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W.P.No.27682 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.27682 of 2013

S.Vasanthi

... Petitioner

-Vs-

1. The Joint Registrar of Coop. Societies,
Vellore Circle, Vellore 632009.
2. C 1363 Kalanthira Chettiappanur Primary Agrl
Cooperative Bank, Kalanthira Post and Village,
Vaniyambadi TK., Vellore District,
represented by its Board of Directors
through its President

3. R.Kandhan

4. K.Govindarajan

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order of dismissal Na.Ka.No.2/2006 dated 14.03.2012 of the second respondent as confirmed by the first respondent's order Na.Ka.No.3848/2012 A2 (Revision Petition No.12 of 2012/A2) dated 23.04.2013 quash both the orders and consequently direct the second respondent to reinstate the petitioner in service with all back wages and attendant benefits.



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For Petitioner : Mr.S.Venkataraman

For Respondents

R1 : Mr.Yogesh Kannadasan
Special Government Pleader

R2 : Notice served
No appearance

R3 and R4 : Given up

ORDER

This Writ Petition has been filed challenging the order in Na.Ka.No.2/2006 dated 14.03.2012 of the second respondent and confirmed by the first respondent in Na.Ka.No.3848/2012 A2 (Revision Petition No.12 of 2012/A2) dated 23.04.2013, thereby dismissing the petitioner from service.

2. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and perused the materials available on record. Though notice was served on the second respondent and name has been printed in the cause list, no one appeared on behalf of the second respondent, in person or through pleader. Insofar as the respondents 3 and 4 are concerned, already they had given up.



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3. The petitioner was working as Senior Clerk in the second respondent Bank. She was served with a memo dated 25.05.2006, thereby she was suspended from service with regard to the irregularity committed in the crop loans granted by the bank. Thereafter, she was served with a charge memo dated 18.08.2006. Till then, she was not paid subsistence allowance. When the petitioner repeatedly insisted in payment of subsistence allowance, she was served with charge memo dated 12.05.2009, nearly after three years. The second respondent had taken advantage of the petitioner's poverty induced her to accept 50% of the amount due from the date of her suspension and without any other recourse, she agreed for the said amount. Out of total amount of Rs.1,81,980/-, due from 25.05.2006, she was paid only 50% and an undertaking was obtained from her that she will not approach the Court of law. However, she questioned the same in W.P.No.10964 of 2009 before this Court and by an order dated 19.06.2009, this Court quashed the undertaking obtained from the petitioner as illegal. That apart, this Court directed the second respondent to pay the arrears of subsistence allowance within a period of four weeks from the date of receipt of the copy of the order. The disciplinary proceedings should be continued only



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after the payment of subsistence allowance. In spite of the same, the second respondent without obeying the order passed by this Court, proceeded with the enquiry. Therefore, the petitioner initiated contempt proceedings as against the second respondent in Cont P.No.1719 of 2010 and only thereafter, she was paid arrears of subsistence allowance. However, there was due to the tune of Rs.2,28,013/-. In the meanwhile, the Enquiry Officer commenced the enquiry, without even settling the subsistence allowance. On the first day of enquiry, the second respondent appeared and paid a sum of Rs.40,000/- and he also agreed to pay another sum of Rs.50,000/- in the next date of hearing. However, on the first date of hearing i.e. 10.12.2011 itself the enquiry was closed.

4. It is also seen that on receipt of the notice of enquiry dated 17.11.2011, the petitioner requested the Enquiry Officer to take assistance of a lawyer to defend her before the Enquiry Officer. She repeatedly requested the Enquiry Officer, to permit her to engage an Advocate. Without considering the same, the Enquiry Officer posted the enquiry on 10.12.2011. On 10.12.2011, the petitioner appeared for the enquiry and she requested to peruse the documents in the presence of an



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Advocate. However, the Enquiry Officer declined to grant permission. Thereafter, the Enquiry Officer submitted his report and held that the charges 1, 5 and 6 alone were proved and the remaining charges were not proved. On receipt of the enquiry report, the petitioner was called for to submit her explanation and she also submitted her explanation dated 07.03.2012 raising various legal issues. The second respondent issued an order of dismissal dated 14.03.2012 to the petitioner, on the ground that the second respondent had taken a different opinion on the report submitted by the Enquiry Officer and concluded that all the charges were proved and passed an order of dismissal.

5. A perusal of the charge revealed that the Secretary, Assistant Secretary and Clerk, along with the petitioner, were suspended on the allegation that they had misappropriated the funds of the society to the tune of Rs.2 Crores. All the charges insofar as the Secretary, Assistant Secretary and the Clerk were proved and they were dismissed from service. Criminal action has been taken against the Secretary, Assistant Secretary and the Clerk which ended in conviction and they are suffering incarceration. Insofar as the petitioner is concerned, no criminal action



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was initiated as against the petitioner, except the departmental proceedings. Admittedly, the petitioner was not paid with the subsistence allowance during the period of her suspension.

6. In this regard, the learned counsel for the petitioner relied upon the Judgment of this Court passed in W.P.No.10823 of 2009 dated 12.07.2019 wherein it was that when an employee is suspended from service, the employer must pay the subsistence allowance every month. It is well settled that conducting domestic enquiry without payment of subsistence allowance is vitiated when the employee was greatly prejudiced by non-payment of subsistence allowance and she could not effectively put forth her case in domestic enquiry and she could not participate in the domestic enquiry. Therefore, conducting domestic enquiry without payment of subsistence allowance is erroneous.

7. As stated supra, the petitioner was not paid subsistence allowance and in fact, she was paid Rs.40,000/- as subsistence allowance on the first hearing of enquiry. The second respondent had undertaken to pay another sum of Rs.50,000/- as arrears of subsistence allowance in the



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second hearing date. The petitioner was not permitted to engage a counsel to defend her before the Enquiry Officer. However, without considering the request made by the petitioner, the Enquiry Officer abruptly closed the enquiry on 10.12.2011 itself and submitted his report before the second respondent. Admittedly, no evidence was recorded by the Enquiry Officer. Therefore, the enquiry itself is vitiated on the ground that the petitioner was not paid subsistence allowance during the period of her suspension.

8. In this regard the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.254 of 2008*** in the case of ***State of UP and others Vs. Saroj Kumar Sinha***, in which the Hon'ble Supreme Court of India held as follows:-

“26. A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear that the enquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the



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witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge. Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved.”

9. In the case on hand, as stated supra, when the petitioner requested to peruse the documents with the assistance of an Advocate, the Enquiry Officer, without permitting the petitioner to engage any counsel, simply closed the enquiry without even recording any evidence and without even marking any document. Therefore, the entire enquiry is vitiated.

10. That apart, the Enquiry Officer held only three charges were proved that too on the basis of the records produced by the second respondent and the other seven charges were not proved. Accordingly, the Enquiry Officer submitted his report to the second respondent, who is the disciplinary authority. However, the second respondent had differed



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with the opinion submitted by the Enquiry Officer and held five more charges namely 4, 7, 8, 9 and 10 as proved and rejected the findings of the Enquiry Officer. In fact, the Enquiry Officer, concluded that three charges stood proved that too without any supporting documents and without even conducting any enquiry. Without considering the same, the second respondent held that another five charges were proved that too without any document and without any evidence. When the second respondent differed from the opinion of the Enquiry Officer, the petitioner must be put on notice.

11. In this regard, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Division Bench of this Court in ***W.A.No.1229 of 2010*** dated ***28.03.2013***, in which the Hon'ble Division Bench of this Court held that questioning the power of the Disciplinary Authority to differ with the findings of the Enquiry Officer and concluded that there is no provision under the Co-operative Societies Act for the Disciplinary Authority to differ with the conclusion held by the Enquiry Officer. Further it was held that when the power of Disciplinary Authority is exercised in imposing the punishment on the delinquent by



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differing with the findings of the Enquiry Officer, who held the charges not proved, the delinquent must be served with a notice and the delinquent ought to have been given an opportunity.

12. He also relied upon the Judgment of the Hon'ble Division Bench of this Court in ***W.P.No.18309 of 2009 dated 02.02.2012***, in which the Hon'ble Division Bench of this Court held that when the Disciplinary Authority has no power to differ with the findings of the Enquiry Officer, the entire exercise done by the Disciplinary Authority in passing the order of dismissal against the delinquent is illegal and liable to be set aside.

13. Even assuming that the Disciplinary Authority has power to differ with the findings of the Enquiry Officer, the Disciplinary Authority ought to have been given an opportunity of hearing to the delinquent. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules in this regard are silent and the Disciplinary Authority also does not give



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an opportunity of hearing to the delinquent officer and records findings different from those of the Enquiry Officer that the charges were established and an opportunity of hearing may have to be read into Rule by which the procedure for dealing with the enquiry officer's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be not guilty by the Enquiring Authority.

14. Further, once the Disciplinary Authority decided to differ from the report of the Enquiry Officer, whose report is of course in the favour of the delinquent, necessarily at least at that stage the Disciplinary Authority should have followed the procedure by giving opportunity to the petitioner, by letting in evidence, either by conducting enquiry or by appointing another Enquiry Officer. In the absence of such procedure having been followed, even though the Disciplinary Authority is certainly entitled to differ from the views of the Enquiry Officer, this Court is of the considered view that the matter has to be remanded to the Disciplinary Authority.



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15. In view of the above discussions, the impugned orders cannot be sustained and are liable to be quashed. Accordingly, the order passed by the second respondent in Na.Ka.No.2/2006 dated 14.03.2012 and confirmed by the first respondent in Na.Ka.No.3848/2012 A2 (Revision Petition No.12 of 2012/A2) dated 23.04.2013 are hereby quashed. The second respondent is directed to reinstate the petitioner with all back wages and other attendant benefits, within a period of eight weeks from the date of receipt of a copy of this order.

16. In the result, this writ petition stands allowed. There shall be no order as to costs.

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Internet : Yes
Index : Yes
Speaking order
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To

1. The Joint Registrar of Coop. Societies,
Vellore Circle, Vellore 632009.
2. The President,
C 1363 Kalanthira Chettiappanur Primary Agrl
Cooperative Bank, Kalanthira Post and Village,
Vaniyambadi TK., Vellore District,
represented by its Board of Directors



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G.K.ILANTHIRAIYAN, J.

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