



W.P.(MD)No.8573 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 8573 of 2019

S.Pandian

... Petitioner

Vs.

1. The State,

Represented by Principal Secretary to Government,
Cooperation, Food and Consumer Protection Department,
Secretariat,
Chennai – 600 009.

2. The Joint Registrar/Special Officer,

Sivagangai District Central Cooperative Bank Limited,
Sivagangai.

3. The Joint Registrar (Co-Operative Society),

Virudhunagar Division,
Virudhunagar

4. The Joint Registrar (Co-Operative Society),

Sivagangai Division, Sivagangai.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to call for the records on the file of the 2nd respondent in connection with the impugned order of dismissal from service passed by him in his proceedings in Na.Ka.2746/1/-09-10E1, dated 20.01.2010 and the consequential impugned rejection of Revision passed by the 3rd respondent vide Na.Ka.2147/10 SaPa, dated 07.03.2011 and the impugned Rejection of Review passed by the 4th respondent vide Na.Ka.6480/2011 SaPa, dated 11.07.2013 and quash all as illegal and arbitrary and consequently direct the respondents to provide all terminal and attendant benefits to the petitioner within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.R.Ragavendran,
Government Advocate, for R-1,3 & 4
Mr.D.Shanmugaraja Sethupathy, for R-2

ORDER

This writ petition is filed to quash the impugned order, dated 20.01.2010 and consequential revision order, dated 07.03.2011 and the impugned review order, dated 11.07.2013 with a consequential direction to the respondents to provide all terminal and attendant benefits to the petitioner.



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2. Heard Mr.G.Thalaimutharasu the Learned Counsel appearing for the petitioner, Mr.R.Ragavendran, the Learned Government Advocate appearing for respondents 1, 3 & 4 and Mr.D.Shanmugaraja Sethupathy, the Learned Counsel appearing for the 2nd respondent and perused the material documents placed on record.

3. The petitioner has served as Branch Manager in the respondents Cooperative Bank Limited. Initially, he was appointed as an Assistant on 25.06.1974, thereafter, he was promoted to various posts. While, he was discharging his duty at Karaikudi Branch in Sivagangai District Central Co-operative Bank, on 14.10.2009, a charge memo was issued alleging that the petitioner has failed to adhere the duty and responsibilities, thereby caused loss to the Society from 27.01.2004 to 11.04.2007. When the petitioner was on discharging the duty as in-charge of the Branch Manager, the petitioner had allowed to withdraw cash by manipulating entries into the accounts without any hindrance and caused loss to the bank to the tune of Rs.2,13,200/-. The petitioner has submitted an explanation for the charge memo and denied that he has not misappropriated any amount and has not manipulating entries. Moreover, during



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the said period, one P.Swaminathan, discharging the duty as Cashier who had dealt with the accounts regarding the pay-in and pay-out and the petitioner has only to approve the said payments, after the Cashier approving the same. Therefore, all the transactions were carried by the Cashier who has main role in the manipulation of entries in the Account book.

4. The 2nd respondent has also issued a charge memo to the said Cashier. The 2nd respondent has appointed an Enquiry Officer, wherein the final report, dated 31.12.2009 the charges levelled against the petitioner were held to be proved. Based on the enquiry report the 2nd respondent has issued a Show Cause notice, dated 01.01.2010 directing the petitioner to submit an explanation, within a period of seven days. On receipt of the explanation, the respondents have passed the impugned order, dated 20.01.2010. Against the impugned order, the petitioner has preferred revision and review petitions under Sections 153 & 154 of Tamil Nadu Co-operative Societies Act, 1983 and both were dismissed. The contention of the petitioner is that the charges against the said Cashier were held to be proved but he was allowed to retire from service. However, the petitioner was imposed punishment of dismissal from service. Therefore, the punishment



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order is absolutely discriminatory. Hence, through this writ petition, the petitioner has challenged the original order, revision and review order.

5. It is stated in the counter that the charge against the petitioner is serious in nature. Since the petitioner was holding the post of Branch Manager, he is more responsible for the entire bank transactions. Therefore, the petitioner was imposed punishment of dismissal from service. As far as the punishment is concerned, based on the evidence the Cashier was allowed to retire from service. Therefore, the petitioner cannot compare with the said co-delinquent, since he was only holding the post of Cashier. Since the petitioner was holding the post of Branch Manager, he is more responsible than the Cashier. There is no violation of principles of natural justice. Hence, the impugned orders are ought to be sustained and cannot be interfered. Therefore, the respondents prayed to dismiss the writ petition.

6. It is seen from the records that the charge against the petitioner is that he has not supervise the income and expenses and has created loss to the society. In short, the allegation against the petitioner is he has not executed his



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supervisory power. The charge has also stated that the Cashier has carried out the entire transactions. The petitioner has not involved, but he has failed to supervise the mistakes and misdeeds of the cashier. The petitioner while submitting explanation also has stated that the cashier has received the receipts, made entries in his own handwriting and had withdrawn the same. The cashier had submitted the same for the petitioner signature. Since there were arrears, the petitioner had signed the same without verifying. The entire transaction was done by the cashier and the petitioner without verification had affixed the signature. The respondents have allowed the cashier to retire from service and has not imposed punishment. But in the case of the petitioner, the punishment of dismissal from service is imposed. Therefore, this Court is of the considered opinion that the punishment imposed on the petitioner is clearly discriminatory, when the Cashier was allowed to retire from service and the petitioner was dismissed from service. Hence the punishment is discriminatory and needs interference.

7. The respondents have filed stated that the co-employees have accused the petitioner and not the cashier. At the same breath it has also been stated the petitioner being the administrative head of the Branch there is



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absolutely no chance for committing the misappropriation without knowledge and connivance of the petitioner. The following portion of the counter would indicate that the respondents have not conducted the enquiry properly:

“11. ... (iv) The petitioner has categorically stated in his petition that all the irregularities and misappropriation was committed by the said Swaminathan and he has admitted the commission of irregularities. Hence there is no dispute about the fact that there was misappropriation and the bank sustained loss. the petitioner has only disputed the fact as to who has committed the irregularities. Therefore, the question to be decided is as to whether the misappropriation was committed by the petitioner or the said Swaminathan. For deciding the above question, the non-examination of accounts holder or complainants would not any way affect the disciplinary proceedings.”

7. From this admission it is evident the respondents are not interested who has really committed the crime and punish the real culprit. It is also evident that the respondents are trying to protect the cashier. The learned counsel appearing for the petitioner further submitted that the Cashier has deposited the entire quantified loss amount. The respondents have not denied the said statement of the petitioner.



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To

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S.SRIMATHY, J

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**Order made in
W.P.(MD)No. 8573 of 2019**

16.06.2023