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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2025

PRONOUNCED ON : 24.03.2025

CORAM:

**THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

W.A.No.1870 of 2021

M.Subbiah

...

Appellant /
Petitioner

versus

- 1.The Additional Registrar
of Co-operative Societies,
(Sales, Planning & Development)
N.V.N.Natarajan Maaligai,
Kilpauk, Chennai - 10.
- 2.The Joint Registrar of Co-operative Societies /
Common Cadre Standing Committees Chairman,
Tuticorin Region,
Tuticorin.
- 3.The Special Officer,
Korampallam Primary Agricultural
Co-operative Thrift Society,
Korampallam,
Tuticorin District.

...

Respondents /
Respondents



PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 02.04.2019 in W.P.No.704 of 2011.

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For Appellant : Mr.K.Premkumar
for Mr.R.Prem Narayan

For Respondents : Mr.P.Ananda Kumar
Government Advocate

J U D G M E N T

Dr. ANITA SUMANTH, J.
G.ARUL MURUGAN, J.

The appellant is the writ petitioner. He has filed the present writ appeal assailing the order of the writ Court dated 02.04.2019.

2. The appellant was working as Secretary of the Korampallam Primary Agricultural Co-operative Thrift Society / third respondent. He was suspended by the Special Officer of the Society on 22.10.2003 and reinstated on 04.03.2004. He was suspended again in regard to the same allegations on 24.02.2005 and reinstated as per the direction of this Court on 30.03.2005. Thereafter, the Joint Registrar of Co-operative Societies / second respondent issued a charge memo in proceedings dated 16.02.2007 framing eleven (11) charges as against the writ petitioner. The charges



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related to misappropriation of funds, fraud, breach of trust, issue of bogus loan, various violations in regard to the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the Act') and the Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter referred to as 'the Rules').

3. After enquiry, an order had been passed holding the writ petitioner guilty of charges and he was dismissed from service on 10.08.2009. The appellant had filed a revision under Section 153 of the Act before the Additional Registrar of Co-operative Societies (Sales, Planning and Development) / first respondent which also came to be dismissed on 06.09.2010. It was that order that was assailed in the writ petition.

4. The writ Court has referred to the rival contentions in regard to the order of termination, finding ultimately that the proceedings were in alignment with the principles of natural justice. The other main ground that had been raised by the writ petitioner was that he had been successful in the criminal case that had been foisted on him in regard to the same charges.



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5. Learned Judge has found, and we agree on this score that the order of acquittal in a criminal case could not be the basis for exoneration from disciplinary proceedings for dereliction of duty. Reference to the judgment of the Supreme Court in the case of ***Lalit Popli v. Canara Bank and Others*** reported in **(2003) 3 SCC 583** is found well placed.

6. Learned Judge has also referred to the judgment in ***Depot Manager, Andhra Pradesh State Road Transport Corporation v. Mohd. Yousuf Miya*** reported in **(1997) 2 SCC 699** on the settled proposition that standard of proof in regard to criminal charges and disciplinary proceedings would be different in that the standard would be far higher in criminal matters. As far as disciplinary proceedings were concerned, they could proceed on preponderance of probabilities and the enquiry officer had come to the correct conclusion, which according to the writ court that the charges had been established.

7. Yet another point that had been put forth in the writ petition related to the fact that two other employees one M.Ayyampandi, who worked as a Assistant Secretary in R3/Society and P.Amutha, who worked



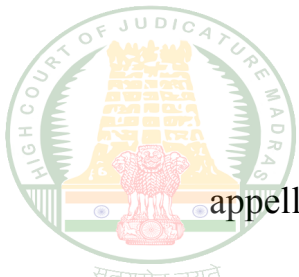
as a Clerk in the Society has been exonerated from the charges and that the writ petitioner had been singled out for the unfair treatment.

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8. After a detailed hearing, the writ court was of the view that the responsibility on the writ petitioner as Secretary of the third respondent Society was far higher. He was aware of the procedures to be followed and the charges in relation to misappropriation in crop loan and fabricating of records were serious.

9. The enquiry officer had found that the charges had been proved against the writ petitioner and it was based on his enquiry report that the impugned orders had been passed. The revisional authority had also concurred with the punishment of dismissal and rightly, the writ court held, that the charges levelled were grave in nature. The writ petition has hence come to be dismissed, assailing which the present writ appeal has been filed.

10. We have heard the detailed submissions of Mr.K.Premkumar, learned counsel for Mr.R.Prem Narayan, learned counsel on record for the



appellant and Mr.P.Ananda Kumar, learned Government Advocate for the respondents.

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11. Before us, two main submissions are urged, one is in regard to the procedure followed by the authorities in the conduct of enquiry and the second is the fact that two other employees M.Ayyampandi and P.Amutha have been exonerated from the proceedings, whereas the appellant has been selectively victimised.

12. As regards the first point, the appellant would specifically draw attention to the fact that no oral evidence had been led before the disciplinary authority and hence, the charges had not even been proved. For this proposition, he would rely on a judgment of the Supreme Court in ***Satyendra Singh v. State of Uttar Pradesh and Another*** reported in **2024 INSC 873**. He also relies on the following judgments in support of his contentions:

- i. *Roop Singh Negi v. Punjab National Bank and Others* [(2009) 2 SCC 570]
- ii. *N.Annamalai v. The Government of Tamil Nadu* [WP(MD)No.12300 of 2011 dated 28.11.2011 Madras High Court]



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- iii. *G.M. Tank v. State of Gujarat and Others [(2006) 5 SCC 446]*
- iv. *Delhi Transport Corporation v. Ashok Kumar Sharma [2024 INSC 564]*
- v. *Ram Lal v. State of Rajasthan & Others [2023 INSC 1047]*

13. Per contra, learned Government Advocate would submit that there is no flaw in not leading oral evidence, as the records had clearly established the merit in the charges. The appellant had not established his defence in any manner and had produced no documents or witnesses to substantiate his stand. In such circumstances, it was wholly incorrect for the appellant, he argued, to shift the burden on the respondents, knowing fully well that the charges stood proved on the basis of the available records.

14. The second ground that has been argued relates to the exoneration of M.Ayyampandi and P.Amutha, who was the Clerk, who were admittedly reinstated by orders dated 07.09.2007 and 01.10.2007 respectively.

15. The respondents really have no acceptable defence to this discrimination between the appellant and the other two employees except to



say that surcharge proceedings under Section 87 of the Act had been issued as against them and they had made good the loss to the Society. It is only in these circumstances that those employees were reinstated.

16. We had sought from the parties the Common Cadre Service Rules for Primary Agricultural Co-operative Banks and had been furnished G.O.No.55 of the Co-operation, Food and Consumer Protection Department dated 24.03.2000 under which those Rules have been notified.

17. The Common Cadre Service Rules have been issued by the Government in exercise of the powers conferred under Section 75 of the Act constituting a Common Cadre of Service for the posts of Secretary of Primary Agricultural Co-operative Banks in the State.

18. Disciplinary Proceedings have been dealt with under Regulation 29 thereof. Clause (a) states that 'the disciplinary proceedings referred to in clause (4) of Regulation 28 to the extent to which it is relevant reads as follows:

“29.DISCIPLINARY PROCEEDINGS:



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a) *The disciplinary proceedings referred to in clause (iv) of regulation 28 against a cadre employee shall be conducted with due observance of the principles of natural justice for which it shall be necessary that;-*

- i) The cadre employee shall be served with a charge sheet duly approved by the cadre authority containing specific charges and mention of grounds in support of each charge and he shall be required to submit explanation in respect of the charge within a reasonable time which shall not less than fifteen days.*
- ii) An enquiry shall be conducted.*
- iii) Such a cadre employee shall also be given an opportunity to cross examine witnesses, to produce at his own cost witnesses in his defence and of being heard in person if he so desires.”*

19. Thus, it is necessary that the principles of natural justice be observed.

20. In **Ram Lal** cited supra, that appellant was a Constable with the Rajasthan Armed Constabulary, 9th Battalion, Jodhpur. In that case, the Hon'ble Supreme Court, at paragraphs 25, 26 & 27 stated as follows:

“25. Expressions like “benefit of doubt” and “honorably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is



obliged to examine the substance of the judgment and not go by the form of expression used.

26. We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, “not proved” - in fact the charge even stood “disproved” by the very prosecution evidence. As held by this Court, a fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be “not proved” when it is neither “proved” nor “disproved” [See Vijayee Singh and Others v. State of U.P. (1990) 3 SCC 190].

27. We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank (supra).”

21. That case turned on the relevance of an acquittal in the criminal charges and the impact of such acquittal on disciplinary proceedings, that is not the issue that arises for decision in this matter. As it is nobody’s case that the appellant should be exonerated from disciplinary charges solely based on the acquittal in the criminal case.

22. In *Delhi Transport Corporation* cited supra, the Hon’ble Supreme Court was concerned by a challenge to an order of the Division Bench of the Delhi High Court. The appellant was the Delhi Transport

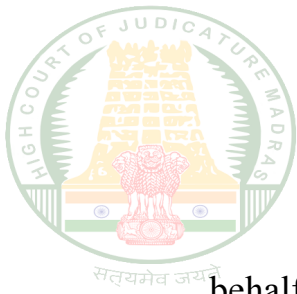


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Corporation and questioned the order which held that proper procedure had not been followed by them in dismissing the respondent employee. At paragraph-18 of the judgment, the Court records that the enquiry report on the basis of which the entire action had been initiated by the authorities suffered from fatal lacunae going to the root of the matter. No witnesses had either been listed nor produced by the prosecution and the prosecution's case was closed with the consent of the presenting officer.

23. The Court, referring to the judgment in the case of **Roop Singh Negi** cited supra has held categorically that even in a case of *ex parte* enquiry, it is essential that the Department must lead evidence of witnesses to bring home the charges levelled against the delinquent employee.

24. An attempt was made before the Hon'ble Supreme Court as also before us to show that the guilt of the charged person was established on the basis of the documents itself. However, the Court holds that no documents had been admitted by the charged officer.



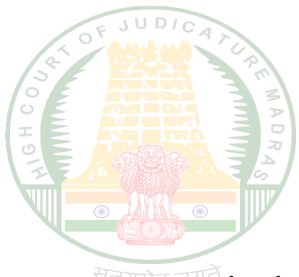
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25. Hence and on the basis that there was no evidence led on behalf of the Department in the enquiry proceedings, the Court concluded that the enquiry report was itself based on no evidence.

26. In the case of **G.M.Tank** cited supra, the Hon'ble Supreme Court holds at paragraph 20 as follows:

“20. It is thus seen that this is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The respondent failed to prove the charges leveled against the appellant. It is not in dispute that the appellant being a public servant used to submit his yearly property return relating to his movable and immovable property and the appellant has also submitted his return in the year 1975 showing his entire movable and immovable assets. No query whatsoever was ever raised about the movable and immovable assets of the appellant. In fact, the respondent did not produce any evidence in support of and/or about the alleged charges levelled against the appellant. Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of PC Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent court on the same set of facts, evidence and witness and, therefore, the dismissal order based on same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.”

27. That too was a case where no evidence had been led by the Department leading to the Hon'ble Supreme Court allowing that appeal.



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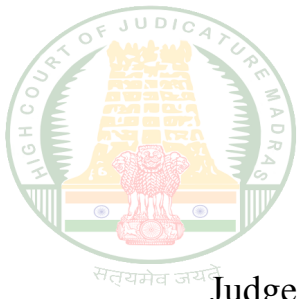
28. The discussion in this regard in the case of **Roop Singh Negi**

cited supra is at paragraphs 14 and 19 of the judgment extracted below:

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

19. The judgment and decree passed against the respondent in Narinder Mohan Arya case had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on an evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. It was furthermore found that the order of the appellate authority suffered from non-application of mind.”

29. The appellant also makes an issue in regard to non-payment of subsistence allowance. However, nothing turns on this as far as the present appeal is itself concerned.



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30. In the interests of completion, we may note that the learned Judge has referred to this aspect, ultimately held that the question of subsistence allowance would only touch upon on the aspect of prejudice. He refers to the judgment of the Hon'ble Supreme Court in the case of ***Indra Bhanu Gaur v. Committee, Management of M.M. Degree College and others*** reported in ***(2004) 1 SCC 281*** and the requirement in Clause 29(iv) of the Common Cadre Service Regulations to the effect that there shall be no payment of subsistence allowance unless a member had furnished a certificate for non-employment and the authority was not satisfied that the suspended employee was not engaged in any other employment during the period of suspension.

31. In fine, he rejected the ground raised to the effect that the impugned order was not sustainable on the ground of non-payment of subsistence allowance.

32. In the present case, the charges laid on the appellant are serious and relate to violation in the grant of agricultural loan. There were allegations of financial impropriety and irregularity as well. Some of the



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receipts for proof of disbursement of loan under the Kisan Credit Card Scheme did not contain any signatures and promissory note/recurring pledge document/recurring mortgage deeds had not been executed as required by the District Central Co-operative Bank, Tuticorin. Jewel loans have been issued without proper surety.

33. In view of the above serious irregularities, the charge memo dated 16.02.2007 came to be issued containing 11 charges for which the appellant submitted his explanation on 08.02.2008. Not satisfied with the reply, the enquiry officer was appointed and the appellant had participated in the enquiry.

34. To be noted that the appellant had even submitted a reply before the enquiry officer where he categorically states that the instances mentioned in the charges all happened only due to the fact that the loans were disbursed with great urgency to the members and therefore there had been some lapses like not getting the full particulars of the guarantors and other lacunaes and these deficiencies accrued only due to the work carried



out in the paramount interest of the members, but however henceforth he will ensure that no such discrepancies occur.

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35. When there are 11 charges framed and there are several irregularities concerning with large number of members in whose names loans has been disbursed, for which necessary loan application was not obtained, guarantors details were not obtained, disbursals made without the signatures of the members and so on, the enquiry officer had gone through in detail all the materials available in which the appellant had participated. On exhaustive analysis of the materials, the enquiry officer had come to the conclusion holding that the charges as against the appellant stood proved.

36. In view of the above facts, it cannot be said that the appellant was not provided with sufficient opportunity and thereby there was violation of principles of natural justice. When the rules contemplate only an enquiry with due observance of the principles of natural justice, a detailed charge memo was issued to the appellant containing the charges and the grounds on which the charges have been framed and after the enquiry, the charges have been held proved which was accepted by the



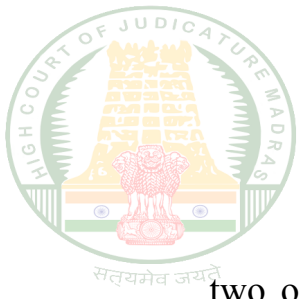
disciplinary authority and the punishment came to be imposed on the appellant.

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37. In such circumstances, the appellant had been afforded with sufficient opportunities to defend himself in the enquiry proceedings. The appellant had not come forward with any further explanation or any evidences to show that there had been no loss which is mainly contended before this Court.

38. This Court while exercising the judicial review under Article 226 of the Constitution of India cannot reappraise the evidence and on the materials available when the enquiry officer had concluded that the charges are proved then it is for the disciplinary authority to decide on the quantum of punishment.

39. As we had found that the procedures have been followed and the appellant had been provided with sufficient opportunities, we find no error or infirmity in the decision arrived at by the writ court.



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40. The learned counsel for the appellant by placing reliance on the two orders passed by the society with regard to the other two employees who were also charged for the loss caused to the society, wherein by order dated 07.09.2007, as against M.Ayyampandi, the society records that the charges in respect of disbursal of fake loans and misappropriation has not been proved and there has been no loss to the society.

41. However, since the enquiry officer also found that the delinquent had failed in his duties, a punishment of stoppage of increment for one year with cumulative effect was imposed and by sympathetically considering the issue he was reinstated into service. Also by another order dated 01.10.2007, the society records the same findings in respect of P.Amutha, Clerk, and after imposing the same punishment she had also been reinstated into service in 2007 itself.

42. By relying on these proceedings, the counsel contends that there has been no loss to the society. When the fact remains that it is recorded in those proceedings that the charges as against them had not been proved in respect of the fake loan distribution and misappropriation,



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punishment came to be imposed only for negligence. But in the instant case, all the charges as against the appellant has been held proved. As far as the loss to the society, since no materials are placed before this Court, we are not in a position to comment anything on the same.

43. In view of the above, while confirming the orders passed by the authorities, liberty is given to the appellant to submit a detailed representation to the respondents, within a period of four (4) weeks from the date of receipt of a copy of this order, to consider the case of the appellant also sympathetically based on the decision taken in respect of the Assistant Secretary and the Clerk. If any such representation is made and if there is any loss and the appellant comes forward to make good the loss to the society by paying the amounts, then it is open to the respondent society to consider the claim by taking note of the decision arrived at in respect of the other two employees. In case, if the society comes to the conclusion to extend the same benefits to the appellant, then the appellant could also be reinstated, of course without any backwages but with continuity in service. We make it clear that the decision in this regard shall be taken by the



respondent society by considering the overall scenario, and on its own merits.

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44. With these observations, this Writ Appeal stands disposed of.

No costs.

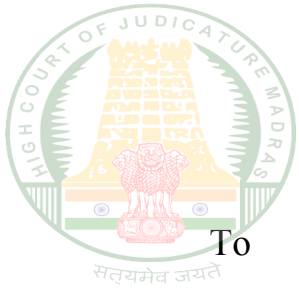
[A.S.M.J.] [G.A.M.J.]
24.03.2025

Speaking order

Index : Yes

Neutral Citation : Yes

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To

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W.A.No.1870 of '21



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Pre-Delivery Judgment made in
W.A.No.1870 of 2021

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