



W.A.No.1560 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

AND

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

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V.K.Rajendran

...Appellant/Petitioner

Vs.

1. The Joint Registrar of Cooperative Societies,
Saravanabhava Supermarket Complex,
Beach Road, Pudupalayam,
Cuddalore District.

2. The Special Officer,
I.I. 552 Eraiyur Primary Agricultural
Cooperative Bank,
Eraiyur (Post) Thittakudi (Taluk),
Cuddalore District.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 28.01.2010 passed in W.P. No.7887of 2008 and to set aside the same.



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For Appellants : Mr.R.S.Anandan
for M/s.D.Balachandran

For Respondents : Mr. L.S.M.Hasan Fizal
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Challenge in this Intra Court Appeal is to the order of the Writ Court dismissing the Writ Petition filed by the Appellant, wherein the order of the second respondent dismissing him from service and its confirmation by the first respondent were under challenge.

2. The appellant was working as a cashier in the first respondent Co-operative Bank. Four charges were framed against him for certain delinquencies on his part. While the first two charges related to his borrowing from third parties and non-repayment of the said borrowings, the



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third charge related to a criminal case filed against him. The fourth charge was that the appellant was unauthorisedly absent between 18.12.2002 and 27.04.2003 and 26.05.2003 and 09.11.2003. The appellant submitted his explanation.

3. After conducting an enquiry, the Enquiry Officer returned a finding on 10.07.2004 concluding that the charge No.4 alone was proved. The other charges were held not proved. The Disciplinary Authority, viz. the first respondent however differed from the findings of the Enquiry Officer concluded that all the charges were proved and issued a show cause notice to the petitioner asking him to show cause why he should not be dismissed from service. The appellant submitted his explanation and upon considering the explanation, the first respondent passed an order imposing a punishment of dismissal from service. Aggrieved the appellant sought for a review before the first respondent.

4. The first respondent by its proceedings dated 29.09.2007 did not consider the other charges except the charge of unauthorised absence



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from duty. According to the first respondent, the Enquiry Officer having held that the said charge was proved and the same having been accepted by the Disciplinary Authority viz. the second respondent the other charges are not germane and the punishment of dismissal from service could be imposed even for the single charge of unauthorised absence from duty.

5. On the said conclusion the review sought for by the appellant was rejected. The appellant came before this Court challenging the said order. Though the appellant did not raise the contention regarding the issue relating to disagreement by the Disciplinary Authority with the findings of the Enquiry Officer and the disproportionality of the punishment in the original Writ Petition, an application was filed seeking to raise additional grounds along with an additional affidavit.

6. The Writ Court upon consideration of the facts and circumstances of the case concluded that the petitioner cannot be allowed to agitate questions that were not raised before the Review Authority in the Writ Petition. The Writ Court also took note of the fact that the petitioner



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had no explanation to offer for the charge of unauthorised absence from duty. Though the permission sought for to raise additional grounds was allowed, the Writ Court while disposing of the Writ Petition found that these contentions were not raised before the Reviewing Authority and hence deemed it improper to consider those grounds. The Writ Court agreed with the conclusions of the Reviewing Authority with reference to the fourth charge namely unauthorised absence from duty and rejected the claim of the petitioner, hence the appellant is on Appeal.

7. Heard Mr.R.S.Anandan, learned counsel appearing for M/s.D.Balachandran, for the appellant and Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader appearing for the respondents.

8. Mr.R.S.Anandan, learned counsel appearing for the appellant would vehemently contend that once the Disciplinary Authority wants to differ from the conclusions of the Enquiry Officer, the Disciplinary Authority is bound to record its reasons for such difference and issue a show cause notice requiring the petitioner to support the resonings of the Enquiry



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Officer. Unless such opportunity is given, according to the learned counsel, the entire proceedings of the Disciplinary Authority are vitiated.

9. The next submission of the learned counsel is that the punishment of dismissal from service for the proved delinquency viz. unauthorised absence from duty is excessive and disproportionate to the proved delinquency. We have considered both the submissions of the learned counsel appearing for the appellant.

10. As far as the first submission is concerned, though it appears very attractive, we find ourselves unable to accept the said contention in view of the fact that the Reviewing Authority has not imposed the punishment for charges 1 to 3. Though the Disciplinary Authority has differed from the Enquiry Officer, the Reviewing Authority has accepted the findings of the Enquiry Officer with reference to charges 1 to 3 and has upheld the punishment only for the proved delinquency viz. unauthorised absence from duty. Therefore, there is no prejudice caused to the appellant because of the improper procedure adopted by the Disciplinary Authority



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while disagreeing with the findings of the Enquiry Officer. Moreover, this very question viz. the improper procedure adopted by the Disciplinary Authority, was not taken as a ground before the Reviewing Authority.

11. The Writ Court has pointed out this lapse on the part of the appellant to refuse permission to the appellant to raise the ground regarding the irregular procedure adopted by the Disciplinary Authority. We find ourselves in agreement with the conclusions of the Writ Court. It is settled law that procedure is handmaid of justice. Admittedly there is a slip in the procedure that is followed by the Disciplinary Authority while deciding to differ from the findings of the Enquiry Officer. However, that has been rectified by the Reviewing Authority, when the Reviewing Authority has chosen to accept the findings of the Enquiry Officer and conclude that even if charges 1 to 3 have not been proved, charge No.4 viz. the charge relating to unauthorised absence from duty having been proved, the order of dismissal is in order.



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12. As regards the proportionality of punishment again it is settled law that it is not for the Writ Court to go into the proportionality of the punishment unless it is shown to be shockingly disproportionate. Though a ground has been raised, we do not find any reference to such contention by the Writ Court. Therefore we do not think we can allow the appellant to raise the question in the Writ Appeal for the first time. Even otherwise, we do not find that the punishment is disproportionate considering the explanation offered by the petitioner, the petitioner would claim that unauthorized absence between 26.05.2003 and 09.11.2003 is because of he being not permitted to work. Not a shred of paper has been produced by the appellant/petitioner, except an undated letter which deals with the period between 18.12.2002 and 09.03.2003, to establish the above said fact.

13. In the normal circumstance the appellant should have at least complied to the superiors that he has not been allowed to work. In the absence of such material, we do not think that we could fault the Authority



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for having imposed the punishment of dismissal from service. Hence, we see no merit in the Appeal. The Writ Appeal fails and it is accordingly dismissed.

(R.S.M., J.) (S.S.K., J.)
23.01.2023

jv

Index : No

Internet : Yes

Speaking order

To

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