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W.P.No.21289 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.21289 of 2019
and W.M.P.No.20498 of 2019

Harjinder Singh

.. Petitioner

VS

1.National Bank for Agriculture and Rural Development
Rep. By its Chairman,
C-24, G Block, Bandra Kurla Complex,
Post Box No.8121,
Bandra (E), Mumbai – 400 051.

2.The Chief General Manager,
NABARD, Regional Office.
48, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying to issue a writ of certiorari after calling for the records
relating to the issuance of charge sheet in
No.NB.TN/HRMD/2417/PA Disc. 2019-20 dated 24.06.2017 by the
second respondent as disciplinary authority and quash the same.

For Petitioner : Mr.Balan Haridass
for Mr.R.R.Pradheep

For Respondents : Mr.Vijay Narayan,
Senior Counsel
for Mr.T.Ravichandran
for R2



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ORDER

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Writ petition has been filed in the nature of a certiorari seeking the records in No.NB.TN/HRMD/2417/PA Disc. 2019-20 dated 23.12.2016 issued by the second respondent and quash the same.

2. The writ petitioner was appointed as Clerk Grade II by the respondent bank on 16.04.1984. He was posted to the Regional Office at Chandigarh. He was then promoted on 01.07.1994 as Assistant Manager and posted at Regional Office, Jammu. He was further promoted as Manager in May, 2003 and posted at Regional Office at Chandigarh. He was then transferred and posted at Regional Office at Chennai on 04.07.2016.

3. During his service at Chandigarh, the petitioner worked as Honorary Member of NABARD Employees Cooperative Urban Salary Earners Thrift and Credit Society Limited, Chandigarh (hereinafter referred to as 'NABARD Employees Cooperative Society'). He was also elected Member of the Managing Committee of the Society between February 1999 and January, 2002. He acted as President of the Managing Committee from January, 2002 and resigned in May, 2003.



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4. He had a very interesting tenure while serving in the aforesaid positions in the NABARD Employees Cooperative Society. On 25.04.2007, he was issued with a charge memo which can be called the first charge memo complaining that he had violated Rule 28 of NABARD Staff Rules, 1982. It was alleged that he had failed to promote the bank's interest and brought disrepute to the organization.

5. The said charge memo was issued under Rule 47 of the Rules. He was placed under suspension on 13.12.2005. The suspension was revoked in November, 2006. He stated that enquiry was held from October, 2007. He was dismissed from service along with five other staff members. He then preferred an appeal before the appellate authority, which was dismissed in August, 2009.

6. He then filed a Civil Writ Petition / CWP No.12241 of 2015 (O&M) before the High Court of Punjab and Haryana at Chandigarh. The petition was allowed and the orders of the disciplinary authority and also of the appellate authority were set aside. It was directed that he should be reinstated into service and arrears of salary and allowances were to be paid till the date of



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reinstatement, however, restricting it to 38 months prior to the filing of the writ petition. He then assumed duties at Regional Office, Chennai.

7. The petitioner was then issued with the impugned charge memo dated 24.06.2019. The crux of the charge is as follows:-

"(iv) As an employee of NABARD, you are required to manage your private affairs as to avoid insolvency or habitual indebtedness. Further, you are also required to furnish to the Competent Authority, a signed statement of your position half-yearly on the 30th June and 31 December and shall indicate in the statement the steps you are taking to liquidate your debts. You have not only failed to manage your private affairs as to avoid insolvency or habitual indebtedness but also failed to furnish the statement indicating the steps you are taking to liquidate your debts. The same also tantamount to act unbecoming of an officer of NABARD."

8. It was contended that therefore the petitioner had violated Rules 44, 26 and 28 of the NABARD (Rules), 1982. It would be only worthwhile to examine those particular rules. All these rules surround private acts of an employee, who suffers a debt or a liability. In the instant case, the respondents had categorized the misappropriated amount as a debt.



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9. This assertion is countered by the learned counsel for the petitioner, who claimed that originally there was an order of stay of recovery granted. The matter went to the the appellate authority and then had been remanded back to the original authority. It is therefore contended by the learned counsel for the petitioner that since the order of stay of recovery revived, it cannot be contended that there is a debt or liability.

10. There is a fallacy in the argument of the learned counsel. It was only an order of stay of recovery. That does not mean that there was no liability to pay. If a bank employee, who has to ensure discipline, which any employee or officer is required, particularly while handling the finances of the bank or of any other institution suffers a debt then he can be charged with violation of the Rules under which he was appointed.

11. The Punjab Cooperative Societies Act, 1981 is the Governing Act where a member or an office bearer commits misappropriation. Proceedings can always be initiated against the petitioner for recovery of any amount held misappropriated. They are not his personal properties. He becomes indebted and becomes



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liable to repay the money back to the members of the society if the charges are established. It is a debt. It creates a charge over his assets. It creates a liability. If it does so, it is in direct violation of the terms of the employment.

12. In *Burdwan Central Cooperative Bank Limited and another v Asim Chatterjee and others* [(2012) 2 SCC 641], the respondent in that particular case was originally employed in what was called a Samity. Thereafter, he joined the services of the appellant bank. After he joined the services of the appellant bank, certain acts inviting disciplinary proceedings came to be initiated when he was functioning as an employee of the Samity. Therefore, when he was an employee of the bank, a charge memo was issued and disciplinary proceedings stood initiated. The Hon'ble Supreme Court stated that disciplinary proceedings stood vitiated. They set aside the view taken by learned Single Judge and by the Division Bench of the High Court and stated that allegations of defalcation made against the respondent therein when he was previously employed under the Samity, could be proceeded against the appellant bank. They had so examined and they had dismissed him from the service. That dismissal was upheld and justified by the Hon'ble Supreme Court. The reasons of the Hon'ble Supreme Court



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are set out below:-

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"15. Having carefully considered the submissions made on behalf of the respective parties and having regard to the fact that the Respondent No. 1 was an employee of the Samity, which was a cooperative society affiliated to the Appellant Cooperative Bank herein, there was a link between the previous employment of the Respondent No. 1 and his subsequent appointment under the Appellant-Bank. It has to be kept in mind that under its Recruitment Rules, the Appellant-Bank was entitled to recruit people from the affiliated societies through a regular recruitment process. Accordingly, even though the Respondent No. 1 was employed by a different Cooperative Society, the same had a link with the Appellant-Cooperative Bank on the basis whereof the Respondent No. 1 was appointed by the Appellant-Bank on 8th September, 1997.

X X X

18. The decision of this Court in S. Govinda Menon's case (*supra*), cited by Mr. Ray, also has a direct bearing on the facts of this case, where, although the Respondent No. 1 was not under the administrative control of the Appellant-Bank, prior to his service with the Bank, his previous conduct was a blot on his integrity and devotion to duty as a member of the service. Since no prejudice had been caused to the Respondent No. 1 by the nonsupply of the Enquiry Officer's report or the second show-cause notice under Article 311(2) of the Constitution, the Respondent No. 1 had little scope to contend that the principles of natural justice had been violated which had vitiated the proceedings.

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21. This is, in fact, a case where the order of punishment had been passed against the Respondent No. 1 on allegations of financial irregularity. Such an allegation would require



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serious consideration as to whether the services of an employee against whom such allegations have been raised should be retained in the service of the Bank. Since a Bank acts in a fiduciary capacity in regard to people's investments, the very legitimacy of the banking system depends on the complete integrity of its employees. As indicated hereinbefore, there is a live-link between the Respondent No. 1's performance as an employee of the Samity, which was affiliated to the Bank, and if the Bank was of the view that his services could not be retained on account of his previous misdemeanor, it is then that the second part of B. Karunakar's case (supra) becomes attracted and it becomes necessary for the court to examine whether any prejudice has been caused to the employee or not before punishment is awarded to him.

X X X

23. In the above circumstances, we cannot agree with the view taken by the learned Single Judge, as affirmed by the Division Bench of the High Court, that the Appellant- Bank had no jurisdiction to proceed against the Respondent No. 1 by way of disciplinary proceedings in regard to the allegations of defalcation made against him while he was employed under the Co-operative Samity which was an affiliate of the Appellant-Bank. The other decision cited by Mr. Ray in S. Govinda Menon's case (supra) also makes it abundantly clear that even though the Respondent No. 1 may not have been under the direct administrative control of the Bank at the relevant point of time when the defalcation is alleged to have taken place, on account of the affiliation of the Samity with the Bank under the provisions of the West Bengal Cooperative Societies Rules, 1987, the Appellant-Bank had jurisdiction over the Respondent No. 1 after he joined the employment of the Appellant-Bank. In the instant case, since the question of integrity in managing the accounts of the



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Samity is in question, it was but natural for the Bank to proceed departmentally against the Respondent No. 1 after coming to learn of the allegations which have been made against him."

12.1 The reasoning of the Hon'ble Supreme Court was that banks act in fiduciary capacity with respect to investments by the public. If there is misappropriation by any employee it would directly affect the very legitimacy of the banking system and impinge on its own integrity. These words drive home the point that even if the petitioner herein had committed acts of misappropriation in a separate society, still since the society was also involved with extending loans to its members, and when integrity of that particular person is called into question, it is the reputation of the respondents which is finally affected, since the integrity of their own officer is being questioned. The confidence which the general public had while entrusting their finances with the respondent would be deroded to that limited extent.

12.2 This judgment provides a bridge between the respondent on the one hand and the acts of the petitioner on the other hand and is more directly applicable to the facts of the case.

13. In *M.Sakthivel v The General Manager, Regional Office*



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of the Food Corporation of India [W.P.No.2319 of 2010 dated 09.02.2010], not only was the petitioner therein proceeded with disciplinary proceedings, but more importantly his action also invited an FIR to be registered against him by the CBI. Taking into consideration that particular fact which went to the root of the acts of misappropriation or misconduct, learned Single Judge justified initiation of disciplinary proceedings. Though the petitioner herein had not fallen into such a deep well, in the instant case, still it would be apt to extract the reasoning of the learned Single Judge:-

"25. The other contention that in respect of misconduct or irregularity committed in the Co-operative Society run by the employees, no action can be taken also cannot be accepted. First of all, it is the society run by the employees of the same Corporation. Only by virtue of their being employees of FCI, they are eligible for membership in the said society. Many times, it is noticed that employees, who are holding office and are Board of Directors of such societies, are given duty relief by the employer to attend to the Society's work. Even otherwise, since CBI has registered a criminal case under the Prevention of Corruption Act, which charge came to bed only because the petitioner is a "public servant" and was allegedly in possession of assets disproportionate to known sources of income. Hence that contention also must fail."

13.1 Even in that particular case, the employee was alleged to have committed acts of misappropriation in a cooperative society allied with the corporation where he worked. It



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had been observed that the members of the cooperative society were the employees of the Food Corporation of India and, therefore, the right of the employer to initiate disciplinary proceedings was recognized and upheld.

14. In both the above cases, the employee had committed acts of misappropriation.

14.1 In *Burdwan Central Cooperative Bank Limited (supra)* he was an employee of a Samity and later become an employee of the Bank. He was charged with misappropriation when he was an employee of the Samity. The Hon'ble Supreme Court said it was a violation of terms of the service.

14.2 In *M.Sakthivel (supra)*, the appellant therein had misappropriated money from the members of the society and it was found that the members were intricately connected with the employees of the Food Corporation of India. Initiation of disciplinary proceedings were upheld.

14.3 In the instant case, the specific stand of the respondents is that each and every member of the NABARD



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Employees Cooperative Society are staff of NABARD. Their finances had been misappropriated, according to the charge memo. If that be so, that is a very serious violation. It has to be viewed seriously.

15. If an officer of the bank is charged with such an offence of misappropriation then I really wonder how the general public will view the respondents with any confidence. They can never trust their personal finances with NABARD.

16. The confidence and trust placed on NABARD would stand eroded only because of the acts of the petitioner owing to his alleged nefarious act while functioning as office bearer of the society. He should have avoided charge of misappropriation. It is an act which he had invited on himself by his conduct. He is answerable. The respondents cannot be expected to retain him in service or to pat his back for his conduct of alleged misappropriation. They necessarily have to initiate disciplinary proceedings. It directly touches upon their reputation. It also touches upon the morale of the other staff members. If misappropriation is condoned then it would only affect the conduct of each and every employee of the bank. That cannot be permitted.



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17. Simultaneously with this order, I had examined the allegations in W.P.No.17266 of 2017 and had set aside the charge memo issued practically on the same grounds but that was set aside because the a second charge memo was issued against the petitioner on the same facts.

18. Here, the charges relate to violation of fundamental terms of employment with the respondents. The petitioner has become a debtor to those, from whom he is alleged to have misappropriated amounts. They are not strangers but identifiable members of the society.

19. A mere order of stay and mere order of remand will not wipe out the debt. Auditing had been done. Facts have been determined and established. I am not prepared to interfere with the charge memo so far as this case is concerned.

20. I am informed that at the time of admission my learned predecessor had directed that the enquiry can proceed and that orders can also be passed but it should be kept in a sealed cover. I do not want anything to do with the sealed cover. Respondents



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may open up the cover wherever they have it and serve a copy of whatever is contained in the sealed cover to the petitioner herein and proceed further in the manner known to law.

21. There is no embargo placed on further proceedings. They only have to follow the procedure as established. They may proceed in the manner known to law and in accordance with the rules and regulations. But since the act of misappropriation is a serious violation of terms and conditions of the service, that act by the petitioner cannot be condoned by this Court. He will have to face the proceedings initiated by the respondents. The right of the respondents to initiate disciplinary proceedings has also been dealt with in *Burdwan Central Cooperative Bank Limited and another (supra)* and *M.Sakthivel (supra)*.

22. In view of these facts, the writ petition has to suffer an order of dismissal and the same is dismissed. The respondents are at liberty to proceed further consequent to the enquiry conducted by them in manner known to law. No costs. Connected miscellaneous petition is closed.

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Index:Yes
Neutral Citation:Yes
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To

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- 1.The Chairman,
National Bank for Agriculture and Rural Development
C-24, G Block, Bandra Kurla Complex,
Post Box No.8121,
Bandra (E), Mumbai – 400 051.
- 2.The Chief General Manager,
NABARD, Regional Office.
48, Mahatma Gandhi Road,
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C.V.KARTHIKEYAN,J.

ssm

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