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W.P.No.22083 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2023

PRONOUNCED ON : 12.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.22083 of 2008

C.M.Ragunathan

...Petitioner

-Vs-

1. The Vellore District Committee of
Cadre Employees for Secretaries of
Primary Agricultural Cooperative Bank,
Rep. by its Chairman-cum-Joint Registrar
of Cooperative Societies,
Vellore – 632 009.
2. The Special Officer,
K.Chettiappanur Primary Agricultural
Cooperative Bank Ltd.,
Vaniambadi Taluk,
Vellore District.
3. S.A.Manimaran,
Joint Registrar of Cooperative,
Societies-cum-Chairman,
Vellore District Committee of Cadre
Employees for Secretaries of PAC Bs,
Vellore District.
Vellore – 632 009.



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4. S.Umapathy,
CSR/Enquiry Officer,
C/o. K. Chettiappanur Primary Agricultural
Cooperative Bank Ltd.,
Vaniambadi Taluk,
Vellore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of dismissal Na.Ka.No.5104/06/A1 dated 29.07.2008 of the first respondent, quash the same and consequently direct the first and second respondents to reinstate the petitioner in service with all attendant consequential benefits as if the petitioner was in service.

For Petitioner	: Mr.S.Venkatraman
For Respondents	
For R1	: Mr.L.S.M.Hasan Fizal Additional Government Pleader
For R2	: Mr.P.S.Sivashanmugasundaram
For R3 & R4	: Mr.C.Mahendran

ORDER

The Writ Petition has been filed challenging the order dated 29.07.2008, passed by the first respondent in Na.Ka.No.5104/06/A1, thereby terminating the petitioner from his service.

2. The petitioner while he was working as Secretary of the second respondent society, he was suspended from service on



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26.05.2006. Thereafter he was served with a charge memo dated 27.11.2006, alleging that he had misappropriated the society funds to the tune of rupees two crores. After suspension of service, the petitioner was not paid subsistence allowances as such, he approached this Court and this Court directed to pay the subsistence allowances to him. Thereafter, he submitted representation to permit him to engage an advocate in the enquiry. It was not considered as such, he again approached this Court and this Court directed the first respondent to permit the assistance of a lawyer to the petitioner. The fourth respondent was appointed as enquiry officer.

3. In the mean while, the petitioner submitted his explanation. Though the petitioner submitted several representation before the enquiry officer for production of various documents for inspection, he was not served with any documents and he was not inspected the documents. He was also not served with report of the enquiry, which was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act. During the enquiry, the petitioner was not permitted to cross-examine the witnesses and he was not permitted to peruse the documents.



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4. According to the petitioner, the enquiry officer acted in biased manner and closed the enquiry on 22.03.2008, without recording any oral evidence whatsoever, he submitted his report dated 23.05.2008. Thereafter, the first respondent called upon the petitioner for explanation after serving a copy of the enquiry report. It was received by the petitioner on 04.04.2008. In the mean while, the petitioner also submitted repeated representation to pay subsistence allowance.

5. On receipt of the second show cause notice, the petitioner sought for fifteen days to submit his explanation. Thereafter, the petitioner submitted his explanation on 08.04.2008. The petitioner also filed a writ petition before this Court in W.P.No.10603 of 2008 for subsistence allowance and thereafter the petitioner was paid subsistence allowance upto 30.04.2008. The first respondent passed final order on 29.07.2008, thereby imposed punishment of dismissal from service. The first respondent suppressed the petitioner's subsequent explanation dated 16.04.2008 and passed final order. Aggrieved by the order of dismissal, the petitioner filed this present writ petition.



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6. The learned counsel appearing for the petitioner submitted that now the petitioner has been convicted by the criminal Court and sentenced to undergo one year simple imprisonment by the trial Court by an order dated 18.08.2022. Though the petitioner was convicted, the earlier order of dismissal cannot be sustained, since during the suspension period, he was not paid subsistence allowance. Therefore, the order of dismissal cannot be sustained and the fresh enquiry has to be conducted, till then he is entitled for subsistence allowances.

6.1. He further submitted that if an employee is exonerated of the charges in disciplinary proceedings and is subsequently convicted and sentenced, the earlier order of exoneration from disciplinary proceedings will not in any way be affected. He cannot be dismissed based on the subsequent conviction. If an employee is dismissed from service in departmental proceedings, but subsequently acquitted by the criminal Court, the subsequent acquittal will not affect the earlier order of dismissal. If an employee is dismissed from service and subsequent convicted on the same set of fact by the criminal Court, the subsequent



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conviction will not deem to ratify and approve the order of dismissal.

The two are operating on different lines and the validity of the order of dismissal has to be gone through separately. If the order of dismissal found valid no issue. On the other hand, if the order of dismissal from service due to disciplinary proceedings is found to be not valid the only option is that the period from the date of dismissal to the date of conviction shall be treated as suspension and the employee may be paid subsistence allowance and the employer is at liberty to dismiss the employee by a fresh order from the date of conviction based on conviction.

6.2. He further submitted that non payment of subsistence allowance as per law vitiates the order. The final payment was paid after the intervention of this Court and pending enquiry, the petitioner was not paid any subsistence allowance. The allegations are exfacie illegal, as no society in the State has funds to advance loans to farmers. The money is given by the government routed through the central bank. The petitioner has no power to sanction loan and he only forwarded the loan applications to central bank along with the approval of the Special



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Officer or President of the Board. The applications are subjected to scrutiny by the Area Officer/Field Manager as to whether the applicant is alive or dead, whether he owns lands and his repaying capacity etc. Then the loan is recommended by the Area Officer/Field Manager and based on the recommendation the central bank released the money and it is not paid in cash to the farmers, and only through bank accounts.

6.3. In fact, the loan forms are signed by the borrowers along with two sureties, two witnesses, Secretary, Special Officer, Area Manager/Field Manager etc. However, the disciplinary proceedings was initiated only based on the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act. Further, the petitioner was not served with the report of the enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act. Therefore, the petitioner was not in a position to defend the disciplinary proceedings properly.

6.4. Further he submitted that except the petitioner no other employee was charge sheeted and no one was dismissed from service. It is clear discrimination and violation of Article 14 of the Constitution of



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India. On receipt of loan application, sanction and dispersal are collective responsibility as such the petitioner alone cannot be made a victim. The petitioner alone has been made scapegoat and others allowed to escape from their responsibility.

6.5. He further submitted that the charges are that the loan were granted to dead person, bogus persons in benami names and landless persons. The respective field officers had certified and recommended for grant of loans. However, they were not charge sheeted and no punishment was imposed to anyone except the petitioner. The enquiry officer failed to give sufficient opportunity to the petitioner to cross examine the witnesses and the petitioner did not permit to inspect the documents and it is clear violation of principles of natural justice. In support of his contention, he relied upon the following judgments :-

(i) Order of this Court dated 07.10.2013 passed in W.P.No.128 of 2009 in the case of K.Rajendran Vs. The Vellore District Committee of Cadre Employees and ors.

(ii) Order of this Court dated 21.07.2023 passed in W.P.No.27682 of 2013 in the case of S.Vasanthi Vs. The Joint Registrar of Coop. Societies and ors.



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- (iii) Order of this Court dated 19.03.2012 passed in W.P.No.19711 of 2004 in the case of M.Devan Vs. The Tamil Nadu Civil Supplies Corporation Ltd. & anr.**
- (iv) 2015 -IV-LLj-173 (Del) in the case of Roop Chand Vs. Delhi Transport Corporation**
- (v) 2011-II-LLJ-627 (SC) in the case of Union of India and ors Vs. S.K.Kapoor.**
- (vi) (2007) 1 SCC 338 in the case of Govt of A.P. and ors Vs. A.Venkata Raidu.**

7. The learned counsel appearing for the respondents submitted that while the petitioner was in service as Secretary, he had misappropriated amount to the tune of Rs.1,92,92,901/- from the second respondent society, which is established, run and administered by public money. Therefore, once the charge of misappropriation proved by the criminal Court, there is nothing wrong losing confidence or faith in a such an employee and awarding punishment of dismissal. There is no place on the part of the judicial forum interfering with the order of dismissal. In support of their contention, they relied upon the following judgments :-

- (i) (2015) 2 SCC 610 - Union of India and ors Vs. P.Gunasekaran.**



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(ii) (2004) 1 SCC 281 – Indra Bhanu Gaur Vs.

***The Committee, Management of MM. Degree College
and ors.***

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. The Secretaries of the primary agricultural co-operative banks are coming under common cadre services by virtue of G.O.No.55 Cooperative Food and Consumer Protection Department dated 24.03.2000. While the petitioner was working as Secretary of the second respondent bank, he was suspended for serious charges on 26.05.2006 and thereafter he was served with a charge memo dated 27.11.2006. The petitioner was served with 11 counts of charges relating to the misappropriation of funds to the tune of two crores, by way of creating various bogus loans and also committed misappropriation in the missed pledged jewels. Though the petitioner was offered explanation, it was not satisfactory in nature and as such the enquiry was ordered. Further, the petitioner was paid subsistence allowance to the tune of Rs.2,69,002/- from the date of suspension to till the date of dismissal except for the last three months.



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10. In fact, the petitioner challenged the order of suspension in various writ petitions and all the writ petitions were dismissed by this Court. After completion of enquiry, the enquiry report was served to the petitioner and the same was also acknowledged by him. The petitioner also submitted his explanation and thereafter final order has been passed on 29.07.2008, thereby dismissing the petitioner from service. The petitioner was permitted to peruse the enquiry report submitted under Section 81 of the Tamil Nadu Co-operative Societies Act. All the documents which were sought for by the petitioner were duly served to the petitioner and the same were duly acknowledged by him. That apart, the petitioner was permitted to peruse and inspect the other documents.

11. The learned counsel appearing for the respondents produced the case details and it revealed that along with petitioner, four others persons were made as an accused at various levels and all of them were charge sheeted on 11 counts. Along with the petitioner, three others were dismissed from service viz., N.Ramalingam, C.Sivalingam and C.K.Mani. In fact, already disciplinary proceeding was initiated and



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accordingly surcharge order was passed on 11.12.2007. In pursuant to the complaint on the basis of the enquiry conducted under Section 81 of the Tamil Nadu Cooperative Societies Act, the petitioner was convicted and sentenced to undergo one year simple imprisonment by the criminal Court. Therefore, the petitioner alone was not singled out and other persons also convicted and dismissed from service.

12. Further, the learned counsel appearing for the respondents relied upon the judgment reported in **(2015) 2 SCC 610** in the case of ***Union of India and ors Vs. P.Gunasekaran***, in which the Hon'ble Supreme Court of India held that it was not open to this Court to exercise its jurisdiction under Article 226 or 227 of the Constitution of India to go into the proportionality of punishment so long as the punishment does not shock the conscience of the Court. Further, the disciplinary authority has come to the conclusion that respondent lacked integrity. There are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. According to Oxford dictionary “Integrity” is moral uprightness, honesty. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness,



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immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreporachability, purity, respectability, genuineness, moral excellence, etc. In short, it depicts sterling character with firm adherence to a code of moral values. Therefore, this Court cannot go into the proportionality of punishment or substitute the same with a lesser or different punishment.

13. The learned counsel appearing for the petitioner relied upon the order *dated 21.07.2023* passed in *W.P.No.27682 of 2013* in the case of *S.Vasanthi Vs. The Joint Registrar of Coop. Societies and ors.*, in which this Court held that conducting domestic enquiry without payment of subsistence allowance is vitiated when the employee was greatly prejudice by non-payment of subsistence allowance.

14. In this regard, the learned counsel appearing for the respondent relied upon the judgment reported in *(2004) 1 SCC 281* in the case of *Indra Bhanu Gaur Vs. The Committee, Management of MM. Degree College and ors.*, in which the Hon'ble Supreme Court of India held that no infirmity on account of subsistence allowance having



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not been paid has been alleged. The delinquent could not plead or substantiate also that the non-payment was either deliberate or to spite him and not due to his own fault. It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot *ipso facto* be a ground to vitiate the proceedings in every case.

15. In the case on hand already the petitioner was paid subsistence allowances and the petitioner failed to show any prejudice caused to him because of the non-payment of subsistence allowance. Therefore, the judgments cited by the learned counsel appearing for the petitioner is not applicable to the case on hand.

16. The learned counsel appearing for the petitioner also relied upon the order dated **07.10.2013** passed in **W.P.No.128 of 2009** in the case of **K.Rajendran Vs. The Vellore District Committee of Cadre Employees and ors** in which this Court held that the petitioner in that case was dismissed from service in an ex-parte enquiry. In the ex-parte enquiry, no witnesses were examined and no documents were marked.



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Therefore, this Court held that the employer shall examine witness and produced necessary documents in support of the charges. Whereas in the case on hand, enquiry officer conducted detailed enquiry and all the witnesses were examined in order to prove the charges. Therefore, the said judgment is not applicable to the case on hand.

17. The other judgments cited by learned counsel appearing for the petitioner are not applicable to the case on hand, since the petitioner was given number of opportunities to defend his case. Therefore, the disciplinary proceeding is not vitiated in violation of principles of natural justice. In view of the above, this Court finds no infirmity or illegality in the order passed by the first respondent and the writ petition is devoid of merits and liable to be dismissed.

18. Accordingly, the Writ Petition stands dismissed. There shall be no order as to costs.

12.09.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

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To

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of Cooperative Societies,
Vellore District Committee of
Cadre Employees for Secretaries of
Primary Agricultural Cooperative Bank,
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ORDER IN
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