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THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.08.2024	Pronounced on : 29.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.1841 of 2012

R.Kumar ... Petitioner

Vs.

1. The Chairman -cum- Disciplinary Authority,
Tamil Nadu Grama Bank, No.6, Yercaud Road,
Hasthampatti, Salem.

2. The Board/ Appellate Authority,
Tamil Nadu Grama Bank, No.6, Yercaud Road,
Hasthampatti, Salem. ... Respondents

[R1 and R2 amended as per order dated 26.02.2024]

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records from the files of the first respondent amd second respondent pertaining to the impugned order of the first respondent Ref: PGB/VIG/SPK/08/2011 -12 dated 29.04.2011 imposing the punishment of "compulsory retirement" and appellate authority's order in Board Meeting No:04 dated 29.08.2011 respectively, and quash the same and consequently direct the respondents to

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reinstate the petitioner in service with continuity of service, with backwages and with all other attendant and consequent benefit.

For Petitioner : Mr.D.Muthukumar

For Respondents : Mr.K.Pradeep

ORDER

The petitioner herein was appointed as an officer in the 'Pallavan Grama Bank', in the year 1989. While the petitioner was working as a 'Branch Manager' in the M.Kunnathur Branch, he was subjected to disciplinary proceedings under the provisions of the Pallavan Grama Bank (Officers and Employees) Service Regulations, 2007, by issuing Articles of Charges dated 28.06.2010, containing nine charges. In response to the said Articles of Charges, the petitioner submitted his reply dated 28.07.2010 and thereafter, an Inquiry Authority was appointed. The said Inquiry Authority viz., Mr.L.Thangarajan, Senior Manager/ Regional Manager, after having conducted a detailed enquiry into charges, submitted his report dated 09.02.2011 to the Respondent No.1/ Disciplinary Authority holding that the charges 1 to 5 and 9 as proved and the charges 6 to 8 as not proved. On receipt of the report of the Inquiry Authority, the Respondent No.1/ Disciplinary Authority, while communicating the report of the Inquiry

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Authority, also furnished the disagreement statement in respect of the charges 6 to 8 to the petitioner through letter dated 17.02.2011, requiring him to submit his comments on the report of the Inquiry Authority, as well as on the reasons for the disagreement. The Disciplinary Authority, while recording the disagreement with the findings recorded by the Inquiry Authority on charges 6 to 8 held the said charges as proved. Thereafter, the petitioner submitted his comments on the findings of the Inquiry Authority by submitting a representation dated 11.03.2011, seriously objecting for the disagreement statement of the Respondent No.1/ Disciplinary Authority in respect of the charges 6 to 8.

2. It was thereafter, the Disciplinary Authority viz., the Chairman of the Pallavan Grama Bank, passed an order dated 29.04.2011, imposing the punishment of *"Compulsory Retirement"* under the Regulation 39(1)(b)(iii) of Pallavan Grama Bank (Officers & Employees) Service Regulations, 2010, while treating the period of suspension as 'suspension'. Aggrieved by the said order, the petitioner filed an appeal before the Board of Directors on 03.06.2011. The said appeal was considered by the Board of Directors and by an order dated 29.08.2011, the original order of punishment dated 29.04.2011 was confirmed by the Appellate Authority. It is aggrieved by the said orders

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passed by the Disciplinary Authority as well as the Appellate Authority, dated 29.04.2011 and 29.08.2011 respectively, the present writ petition has been filed by the petitioner.

3. During the pendancy of the writ petition, the Pallavan Grama Bank was merged with the Tamil Nadu Grama Bank and in view of the same, the original respondents 1 and 2 were substituted by the present respondents 1 and 2.

4. Heard Mr.D.Muthukumar, learned counsel for the petitioner and Mr.K.Pradeep, learned counsel for the respondents and also perused the entire material on record.

5.1. The learned counsel for the petitioner contended that the sum and substance of all the charges that are levelled against the petitioner is of negligence and also of causing loss to the Bank. According to him, all the allegations against the petitioner are pertaining to the procedural lapses only and there are no substantial allegation of misconduct against the petitioner. As such, the imposition of punishment of “Compulsory Retirement” is shockingly disproportionate to the charges levelled against the petitioner. In

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support of his contentions, the learned counsel for the petitioner has placed reliance on the decisions of the Hon'ble Apex Court in the case of ***"S.R.Tewari -vs- Union of India and others"*** reported in **(2013) 6 SCC 602** and in the case of ***"Union of India and others -vs- P.Balasubrahmanayam"*** reported in **(2021) 5 SCC 662.** He also further contended that the alleged loss caused to the Bank was never quantified nor there was any material that was brought on record, either during the course of enquiry nor there was any conclusive finding on the loss, alleged to have been caused to the Bank. He also further contended that, though the management has placed reliance on, as may as 96 documents and they were marked as Exhibits in the enquiry, the said documents were neither proved, nor the persons connected with the said documents were examined as witnesses and therefore, the said documents cannot be the basis for holding the charges as proved against the petitioner.

5.2. According to learned counsel for the petitioner, such documents which were not produced or marked through the relevant witnesses cannot be relied upon. He also further contended that the Disciplinary Authority, having differed with the conclusions of the Inquiry Authority in respect of the charges 6 to 8, without affording any opportunity to the petitioner, have concluded on the said charges holding them as proved and then afforded an

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opportunity to submit the objections of the petitioner. According to him, the petitioner ought to have been afforded an opportunity before recording the final findings of the Disciplinary Authority on the said charges. He also further contended that the remedy of appeal provided by the Board of Directors against the order passed by the Disciplinary Authority has been rendered useless, as the Disciplinary Authority viz., the Chairman of the Pallavan Grama Bank has also participated in the meeting of the Board, which considered the appeal filed by the petitioner against the order of the punishment passed by the Disciplinary Authority/ Chairman.

5.3. Thus, it is contended that the order passed by the Appellate Authority is vitiated because of the participation of the Disciplinary Authority in the meeting of the Board of Directors. He also further contended that the Disciplinary Authority as well as the Appellate Authority failed to take into consideration various circumstances peculiar to the M.Kunnathur Branch of the respondent Bank, in the light of the fact that the said Branch is functioning with three staff alone, which give scope for the Cashier and SCA to commit fraud and misappropriation of the amounts from the accounts of the customers etc.,

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5.4. The learned counsel for the petitioner further contended that the petitioner is suffering from kernel vision problem and therefore, the respondents, while passing final orders in the disciplinary proceedings, ought to have taken into consideration the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, as well as the Right of Persons with Disabilities Act, 2016 and also placed reliance on the decision of the Hon'ble Apex Court in the case of ***"Ravinder Kumar Dhariwal and another -vs- Union of India and others"*** reported in **(2023) 2 SCC 209** and he also placed reliance on the case of ***"Yoginath D.Bagde -vs- State of Maharashtra and another"*** reported in **(1999) 7 SCC 739,** in support of his contention that the Disciplinary Authority cannot record conclusive findings on the charges 6 to 8, while disagreeing with the conclusions of the Inquiry Authority on the said charges, unless an opportunity is afforded to the petitioner.

6. On the other hand, the learned counsel appearing for the respondent Bank contended that, all the charges that are levelled against the petitioner are serious in nature and shows the gross negligence on the part of the petitioner,

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being the Branch Manager and Head of the Branch, he totally failed to control the fraudulent activities committed by the Cashier and SCA, resulting in defaming the respondent Bank in the eyes of the general public, besides causing financial loss to the Bank. He also further contended that, the petitioner, being a Branch Manager, allowed the Cashier to operate the confidential key/ password, thereby acted in a gross negligent manner. He also further contended that the Disciplinary Authority, having taken note of the negligent acts of the petitioner and his failure to safeguard the interest of the Bank, has rightly imposed the punishment of "Compulsory Retirement", having come to the conclusion that the continuance of the petitioner in the respondent Bank would cause great prejudice and that the said punishment is appropriate in the facts and circumstances of the case. He also further contended that, the Chairman/ Disciplinary Authority, who is also a member of the Board of Directors i.e., Appellate Authority, has not participated in the deliberations and in the matter of taking a decision on the appeal filed by the petitioner against the order of punishment and thus, the contention of the learned counsel for the petitioner in this regard is not correct.

7. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

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8. The nine charges that are levelled against the petitioner are as under:-

> ***"Charge No.1***
>
> *Shri M Vanaraj, Shroff, along with Shri D Shanmugam, the daftary of the branch, had unauthorisedly withdrawn money from accounts of various customers through fraudulent means, without the knowledge and consent of the related customers. In certain cases, the they had credited back amounts to such of those accounts, wherefrom they had fraudulently withdrawn amounts, by way of cash/transfer from other unrelated accounts and by fictitious/ unrelated OBC cheque realization proceeds meant for credit to other unconnected accounts. As Branch Manager, you had simply approved all these transactions without ascertaining the genuineness thereof. In respect of the certain accounts, the signatures of the customers were forged and you had passed these instruments without verifying the signatures of the parties. In many cases, Shri M Vanaraj and Shri D Shanmugam have taken out the paid instruments and certain other incriminating vouchers from the voucher bundles subsequently and hence the basic evidences of the misappropriations committed by them in the customers' accounts are missing. You had failed to exercise proper control over the safe keeping of the vouchers and records of the Branch and your negligence in this regard has resulted in financial loss to the bank. Had you exhibited the normal prudence and diligence expected of from an officer like you, fraudulent transactions and the loss Sihn M Vanaraj and Shri D Shanmugam could have been detected earlier and the loss sustained by the bank on account of these unauthorized transactions could have been avoided. Your negligent way of function and the total carelessness caused a loss of Rs.13.36 lacs towards the way of missappropriation of Customers' money both Shri M Vanaraj and Shn D Shanmugam*

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Charge No.2

One Mr. K. Kumar had availed an ISB Jewel loan No. 83 for Rs. 41,000/- on 20.01.09 and withdrew the said amount from his SB account No: 3394, whereto the proceeds of the said loan was credited. The Cashier had prepared another debit voucher for Rs 59,000/- to the said ISB JL account in the name of the party and withdrew the amount after crediting to party's account. You had approved and passed for payment of the said fictitious voucher put by the Cashier and allowed the Cashier to withdraw the said amount of Rs. 59,000/- on 20.01.09. Subsequently this amount of Rs. 59,000/ was credited back to the said ISB JL account by the Cashier and thereby the fraudulent withdrawn amount was remitted back and adjusted by Shri M Vanaraj. As Branch Manager, you had approved all the above fictitious transactions without verifying the genuineness of the transactions and your negligence and carelessness had resulted in financial loss to the bank.

Charge No.3

One Mr. K. Ramachandran had availed a JL. for Rs 11,500/- on 19.05.09 and the proceeds thereof, on being credited to SB account No: 3269, was withdrawn by him by way of Withdrawal slip No: 473985 dated 19.05.09 for Rs 11,500/-. Shri M Vanaraj had entered the payment in the system again and withdrew the cash of Rs. 11,500/-. As Branch Manager, you had approved the above fraudulent transaction without verifying the genuineness thereof and your negligence had facilitated Shri M Vanaraj to withdraw the amount of Rs. 11,500/- fraudulently, without the support voucher therefor.

Charge No.4

One Mr. K. Ayyar had availed an AJL KCC loan for Rs. 9,700/- on 11.01.09. Shri M Vanaraj, the Cashier had put an additional debit entry for Rs. 87,300/- to the said AJL account and had withdrawn this amount on the

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same day. Again on 22.01.09, the Cashier debited a further of Rs. 2,00,000/- from the above-mentioned AJL KCC account and withdrew the amount fraudulently. The Cashier had set right the said fraudulent transactions by remitting cash amounting to Rs. 2,87,603/- through fraudulent means, for closing the said account. As Branch Manager, you had approved the above mentioned transactions without verifying the genuineness of the vouchers and the total negligence and carelessness exihibited by you while approving the above transactions.

Charge No.5

Shri M Vanaraj had carried out various fraudulent transactions in 'Outstation cheques sent for collection account (OBC)': He had utilized the OBC realization proceeds recived from various outstation branches for affording credits to unrelated accounts, wherefrom he had fraudently withdrawn amounts without the knowledge and consent of related customers. He had fictitiously booked certain OBC items consent supported by the cheques and had reversed these items with the proceeds received in respect of other unrelated accounts, in order to conceal the fraudulent transactions done by by him. As Branch Manager, you had not at all checked and verified the genuineness of the OBC collection cheques, registered in the computer systems by Shri M Vanaraj and thereby failed to detect the fraudulent activities committed by the Cashier.

Charge No.6

Shri M Vanaraj has fraudulently withdrawn amounts Rs 1 lac from SB 2874 of Sarva Shiksha Abhiyan A/c on 04.04.09 and another Rs1 lac from another account No.2899 of Village Education committee, Panchayat Union Elementary School Tirunarankundram on 04.05.09 by effecting payment on the instruments, which were already paid.

Charge No.7

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Even though the insufficiency of adequate balance in the SB account No: 3358 of C. Nalliammai, caused due to the alleged fraudulent withdrawal of Rs. 25,000/- made therein on 28.03.09 had come to your notice on 02.05.09 itself, you, as Branch Manager, did not act immediately for making a thorough verification of the account and instead facilitated Shri M Vanaraj, on return to duty, to credit the questioned amount to her account by way of fraudulent credit of Rs. 25,000/- on 04.05.09. You had failed to verify and report the matter to HO immediately. During this interim period also, Shri M Vanaraj had committed further fraudulent transactions resulting in financial loss. Had you reported the matter immediately on detection, further loss of money and image caused to the bank could have been avoided. Your above acts have proved that you have suppressed the facts.

Charge No.8

As Branch Manager, you had failed to ensure the safety and security of the documents and vouchers of the branch by keeping them under proper safe custody and your negligence in this regard had facilitated the Cashier and Peon to tamper and destrot a host of vouchers and instruments, which are the basic evidences of the fraudulent transactions by way of misappropriation of huge sums of various customers. done by them, as mentioned in foregoing paragraphs. You had failed to exercise utmost care and caution in ensuring preservation of bank's vouchers, and records under proper custody and thereby failed to safeguard the interests of the bank.

Charge No.9

As per records available, it has been evidenced that during your tenure as Branch Manager, you had left the branch before the closure of the branch business hours on every alternate days. Records show that the 'Day End process' of the branch was done before the

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stipulated time for closure of the business hours on many days."

From the perusal of the above charges, it is evident that the Cashier viz., Mr.M.Vanaraj Shroff and Mr.D.Shanmugam, Daftary of the Branch have committed several fraudulent activities such as withdrawing the amounts from different customers, unauthorizedly depositing the amounts into the accounts of various customers without their knowledge and consent, misusing the amounts received on collection from other banks cheques/ outstation cheques, drawing amounts second time on the used vouchers, drawing the amounts from the various gold loan accounts without the knowledge and sanction of customers, booking amounts against the OBC items without supported by the cheques, destroying the vouchers fraudulently from the Bank in order to destroy the evidence of committing various fraudulent acts etc.,

9. It is not in dispute that the Cashier and Daftary have committed all the fraudulent acts, as alleged under the charges in question. It is also not in dispute that the petitioner herein approved all such fraudulent transactions made by the Cashier and Daftary and allowed them to withdraw amounts/ deposit the amounts, either by himself or allowed the Cashier to use the password of the petitioner to approve all such transactions. There is no

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dispute on these aspects. A perusal of the reply submitted by the petitioner in response to the Articles of Charges, further representation dated 11.03.2011 and the appeal preferred by the petitioner, dated 03.06.2011 against the order of punishment dated 29.11.2011 would establish the above. Further, it is also the contention of the learned counsel for the petitioner that the password secrecy has no sanctity in the respondent Bank, due to the practice of giving the password of the Manager, whenever he goes on leave, to the incoming reliever. It is also his further case that, because of the kernel vision problem, that is being faced by the petitioner, the other two staff members of the Branch have exploited the situation in perpetuating the fraud on the bank.

10. According to him, it is because of his kernel vision problem, he could not properly verify the used vouchers brought before him for approval for withdrawal of funds for the second time. It is also his further case that, there cannot be any loss caused to the bank in fraud-related case, as the fidelity insurance claim settlement amount in most cases makes up for the money siphoned off by fraudulent means. Thus, it is evident that the petitioner has not disputed of the happening of any of the fraudulent acts alleged against the Cashier and Daftary and also of approving all such fraudulent acts without proper verification and supervision. On the other

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hand, the petitioner tried to justify his actions in approving such fraudulent transactions without proper verification, either on the ground of his kernel vision problem or on the ground of lapses in maintaining the secrecy of the password. If the petitioner, who is holding the post of 'Branch Manager', is unable to control the activities in the Branch and failed to properly supervise the same, which resulted in allowing the Cashier to misappropriate the amounts of the customers by withdrawing them fraudulently and by accounting for amounts without there being any OBC's, withdrawing amounts against gold loan accounts of customers and other accounts of the Government Authorities, including allowing the Cashier to misuse his password, it is not understood, as to why the petitioner is there in the Branch concerned, as the 'Branch Manager'. Perhaps it is only by taking into consideration all these aspects, the Disciplinary Authority must have thought it fit to impose the punishment of 'compulsory retirement' considering the fact that the petitioner has completed 20 years of service by then in the respondent bank, instead of imposing the punishment of 'removal/ dismissal from service'.

11. In the light of the above, this court is not in a position to agree with the contention of the learned counsel for the petitioner that the punishment of

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“compulsory retirement” is disproportionate to the charges levelled against the petitioner. It is not a simple case of procedural lapses, but it is a case of negligence or incapacity on the part of the petitioner, which resulted in allowing the Cashier to commit fraud in the Bank. Hence, the decisions relied upon by the learned counsel for the petitioner on the point of dis-proportionality of punishment have no application to the facts of the case on hand.

12. Then, coming to the contention of the learned counsel for the petitioner that, there is no quantified loss caused to the Bank, is also liable to be rejected. Whether there was any loss, quantified loss or such loss can be made up by way of insurance etc., are totally irrelevant, once the negligence or incapacity or failure of the petitioner as a 'Branch Manager', as alleged in the charges is established. Even if there is no loss also, the petitioner cannot escape from his responsibilities on the said ground.

13. The contention against the 96 exhibits that are marked during the course of enquiry through the presenting officers on the ground of non-examination of the relevant witnesses does not stand for legal scrutiny. In the absence of any dispute about the admissibility of the said documents or the

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contents of the said documents, the contents of the said documents nor admissibility of the said documents cannot be disputed. Admittedly, there is no dispute about the genuineness of the said exhibits nor about the contents of the said exhibits. Further, the petitioner has also not raised any objection in that regard, while filing an appeal before the Appellate Authority against the order of punishment. But, such an objection is raised for the first time only before this court in the present writ petition. Hence, the said contention also deserves to be rejected.

14. Then, coming to the aspect of not affording an opportunity on the differing note on charges 6 to 8 by placing reliance on the decisions of the Hon'ble Apex Court in the case of "***Yoginath D.Bagde -vs- State of Maharashtra and another"*** reported in **(1999) 7 SCC 739** is concerned, this court is unable to agree with such contention also for the reason that the Disciplinary Authority, while recording the reasons for differing with the conclusions of the Inquiry Authority, has held the said charges as proved and then afforded an opportunity to the petitioner to submit his objections on the report of the Inquiry Authority as well as on the reasons for differing with the views of the Inquiry Authority on charges 6 to 8. The Disciplinary Authority itself is competent to conduct an enquiry into the charges in question or to

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appoint any other officers to conduct an enquiry and to submit a report to him. In the instant case, an Enquiry Officer was appointed and he has recorded his findings on all the charges, holding some charges as proved and some charges as not proved. If the petitioner has no objection on the findings recorded by the Inquiry Authority in all the charges, equally the petitioner cannot have any objections on the findings recorded by the Inquiry Authority on charges 6 to 8 as well. As seen from the letter dated 17.02.2011, whereby an opportunity was afforded to the petitioner to submit his objections on the report of the Inquiry Officer and the differing views of the Disciplinary Authority, except holding the charges 6 to 8 as proved, the Disciplinary Authority has not jumped to any conclusion on the final order to be passed in the matter, basing upon such finding. At that stage, an opportunity was afforded to the petitioner to submit his objections against such findings. Hence, in the considered view of this Court, the principles of natural justice have been complied with by the Disciplinary Authority. It is only after the objections of the petitioner were submitted, the Disciplinary Authority has passed the final order of punishment. Therefore, the said contention is also liable to be rejected.

15. Then, coming to the contention of the learned counsel for the

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petitioner on the ground that the Disciplinary Authority/ Chairman has participated in the decision making process by the Appellate Authority is concerned, a perusal of the order dated 29.08.2011 passed by the Appellate Authority would demonstrate that the appeal filed by the petitioner was considered by other members of the Board of Directors and the Disciplinary Authority/ Chairman has not participated in the said process and it is only after a decision was taken by other members of the Board of Directors, excluding the Chairman, formally the Chairman has participated at the end of the meeting. Therefore, it cannot be said that the Disciplinary Authority has participated in the decision making process, while deciding the appeal filed by the petitioner. Be that as it may, even if the order passed by the Appellate Authority is found to be vitiated because of the formal participation of the Disciplinary Authority/ Chairman, in the considered view of this Court, the same would not make any difference, as this Court has already examined the validity of the original order of punishment dated 29.04.2011 in the preceding paragraphs. Even by ignoring the order passed by the Appellate Authority also, the punishment of compulsory retirement imposed on the petitioner needs no interference by this court, while exercising the discretionary jurisdiction under Article 226 of the Constitution of India.

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16. The other contention of the learned counsel for the petitioner placing reliance on the provisions of the Persons with Disabilities Act, 2016 also is liable to be rejected, as the same is not the ground taken by the petitioner, either during the course of enquiry or before the appellate authority. Even otherwise, if the petitioner is suffering with any such disabilities, it is for the petitioner to take appropriate steps to seek protection under the provisions of the said Act, but the same cannot be allowed to be taken as a defence in the disciplinary proceedings in order to escape from the charges levelled against the petitioner. In the decision relied upon by learned counsel for the petitioner in the case of ***"Ravinder Kumar Dhariwal and another -vs- Union of India and others"*** reported in **(2023) 2 SCC 209** has no application to the case on hand, as there is no discrimination shown towards the petitioner because of the so-called kernel vision problem that is being suffered by the petitioner, nor it is case of the petitioner as well. Further, any such defence needs to be considered basing on factual aspects, which are totally lacking this case. Hence, the said ground is also not available to the petitioner.

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17. In the light of the above, this Court does not find any merit in the writ petition and the same is accordingly dismissed. No costs. Connected miscellaneous petitions, if any shall stand closed.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

1. The Chairman -cum- Disciplinary Authority,
   Tamil Nadu Grama Bank, No.6, Yercaud Road,
   Hasthampatti, Salem.

2. The Board/ Appellate Authority,
   Tamil Nadu Grama Bank, No.6, Yercaud Road,
   Hasthampatti, Salem.

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MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in W.P.No.1841 of 2012

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