any statement is subject to cross examination, it cannot be accepted as such. The Enquiry Officer is right in stating that since the said Gandhimathi has refused to undergo cross examination, the said imputation cannot be held as proved. Therefore this Court is of the concerned opinion that the enquiry officer is right in coming to such conclusion that the "imputation 1 as not proved".

8. As far as imputation 2 is concerned, the contention of the respondent is that the petitioner demanded illegal gratification for processing Jeyanthi's loan application and the petitioner is making an issue of non-examination of Lingaraj and Malathi, but, at the same time he is silent about the evidence of Jeyanthi. The respondent further contended that except for the Jeyanthi's statement, the petitioner has given explanation for other statements, the petitioner has not denied anything in the statement of the said Jeyanthi and the disciplinary authority has given cogent reasons for coming to the conclusion that the charges levelled against the petitioner are proved. The disciplinary authority differed from the Enquiry Officer stating that the said Jeyanthi preferred complaint openly to the Branch Manager, namely Syed Sulaiman and the petitioner has not refused / denied the complaint, when the said Jeyanthi accused him for taking bribe before the Branch Officer. It is seen that the disciplinary authority has taken the said fact from the preliminary enquiry. The preliminary enquiry was conducted to ascertain the *prima facie* case. But, after the Enquiry Officer has concluded that the statement of the said Jeyanthi and Kala Devi differ from each other, the disciplinary authority cannot take the preliminary report and hold that the charges are proved. The enquiry officer has stated the reason that the Management witness Gandhimathi has not mentioned any group name in her deposition. One Kaladevi, Animator Vaigai SHG has stated that she paid Rs.15,000/- through Jeyanthi and then she said she paid Rs.3000/- to the delinquent. In another deposition she said she did not pay the amount directly to the delinquent but paid through Jeyanthi. The enquiry officer has also stated that on analysis the amount also differs and no uniformity. The said Jeyanthi refused to cooperate for cross examination. The loan papers are not processed during the period of delinquent and Kaladevi has deposed that delinquent did not demanded bribe and she has not paid any amount to the delinquent. The deposition of Kaladevi and Jeyanthi are contradictory and therefore held that the imputation 2 as not proved. This Court is of the considered view that the disciplinary authority's deviation from the enquiry report is perverse. Therefore this Court concurs with the enquiry officer finding and hold that the imputation 2 is not proved.

9. As far as imputation 3 is concerned the enquiry officer has held the same is proved. The enquiry officer has stated the reason that the said Lingaraj has deposed that he had paid the bribe to the petitioner. The petitioner has processed the pre-sanction

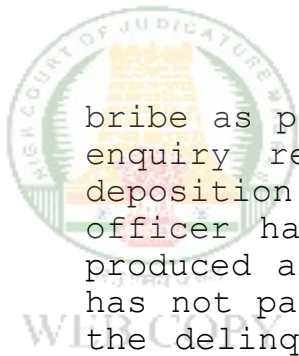


inspection for both the SHG. The delinquent has wrongly stated as 12 members, but in one group as 15 members and in another group is 16 members and hence the allegation is proved. But the enquiry officer has failed to take note of the delinquent defence that the said Lingaraj was in drunken mood and has not been cross examined. It is seen from the report that the said Lingaraj did not appear before the enquiry officer at all. The enquiry officer has come to the conclusion that the papers were processed during the delinquent period and the number of members has been wrongly stated. This Court is of the considered view that this alone is not sufficient to come to the conclusion that bribe has been obtained and the reasoning is erroneous. Hence this Court is of the view that the imputation 3 is not proved.

10. As far as imputation 4 is concerned the enquiry officer has held the same is not proved. The enquiry officer has stated that as per the statement of one Venkatachalam the delinquent has used unparliamentary words against the group members and the said Shanthi has not stated the delinquent demanded money. It is also seen from the record that the delinquent was shifted from advance portfolio to cash section from 26.07.2006. But, the disciplinary authority has stated that the fourth charge was proved, by relying on Shanthi's statement. But, the fact remains that the petitioner has been shifted from the advance portfolio during the period when the said Shanthi application is processed, the imputation cannot be made against him and hence, the disciplinary authority's observation is erroneous and perverse. Therefore this Court concurs with the reasoning of the enquiry officer and the imputation 4 is not proved.

11. As far as imputation 5 is concerned the enquiry officer has held the same is not proved. The enquiry officer has stated the reason that the said A. Dhanaseeli statement differs. At one point the said Dhanaseeli states that she collected Rs.150/- from members of Sakthi Group and paid the amount to the delinquent. In another deposition she states that she collected Rs.2400/- and paid Rs.1800/- to the delinquent and surrendered to the group due to some conflict among the group members. The disciplinary authority has differed stating that Dhanaseeli is not contradicting. Dhanaseeli has stated that she has collected Rs.2,400/- and paid Rs.1,800/- and retained the balance amount of Rs.600/- with Dhanaseeli. On perusing the record it is seen that the said Dhanaseeli has stated she had collected Rs.150/- in one deposition and in another deposition she has stated she collected Rs.2400/-. Since there is discrepancy in the amount, this Court concurs with the reasoning of the enquiry officer and the imputation 5 is not proved.

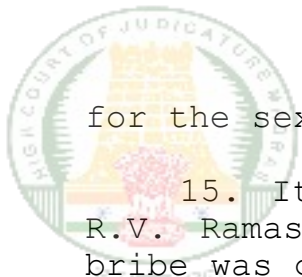
12. As far as imputation No. 6 is concerned it is seen from the records that the said Malathi was not produced as witness and the said Malathi refused to appear. The reason given by the respondents is that since she being a young lady, her parents does not want her reputation to be damaged. The enquiry officer has held the charge of



bribe as proved since the loan was delayed. But it is seen from the enquiry report that the investigation officer has dictated the deposition from the language used in the statement. The enquiry officer has held that charge as proved since the defence has not produced any witness. It is an admitted fact that the said Malathi has not participated in the enquiry and there is no opportunity for the delinquent to cross exam. The enquiry officer has come to the conclusion that the loan was processed during the delinquent period and the loan was not released during the tenure of the delinquent and there was a delay in issuing loan. This Court is of the considered opinion for proving the bribe there should be reliable evidence, since the loan was delayed and not released during the period of the delinquent cannot be sufficient to prove the act of bribery. Moreover the said Malathi has not deposed and she was not cross examined. Therefore this Court is of the considered opinion that the reasoning of the enquiry officer is perverse.

13.As far as the imputation No.7 is concerned, it is the allegation of sexually coloured remarks. The Enquiry Officer has held the same as proved. But, on seeing the charge sheet, it is stated that the sexually coloured remarks as "ஞாயிற்றுக் கிழமை 12 மணிக்கு வா". Whenever the sexually coloured remarks are taken into account, the entire incident ought to be narrated. But, nowhere in the charge memo the entire incident has been narrated. Even the said Malathi has not narrated the entire incident anywhere. To prove the sexual harassment the incident ought to be narrated and with a single sentence that too the phrase "come by 12 o' clock" alone is not sufficient to prove the act of sexual harassment. In the counter affidavit, it has been stated that the petitioner asked the said Malathi "to come by 12 o' clock and after seeing her only the loan will be disbursed". But in charge memo it is stated the petitioner has asked her to come by 12'o clock. The respondents have added a new version in the counter. The respondents have stated that the said Malathi complained the same in the presence of Suresh Babu and has given a written complaint. However, the said Malathi has not appeared before the authorities to substantiate the allegation. Therefore this Court is of the considered opinion that "come by 12 o' clock" is not sufficient to state that it is a sexually coloured remark.

14.The respondents alleged that the petitioner has taken bribe but, the respondents have not filed any FIR, that too, it is not the allegation of single incident of taking bribe, it is the allegation of six incidents. So, it is strange that the respondents have not preferred any FIR against the petitioner and this ought to be taken as adverse against the respondents. As far as the sexually coloured remark is concerned, once any allegation as sexual assault is complained, then, the respondents ought to take separate action against the appropriate acts. Except for the charge sheet, the respondents have not taken any action against the petitioner. Even



for the sexual harassment allegation.

15. It is seen from the records that the answer of Ramu and R.V. Ramasamy for the question "did you see personally when the bribe was given to Mr. Somanathan" is "No sir". The answer of Suresh Babu for the question "what kind of ill treatment given by the delinquent" the answer is "not treated the subordinates cordially, illtreated the staffs and public". The deposition of all these people states that the petitioner was using unparliamentary words against the members of the SHG and the petitioner misbehaved with the public. From this it would be clear that the enquiry officer's finding is perverse as far as sexual harassment and the deviation of the disciplinary officer is still more perverse. Infact, the said Lingaraj and Malathi had never appeared before the Enquiry Officer. This Court is of the considered opinion that all the charges as "not proved". The Enquiry Officer has held 3, 6 and 7 charges as proved but this Court is of the considered opinion that there is no evidence and hence the enquiry report is perverse. The disciplinary authority has held that charges 1,2,4 and 5 as not proved, but the disciplinary authority has taken preliminary report and has held the charges as proved and the same is erroneous and perverse. As stated earlier, each and every imputation was not proved through any evidence and the finding of the enquiry officer as proved for charges 3,6 and 7 is based on "no evidence". Since the enquiry officer has held the charges 3,6 and 7 are proved is based on "no evidence", this Court is of the considered opinion that the enquiry ought to be interfered under judicial review as stated in Union of India and others VS P. Gunasekaran reported in (2015) 2 Supreme Court Cases 610.

16. The petitioner was aged about 62 years at the time of filing this Writ Petition. As on date, he is aged about 71 years. The petitioner has rendered 30 years of service and was not placed under suspension. The petitioner was dismissed from service and was not paid salary for 8 months alone. The petitioner has stated that because of this his only daughter's marriage could not be celebrated. On seeing the entire records this Court is of the considered view that the petitioner has used some harsh words while dealing with the SHG and that has been the reason for initiating the disciplinary proceedings. The respondent contended that earlier the petitioner was charge sheeted on 19.07.1990 and 27.08.1991 but has not stated the result of the said charges. Taking all these factors into consideration, this Court modifies the punishment of dismissal from service as stoppage of increment for three months alone. The respondents are directed to modify the punishment and the consequential disburse the salary for the said 8 months and also disburse the terminal benefits. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.



17. Therefore, the Writ Petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)

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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.

TO:

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+1 CC to M/s.M.P.SENTHIL, Advocate (SR-1426[F] dated 12/01/2022)

+1 CC to M/s.G.SRIDHARAN, Advocate (SR-1346[F] dated 12/01/2022)

W.P.(MD)No.1919 of 2013
12.01.2022

RD(28.01.2022) 9P 6C