IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **.03.2024**

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.2143 of 2012

R.Ramamoorthy ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.The Management of
Nilgiris District Central,
Co-operative Bank Ltd.,
Uthagamandalam,
The Nilgiris. … Respondents

Writ Petition has been filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records and to quash the award passed by the first respondent in I.D.No.123 of 1997 dated 24.08.2010 and consequently call for the records on the file of the second respondent with regard to the order passed him, in his proceedings Rc.No.2886/94E1 dated 04.05.1996 and quash the same and direct the respondents to reinstate the petitioner with all monetary and service benefits.

For Petitioner : Mr.R.Singaravelan,

Senior Counsel
for Mr.V.S.Jagadeesan

For Respondent 1 : Labour Court

For Respondent 2 : Mr.R.Viduthalai,
Senior Counsel
for Mr.P.Ganesan

O R D E R

The relief sought by the petitioner in this writ petition is to calling for the records and to quash the award passed by the first respondent in I.D.No.123 of 1997 dated 24.08.2010 and consequently call for the records on the file of the second respondent with regard to the order passed him, in his proceedings Rc.No.2886/94E1 dated 04.05.1996 and quash the same and direct the respondents to reinstate the petitioner with all monetary and service benefits.

2. Learned senior counsel for the petitioner would submit that the petitioner viz., R.Ramamoorthy has entered into the service as a Junior Assistant in a permanent post in the Nilgiris District Central Co-operative Bank Ltd., on 19.11.1973. Subsequently, he was promoted to the post of Senior Assistant. The second respondent is a Central Co-operative Bank, an

Apex Body for all Co-operative Banks functioning in the Nilgiris District. This being so, the second respondent/Bank in the year 1982 has started a new and an independent co-operative society in the name and style of "Nilgiris District Central Co-operative Bank Employees Co-operative Thrift and Credit Society" by registering under the Tamil Nadu Co-operative Societies Act, 1983. The main function of the society was to lend loans to the employees of the second respondent/Bank. The society is an independent body and it is not a sister concern of the Bank. It has got its own by-laws for its functioning and sanctioning loans to its members. It has got its own Special Officer/Board of Directors, Secretary to take care of its day-to-day affairs. Subsequent to the abolition of the Board of the Co-operative Society, a Special Officer was appointed by the Government as an in-charge officer of the society, who shoulders the entire responsibilities with regard to the functioning of the society.

3. Learned senior counsel for the petitioner would further submit that after the formation of the co-operative society, the petitioner was asked to attend the works of the society, after the bank working hours and without

hindrance to functioning of the bank, as he was working as a Senior Assistant i.e., a full time employee of the bank. During the bank working hours, his service is indispensable and it is a well known fact that a bank employee was not allowed to go out of the bank, till the accounts are get tallied. It is wrong to say that he was allowed to work during the working hours of the bank. For discharging his duties as a Part Time Clerk in the society, the petitioner was paid a sum of Rs.50/- as remuneration per month by the society and not more than that. The petitioner's duty was to put entries in the day book by looking into the vouchers and the challans.

4. Learned senior counsel for the petitioner would further submit that the society used to grant loans to its members and the same was disbursed to its members by way of cheque. In turn, the members have to repay the loan straightaway to the bank in the society’s account and in turn, the petitioner has to submit a copy of the challan to the society with regard to the repayment of loan, which the members had availed from the society. In the evening, after the office hours, the petitioner has to go to the society to make appropriate entries in the day books with that collected challans. The

petitioner was not handling cash at any point of time. The system of operation as such that the loan amount was given by way of cheque to its members and the same was repaid straightaway into the society's account maintained with the Bank and the challan alone was deposited in the society for making appropriate entries in the member's accounts.

5. Learned senior counsel for the petitioner would further submit that the petitioner is only working as a part time clerk in the society and he was not in charge of any cash or handling cash in the society. Even, there are other full time employees in the society such as Secretary, Special Officer and a committee which manages the work of sanctioning loans to its members and others who looks after the day to day affairs of the society. The by-laws clauses 38 to 42 deals with the sanction of loan and as to how it has to be collected. The clause 38 clearly states that the loan is given only to the members and the application for the loan shall be disposed by the committee. The clause 39 states that all applications for loan shall be placed before the Secretary and in turn, he shall place the same before the committee. Hence, it

is explicitly clear that the petitioner has no role in sanctioning the loan and in collecting the money from the members. As all the members of the society are all employees of the bank and not the public at large, equally they all know that they have to repay the loan only to the bank during the working hours of the bank and the challan alone should be deposited with the society. The petitioner's work is to make appropriate entry in the books.

6. Learned senior counsel for the petitioner would further submit that as per by-laws clause 47 & 48, it is the committee which is the supreme body for sanctioning loan and to monitor the repayments. It is the committee which has to report to the general body and the Registrar of Co-operative Societies at least once in a year. When such is the style of operation everything nailed within its four corners and the question of committing fraud does not arise. After a periodical inspection, the Deputy Registrar of Co-operative Society writes a letter dated 12.12.1994 seeking to audit the accounts of the society. In turn, two personnel were appointed to audit the accounts of the society by the second respondent vide letter dated

09.01.1995. Without even informing the petitioner and in the absence of the petitioner they gone into the society and submitted the report dated 27.01.1995 with regard to the accounts for the period from 01.04.1992 to 31.12.1994. On the basis of that report, a Charge Memo dated 25.02.1995 was issued by the bank as per the by-laws of the bank framing the following charges:-

i) He has committed misconduct by misappropriation of funds of the above society.

ii) He has committed misconduct by breach of rules.

iii) He is indifferent and negligent in discharging his legitimate duties.

Pursuant to the charge memo, the petitioner has submitted an explanation dated 28.04.1995.

7. Learned senior counsel for the petitioner would further submit that the charge memo explicitly states that it was issued based on the audit report dated 27.01.1995. The copy of the report was not even given to the petitioner, when the explanation was sought from the petitioner to give his reply. Further all those details were collected in the absence of the petitioner,

though he was very well available. Even for the aforesaid charge memo, the petitioner has given an explanation dated 28.04.1995 in which he has stated that it is only a clerical error which is a rectifiable one and nothing has been done with an intention to defraud and to cause any financial loss to the society. As per charge No.1, the petitioner has written as remittance to the Central Bank as Rs.53,133.85/- as per the day book by tampering and falsifying the challan, but the actual remittance comes to Rs.23,133.85/- only and thus the petitioner has misappropriated a sum of Rs.30,000/-. As far as Charge No.1 is concerned, the petitioner in his explanation dated 28.04.1995 has stated that it is only a clerical mistake. In fact, the petitioner was not benefited by any means as no cash transactions are involved here. It is only a rectifiable clerical mistake. The respondents had not even enquired the member about the amount he had remitted under the Loan Account Nos.4012, 3521 and in the said circumstances, it has to be construed only as a clerical mistake and not misappropriation.

8. Learned senior counsel for the petitioner would further submit that as far as Charge No.2 is concerned, it is stated that on 01.11.1994, a sum of

Rs.1,17,000/- has been recorded in the day book as amount remitted towards savings bank account of the said society with Central Bank, but actually the amount has not been remitted and it is alleged that the amount of Rs.1,17,000/- has been misappropriated by the petitioner. As far as the Charge No.2 is concerned, the petitioner has stated in his explanation that instead of writing the accounts under the employees/members accounts, he has wrongly made an entry as if the amount was remitted towards Savings Bank Account of the society. Nobody, including the enquiry officer and the Labour Court has enquired about this statement. They said that he has accepted his fault and paid the amount and so he is at fault which is totally an erroneous finding.

9. Learned senior counsel for the petitioner would further submit that as far as Charge No.3 is concerned that the enquiry officer himself has come to a conclusion that it is only a clerical mistake. On the other hand, the Labour Court has re-appreciated the evidence and has wrongly come to a conclusion that the petitioner has misappropriated. As far as Charge No.4 is

concerned, the petitioner has closed the loan account without collecting the interest on the loans. The total interest due to the society comes to Rs.38,422/- As far as Charge No.4 is concerned, it is not known as to how they said that the petitioner has intentionally closed the loan accounts when these are only a clerical mistake. All the loan accounts are monitored and watched by the committee and the Registrar as per the by-laws. When that being the case, the petitioner cannot be construed to have got any benefit by closing the accounts without any basis. Even otherwise, all the loan accounts belongs to the employees of the bank and they also own share in the society as a shareholder. Under the said circumstances even, if any such mistake is happened then the amount could have been collected from them and for which the petitioner cannot be made as a scapegoat.

10. Learned senior counsel for the petitioner would further submit that as far as Charge No.5 is concerned, the petitioner has obtained loan in excess of the individual borrowing power. Even as per the by-law of the society, the sanctioning power to grant loan is only with the committee and its the

committee which alone grants the loan and in turn the bank has paid the loan on his own. No such self sanctioning of loan has taken place here. Even, if it is construed that there is any violation, it is only a violation of rules and it cannot be construed as illegal but it could be construed only as irregular. If it is construed as illegal and misappropriation, then action should have been taken against the sanctioning authority also i.e., the committee. There cannot be any pick and choose attitude in taking disciplinary action against one person and leaving other Scott free.

11. Learned senior counsel for the petitioner would further submit that not satisfied with the explanation submitted by the petitioner, the second respondent has appointed an enquiry officer to conduct an enquiry. Subsequently, the enquiry was conducted and the enquiry officer has also submitted his report dated 01.12.1995, for which the petitioner also submitted his explanation dated 10.02.1996. Without considering any of the explanation submitted by the petitioner, the second respondent has passed the impugned order in Rc.No.2886/94E1, dated 04.05.1996 by which dismissed the petitioner from the service of the bank.

12. Learned senior counsel for the petitioner would further submit that the enquiry officer has not considered any of the points raised by the petitioner but comes to the erroneous conclusion that the charges are proved not based on any material but on assumptions and presumptions. The petitioner has paid a sum of Rs.3,90,000/- including the housing loan, which he has availed from the bank by selling his house. It cannot be put against the petitioner that he has accepted the charges and paid the amount. It is not his independent decision and nothing has been proved against the petitioner and thus, the punishment is against the principles of natural justice, fair play, equity and good conscience. The co-operative society is an independent body and it has got its own by-laws, rules and staff. It has got its own Special Officer, Secretary and a Committee to look after the day to day affairs of the society. The Bank has got no control over the management of the society. The society was formed for the welfare of the employees of the Bank and not for the welfare of the bank and it cannot be said that the bank has got full control over the society. In regard to the jurisdiction of the bank, the petitioner has filed an application in I.A.No.464 of 2010 and I.A.No.465

of 2010 before the Labour Court and in that the Labour Court has passed a common order dated 04.08.2010 stating that the bank has got jurisdiction to take disciplinary action. Challenging the said order, the petitioner has not filed any petition, as it being a preliminary order in view of the order passed in a case reported in AIR 1975 SC 1900 that against an interim order no writ will lie. In view of the decision of the Hon'ble Supreme Court, the Labour Court at the time of disposal of the main petition ought to have decided about the jurisdiction of the bank to initiate disciplinary proceedings which it had failed to do.

13. Learned senior counsel for the petitioner would further submit that a criminal case was also initiated against the petitioner in Crime No.1 of 1994 by the Economical Offence Wing (City) Police Station, Coimbatore and the same was numbered as C.C.No.28 of 2000 on the file of the learned Judicial Magistrate-4, Coimbatore. The said case was disposed by the learned Judicial Magistrate by an order dated 26.11.2001, convicted the petitioner for the offence under section 408, 477-A of IPC and without sentencing the petitioner, released the petitioner by invoking the Probation of Offenders Act.

While passing the order, the learned Judicial Magistrate has specifically clarified that the petitioner was released under the Probation Offenders Act and as per Section 12 of the Probation Offenders Act, the conviction would not affect the employment of the petitioner and as such the respondents should not have passed the order of dismissal against the petitioner. For better appreciation and understanding Section 408 and 477(A) of Indian Penal Code is extracted hereunder:

> *“**407. Criminal Breach of trust by carrier, etc., -** Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust, in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*
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> ***477-A/Falsification of accounts.-** Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such valuable security or account, shall be punished with imprisonment of either description for a term which may extend*

to seven years, or with fine, or with both."

14. Learned senior counsel for the petitioner would further submit that the order passed by the Criminal Court was not taken into consideration by the Labour Court, while passing the award dated 24.08.2010. In the enquiry report, it is stated that in the result, the allegation No.(iii) to the charge fails and the allegations (i) and (ii) to this charge have been proved by the Management. Accordingly, the workman has misappropriated the funds of the said society to the tune of Rs.1,47,000/-, whereas the disciplinary authority in the show cause notice dated 27.01.1996 has stated that the domestic enquiry officer has reported that all the charges are proved, which is contrary to the findings of the enquiry officer.

15. Learned senior counsel for the petitioner would further submit that in the charge memo dated 25.02.1985 it is mentioned that as per day book, the petitioner has returned a remittance to an extent of Rs.53,133.85/- by tampering and falsifying the challan, but the actual remittance comes to Rs.23,133.85/- only and thus the petitioner has misappropriated a sum of Rs.30,000/-. Then, the petitioner has closed the loan account without

collecting the interest on the loans and the total interest due to the society comes to Rs.38,422/-. While he was working as part time clerk, he as acted against the by-laws and rules by obtaining loan by maximum borrowing power of the society in his own name.

16. Learned senior counsel for the petitioner would further submit that the petitioner has challenged the impugned order of the second respondent vide proceeding in Rc.2886/94E1 dated 04.05.1996 by raising industrial dispute in I.D.No.123 of 1997 before the Labour Court, Coimbatore. The Labour Court has passed an award dated 24.08.2010, confirming the order of dismissal passed against the petitioner and aggrieved over the same, the petitioner has come forward with the present writ petition.

17. Learned senior counsel for the petitioner has also drew the attention of this Court to the order passed in W.P.No.23429 of 2001 dated 01.04.2010 filed by the second respondent/society against the petitioner and the relevant paragraph is extracted hereunder:

> *"3. The management wanted to let in evidence and examined on witness as M.W.1. Even before the completion of*

the evidence, the workman started that he is not attacking the validity of the enquiry and therefore, there is no need to lead evidence and filed an application. Therefore, the question came to be decided was whether the management can let in evidence when once an enquiry is held to be fair and proper".

18. Learned senior counsel for the petitioner has also relied on the judgment passed by the ***Hon'ble Supreme Court of India, reported in (1993) 4 SCC 727 in the case of Managing Director, ECIL, Hyderabad and others Vs., B.Karunakar and others.*** For better appreciation, the relevant paragraph is extracted hereunder:

"25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings int her eport, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by

the Forty-second Amendment.

26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer from an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recoded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned".

19. The counter affidavit was also filed by the second respondent in June 2016. Learned senior counsel appearing for the second respondent submitted that the thrift and credit society is not an independent body and it was formed only for the benefit of the Co-operative Banks Employees who are all the members and the petitioner was handling the accounts of the

society. The object of the society was to lend money as loan to its members and other of objects of society are as follows:

(i) To borrow funds from members or others to be utilized for loans to members for useful purposes.

(ii) To act as the agent for the joint purchase of the domestic and other requirements of its members and

(iii) Generally, to encourage thrift, self-help and co-operation among the members.

20. Learned senior counsel appearing for the second respondent would further submit that the petitioner while working as a part time clerk has misappropriated the funds of the society by falsification of the accounts. He was served with charge memo on 26.02.1995. The charge memo of the Special Officer, Nilgiris District Central Co-operative Bank Ltd., in R.C.No.2886/94-E1 with the following charges:

(i) The petitioner has committed misconduct by misappropriation of funds of the co-operative Bank Employees Co-operative Thrift and Credit Society.

(ii) The petitioner has committed misconduct by breach of rules.

(iii) The petitioner has acted indifferent and negligent in discharging his legitimate duties of the Co-operative Bank Employees Co-operative Thrift and Credit Society.

21. Learned senior counsel appearing for the second respondent would further submit that the petitioner in his explanation on 28.04.1995 stated that the falsification of the records was due to the printing mistake in the day book and clerical error and wrong classification of heads while writing the day book. He has also accepted all the allegations and promised to make good the losses suffered by the society and was ready to remit Rs.1,57,000/- to the society and requested two months time to pay the same. In his explanation on 28.04.1995, the petitioner has requested two months time to dispose off his house and recoup the deficiency he caused to the assets of the society. The second respondent ordered a domestic enquiry to the charges against the petitioner and the second respondent has given the petitioner a fair chance to defend himself in the disciplinary proceedings. The enquiry officer gave his finding on 01.12.1995 after giving him a chance to defund

and found that all the charges have been proved.

22. Learned senior counsel appearing for the second respondent would further submit that the a show cause notice was issued on 27.01.1996 to show cause within 10 days from the date of receipt of notice as to why appropriate punishment should not be inflicted on him for the proved charges. As per the principles of natural justice a report of the domestic enquiry was sent to him. Based on these, the final order was passed by the Special Officer of the second respondent Bank. The petitioner need not be present at the time of audit and only in the periodical inspection by Deputy Registrar of Co-operative Societies the fraud was detected who wrote a letter dated 12.12.1994 seeking to audit the accounts of society, the audit was conducted. Only when the misappropriation was detected, the action was initiated against the petitioner and in his explanation he admitted the crime. The bank has got jurisdiction to take action against the society by virtue of being the financing bank to the society.

23. Learned senior counsel appearing for the second respondent would

further submit that “The Nilgiris District Central Co-operative Bank employees Co-operative Thrift and Credit Society” was created to lend loans to its members, who are exclusively employees of the second respondent bank. They are inter-related to each other. The society cannot function without availing the assistance help of the second respondent bank. The petitioner who was entrusted with specific duty of maintaining the accounts and books of the society, committed misconduct and breach of trust by misappropriating the funds of society and the second respondent being the employer of the petitioner is entitled to take action against the petitioner. In the reply dated 28.04.1995, the petitioner admitted his charges and requested to pardon him and assured that he will repay the amount within two months. Further, dismissal from service is the appropriate punishment in the case of proved misconduct of misappropriation of funds. The misconduct is nothing but moral turpitude. He has not questioned the jurisdiction before the enquiry officer. He has admitted his mistake. The petitioner has got the duty to do his work diligently with all integrity, since the money he was lending was the fund of the second respondent bank which was mobilized from general public. The petitioner has not raised this point in his explanation before the enquiry officer of the Labour Court. The petitioner has lost the confidence of his employer and was rightly terminated from service.

24. Heard the learned counsel on either side and perused the materials available on record.

25. It is an admitted fact that the petitioner was employee of the Nilgiris District Central Co-operative Bank Ltd. In the year 1982, the second respondent/Bank has started a new and an independent co-operative society in the name and style of "Nilgiris District Central Co-operative Bank Employees Co-operative Thrift and Credit Society" by registering under the Tamil Nadu Co-operative Societies Act, 1983. The main function of the society was to lend loans to the employees of the second respondent/Bank. The petitioner was asked to attend the works of the society, after the bank working hours and without hindrance to functioning of the bank as he was working as a Senior Assistant i.e., a full time employee of the bank. Subsequently, the petitioner was deputed to work at the society through proceedings No.1/93 passed by the Special Officer dated 12.06.1993, which

enable the petitioner to sign all the receipts and to maintain the accounts as per the order of the Special Officer and he has to prepare all the accounts and reports to be submitted for auditing. The society is not an independent body and it was formed only for the benefit of the Co-operative Banks Employees, who are all the members and the petitioner was handling the accounts of the society.

26. The petitioner while working as a part time clerk in the second respondent/Bank has misappropriated the funds of the society by falsification of the accounts. He was served with charge memo on 26.02.1995. The charge memo of the Special Officer, Nilgiris District Central Co-operative Bank Ltd., in R.C.No.2886/94-E1 with the following charges:

(i) The petitioner has committed misconduct by misappropriation of funds of the co-operative Bank Employees Co-operative Thrift and Credit Society.

(ii) The petitioner has committed misconduct by breach of rules.

(iii) The petitioner has acted indifferent and negligent in discharging his legitimate duties of the Co-operative Bank Employees Co-operative

Thrift and Credit Society.

27. The petitioner in his explanation on 28.04.1995 stated that the falsification of the records was due to the printing mistake in the day book and clerical error and wrong classification of heads while writing the day book. He has also accepted all the allegations and promised to make good the losses suffered by the society and was ready to remit Rs.1,57,000/- to the society. It is also admitted by the petitioner that his work is to make appropriate entries in the accounts book of the society. One of the contention of the petitioner is that in order to audit the accounts of the society, two personnel were appointed vide letter dated 12.12.1994 by the second respondent. Without even informing the petitioner and in the absence of the petitioner they had gone to the society and submitted the report dated 27.01.1995 in regard to the accounts for the period 01.04.1992 to 31.12.1994. While going for audit, the audit personnel need not inform the petitioner and they can very well do in his absence and what they require for inspection and auditing is the accounts book and ledger and the entries. Hence, the said exercise shall

be carried out by the audit personal without the presence of the petitioner. Therefore, the contention of the petitioner is unsustainable.

28. The charge memo was issued based on the audit report dated 27.01.1995 and it is also an admitted fact that the petitioner has given in the explanation dated 28.04.1995 that is only a clerical error, which is a rectifiable one and nothing has been done with an intention to defraud. In regard to Charge No.1, the petitioner has written as remittance to the Central Bank as Rs.53,133.85/- by tampering and falsifying the challan, but the actual remittance comes to Rs.23,133.85/- only and thus the petitioner has misappropriated a sum of Rs.30,000/-. **In his explanation dated 28.04.1995, the petitioner has stated that it is a clerical mistake and he was not benefited by any means as no cash transactions carried out here cannot be countenanced by this Court.**

29. In regard to Charge No.2, it is stated that on 01.11.1994, a sum of Rs.1,17,000/- was remitted towards savings bank account of the said society with Central Bank, but actually the amount has not been remitted and it is

alleged that the amount of Rs.1,17,000/- has been misappropriated by the petitioner. **In this regard, the petitioner has stated in his explanation that instead of writing the accounts under the employees/members accounts, he has wrongly made an entry as if the amount was remitted towards Savings Bank Account of the society and the same is unsustainable.**

30. In regard to Charge No.4, the petitioner has closed the loan account without collecting the interest on the loans. The total interest due to the society comes to Rs.38,422/- and in regard to this charge, the petitioner has submitted that it is only a clerical mistake.

31. In regard to Charge No.5, the petitioner has obtained loan in excess of the individual borrowing power. In regard to the same, the petitioner has replied that even if it is construed that there is any violation, it is only a violation of rules and it cannot be construed as illegal but it could be construed only as irregular. **It is crystal clear and evident from the above that the petitioner has made wrong entries in the accounts book and ledgers, which is maintained by him, which has resulted in monetary loss**

to the society.

32. The reply explanation of the petitioner in each and every charge is that it is a clerical mistake and the same is rectifiable one, which cannot be countenanced by this Court. It is also an admitted fact that the petitioner has paid a sum of Rs.3,90,000/- including the housing loan by selling his house and no prudent man will sell his house, if he has not accepted the mistake committed by him and the above payment itself shows that the petitioner has committed the delinquency of misappropriation of funds. If the entries made by the petitioner in the ledger and accounts books is only a clerical mistake or error and the same is rectifiable one, then there is no need for the petitioner to pay a sum of Rs.3,90,000/- to the respondent/society. Hence, it is crystal clear and evident that the petitioner has misappropriated the funds of the society. The petitioner, the petitioner is the employee of the bank and he has deputed to work as a part time clerk in the second respondent society. Hence, the bank has got the control over the management of the society and as also got powers to initiate disciplinary action against the

petitioner since he was only a part time clerk of the society.

33. In regard to criminal case which was initiated against the petitioner in Crime No.1 of 1994 by the Economical Offence Wing (City) Police Station, Coimbatore and the same was numbered as C.C.No.28 of 2000 on the file of the learned Judicial Magistrate-4, Coimbatore. **The said case was disposed by the learned Judicial Magistrate by an order dated 26.11.2001, convicted the petitioner for the offence under section 408, 477-A of IPC and without sentencing the petitioner, released the petitioner by invoking the Probation of Offenders Act. Hence, it is proved that the petitioner has committed under Section 408, 477-A of IPC without any doubt.**

34. The petitioner has challenged the impugned order of the second respondent vide proceeding in Rc.2886/94E1 dated 04.05.1996 by raising industrial dispute in I.D.No.123 of 1997 before the Labour Court, Coimbatore and the Labour Court has passed an award dated 24.08.2010, confirming the order of dismissal passed against the petitioner. For better

appreciation, the relevant paragraph is extracted hereunder:

"22. In the reply under Ex.M32, the petitioner has clearly and in an unequivocal terms admitted the charges and pleaded time to repay the misappropriated amount. In order to appreciate the voluntary admissions made by the petitioner, the submissions made by the petitioner in the reply dated 10.02.1996 under Ex.M32 are reproduced at this stage as hereunder,

ஐயா,

பொருள்– நீலகிரி மா.ம.கூ.வங்கி ஊழியர்கள் கூ.க.மற்றும் சிக்கன சங்கம் ராமமூர்த்தி – பகுதிநேர ஊழியர் – சங்க கணக்கில் கையாடல் செய்தது – தொடர்பாக – குற்ற நிரூபண கடிதத்திற்கு விளக்கம் சமர்ப்பித்தல் – சம்பந்தமாக.

தகவல் – தனி அலுவலர், நீ.மா.ம.கூ.வங்கி அவர்களின் குற்ற நிரூபண கடிதம் ந.க.2886/94 இ.1.நாள் 27.01.1996 மற்றும் 01.12.1995 நாளிட்ட விசாரணை அலுவலரின் அறிக்கை நகல் இணைக்கப்பட்டது.

தங்களின் குற்ற நிரூபண கடிதம் 06.02.1996 அன்று பெற்றுக் கொண்டேன், கடிதத்தில் என் மீது சுமத்தப்பட்டுள்ள குற்றங்களை ஒப்புக் கொள்கிறேன். என்னால் சங்கத்திற்கு கட்ட வேண்டிய தொகையை கட்ட ஒப்புக் கொள்கிறேன். எனவே எனது வீட்டை விற்று கட்டி விடுகிறேன். வீட்டை விற்க ஏற்பாடுகள் செய்து கொண்டிருப்பதால் தனி அலுவலர் அவர்கள் என் மீது கருணை காட்டுமாறும், வீட்டினை விற்ற உடனே வங்கியில் என்னால் கட்ட வேண்டிய தொகையை கட்டி முடித்து விடுகிறேன் என்று உறுதியளிக்கிறேன். எனவே, தயவு செய்து கருணையுள்ளத்தோடு எனக்கு மூன்று மாத காலம் கெடு தருமாறும் இதற்கிடையில் யாதொரு நடவடிக்கையும் எடுக்க வேண்டாமென்று தங்களை பணிவுடன் கேட்டுக் கொள்கிறேன்.

As above, the petitioner has voluntarily admitted the charges and agreed to repay the misappropriated amounts within three months from 10.02.1996. As above, right from the beginning, the petitioner clearly and voluntarily admitted the charges levelled against him and therefore, this Court is of the view that the findings of the enquiry officer in his report under Ex.M30 dated 01.12.1995 are all based on acceptable legal evidences and therefore it is a valid report."

24. As already submitted, this Court by passing the common order dated 04.08.2010 in I.A.Nos.464/2010 and 465/2010 came to a conclusion that the respondent has jurisdiction to initiate disciplinary action as against the petitioner for the misconducts committed by him, while he was discharging his duties as a part-time clerk in the Thrift and Credit Society. The petitioner has not made any objection to the jurisdiction of the respondent in initiating the disciplinary action until filing of the rejoinder in this case. Before the enquiry officer he has not questioned the jurisdiction of the respondent in initiating the disciplinary action. He has not given any letter before the enquiry officer or before the respondent submitting objections for initiating disciplinary action by the respondent. Even before this Court, the petitioner has admitted the fairness of the domestic enquiry conducted as against him. By admitting the fairness of the domestic enquiry, the petitioner has indirectly admitted the jurisdiction of the respondent in initiating the disciplinary action as against him. As observed by this Court in the common order dated 04.08.2010 mentioned supra, by admitting the fairness of the *domestic enquiry conducted against him at the instance of the respondent, the petitioner has clearly admitted the jurisdiction and the authority of the respondent to initiate the said disciplinary action as against him. As already submitted, the Thrift and Credit Society is a Society existing for the welfare of the employees of the respondent. Without the support and existence of the respondent, the Thrift and Credit Society cannot survive. The respondent deputed the petitioner, who was an employee only under the respondent, to do some clerical works in the Thrift and Credit Society. The petitioner received monthly salaries only from the respondent. If the petitioner is really questioning the jurisdiction and the authority of the respondent, then he would not have filed a memo dated 17.11.2000 admitting the fairness of the domestic enquiry initiated by the respondent. If an authority who is not having any jurisdiction to initiate disciplinary action, initiates any disciplinary action, then the domestic enquiry conducted by the enquiry officer at the instance of the said authority cannot be taken as a domestic enquiry conducted in a fair and proper manner. By admitting the fairness of the domestic enquiry conducted at the instance of the respondent as against hi, the petitioner has clearly admitted the jurisdiction and authority of the respondent to initiate the disciplinary action as against him for the misconducts committed by him in the Thrift and Credit Society. Therefore, this Court is of the view that the objections raised by the learned counsel appearing for the petitioner alleging that the respondent initiated disciplinary action without any authority is unsustainable and therefore, the same is rejected. The respondent is having lawful authority and* *jurisdiction to initiate disciplinary action against its employees including the petitioner for the misconducts committed by them in the course of their employment. For all the reasons stated herein before, it is concluded, that the findings of the enquiry officer under Ex.M30 are all based on acceptable legal evidences. Further, it is concluded, that the respondent has jurisdiction to initiate the disciplinary action as against the petitioner. Hence, it is concluded that the order of dismissal dated 04.05.1996 under Ex.M33 is not liable to be set aside, since the petitioner committed misconduct of misappropriation of funds. Therefore, the petitioner is not entitled for reinstatement in service with continuity of service and back wages. This industrial dispute is liable to be dismissed. As above, the points are answered."*

From the above findings of the Labour Court, it is clear that as per Ex.M32, the petitioner has clearly admitted the charges and pleaded time to pay the misappropriated amount.

35. The judgment relied by the senior counsel for the petitioner is not applicable to the case on hand for the reason that the petitioner was served with the copy of the enquiry report and was given 10 days time to show cause why the punishment would not be inflicted on him for the proved charges. **Whereas in the case relied, the petitioner was not served with the copy of the enquiry report.**

36. The petitioner being a clerk in a bank must be a person of high integrity, he ought not to have indulged in the case of misappropriation and he has admitted the charges as it is evident from Ex.M32 and the amount of sum of Rs.3,90,000/- was also paid to the society by the petitioner, which is also admitted by the petitioner.

37. Hence, the punishment of dismissal from service is an appropriate punishment, since the misconduct of misappropriation of funds have been proved in the enquiry conducted by the second respondent as well as in the findings of the award passed by the Labour Court in I.D.No.123 of 1997 dated 24.08.2010.

38. In view of the above factual matrix of the case, there is no perversity or arbitrariness in the award passed by the Labour Court, Coimbatore in I.D.No.123 of 1997 dated 24.08.2010 and it does not warrant

any interference by this Court and the order passed by the second respondent in proceedings Rc.No.2886/94E1, dated 04.05.1996 is also liable to be confirmed and the same is hereby confirmed.

39. In the result, this writ petition stands dismissed. No costs.

.03.2024

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

To:

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.The Management of
Nilgiris District Central,
Co-operative Bank Ltd.,
Uthagamandalam,
The Nilgiris.

J.SATHYA NARAYANA PRASAD,J.

vm

W.P.No.2143 of 2012

.03.2024