(2006) 01 KL CK 0058

High Court Of Kerala

Case No: O.P. No. 6246 of 1998

V.T. Mary		APPELLANT
	Vs	
Kuzhur Service Co-operative Bank Ltd. No. 540 and Another		RESPONDENT

Date of Decision: Jan. 3, 2006

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1932 - Section 11A

Hon'ble Judges: S. Siri Jagan, J

Bench: Single Bench

Advocate: P. Ravindran, for the Appellant; K.K.M. Sherif, P.M. Mohammed Shiraz, P. Ramakrishnan and Lakshmi Narayanan, Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

S. Siri Jagan, J.

In this original petition, the Petitioner, an employee of the 1st Respondent Co-operative Society, challenges Ext. P-2 award of the 2nd Respondent Industrial Tribunal, Palakkad, by which the Tribunal upheld the punishment of dismissal from service, imposed on the Petitioner by the 1st Respondent, pursuant to disciplinary proceedings initiated against her. The brief facts necessary for the disposal of the case are as under.

2. In 1987 the Society was under the management of an administrator appointed u/s 32 of the Kerala Co-operative Societies Act, 1969. From 1970 onwards, the Petitioner was holding temporary charge of the post of Secretary of the Society. Disciplinary proceedings were initiated against the Petitioner on 51 charges of misconduct in 1987. A domestic enquiry was conducted in which the Petitioner was found guilty. Accepting the findings of the enquiry officer, the administrator imposed on the Petitioner the punishment of dismissal from service. The Kerala Co-operative

Employees Front, the Union espousing the cause of the Petitioner, raised an industrial dispute which was referred for adjudication to the 2nd Respondent Industrial Tribunal. The 2nd Respondent adjudicated the same as I.D. No. 5 of 1994. The Tribunal considered two issues as preliminary issues. The first was one raised by the management, namely whether the Petitioner, being the Secretary of the Society, working in a managerial and supervisory capacity, is a workman as defined under the Industrial Disputes Act. The second was raised by the Union regarding the validity of the enquiry. The Tribunal held that the Petitioner was a workman and that the enquiry was invalid for violation of principles of natural justice. Thereafter, the management Society was granted opportunity to adduce evidence to prove the charges. Both sides adduced evidence. After considering the evidence, the Tribunal found that 19 out of the 51 charges were proved and since in view of the misconducts proved against the Petitioner, the management lost confidence in the Petitioner, it cannot be held that the punishment of dismissal is excessive or disproportionate to the gravity of the misconducts proved against the Petitioner warranting interference u/s 11A of the Industrial Disputes Act. Ext. P-2 is the award passed by the Tribunal, which is under challenge in this original petition.

3. I have heard counsel on both sides elaborately.

4. Counsel for the Petitioner challenges Ext. P-2 award on the following grounds:

(a) The administrator had no jurisdiction to dismiss the Petitioner from service.

(b) The punishment imposed by the administrator being in violation of the procedure prescribed under Rule 198 of the Kerala Co-operative Societies Rules, is void ab initio and the whole disciplinary proceedings ought to be set aside on that ground alone.

(c) The findings of the Tribunal on the 19 charges are perverse and unsustainable.

(d) The Petitioner was victimised on account of the fight between two factions in the Society which was the motive for initiating the disciplinary action.

(e) The Tribunal entered the finding of loss of confidence without any pleading or material on record.

(f) The punishment of dismissal from service is excessive and disproportionate.

5. I shall deal with the first two contentions together. The first contention is regarding lack of jurisdiction and the second regarding violation of Rule 198. These contentions necessarily relate to the fact that the Society was under the management of the administrator. The contention regarding jurisdiction of the administrator is based on the Full Bench decision of this Court in Hassan v. Joint Registrar of Co-operative Societies 1998 (2) KLT 746, holding that the power of the administrator u/s 33(2) of the Act does not take in the power to enrol new members to the Society. Counsel argues that the jurisdiction to dismiss an employee is

analogous to the jurisdiction to enrol new members, which can be exercised only by the Sub Committee and Managing Committee of the Society as envisaged in Rule 198 of the Rules and not by the administrator. Therefore, the punishment of dismissal imposed on the Petitioner by the administrator is void ab initio. Relying on the decision of the Division Bench of this Court in President, Pudupariyaram Service Co-op. Society v. Rugmini Amma & others 1996 (1) KLT 100, counsel for the Petitioner contends that since the disciplinary authority is the Sub Committee and against the decision of the committee, the Petitioner has a right of appeal, such right has been denied to him by virtue of the order of the administrator. This would violate provisions of Rule 198 for which reason also, the order of the administrator is ab initio void.

6. Counsel for the Society refutes these contentions primarily on the ground that these contentions are no longer relevant since the Tribunal had independently considered the matter afresh after taking evidence finding the Petitioner guilty of 19 charges of misconduct and that the charges are grave enough to warrant the punishment of dismissal from service. He would further submit that these contentions were never raised before the Tribunal and therefore cannot be considered now.

7. In reply, counsel for the Petitioner submits that he could not have raised these contentions before the Tribunal because at that time, the law prevailing was that the administrator had such powers by virtue of the decision in George v. Joint Registrar 1985 KLT 836, which decision was overruled only in Hassans''s case (supra) by the Full Bench after the decision of the Tribunal. Since the Tribunal''s decision was prior to the Full Bench decision, he could not have raised that contention before the Tribunal. Now that the full Bench has overruled that decision, which was also affirmed by the Supreme Court in Joint Registrar of Co-operative Societies v. T.A. Kuttappan 2002 (2) KLT 480 which applies to the power to dismiss an employee also, the Petitioner is legally entitled to raise the said contention in this original petition, according to counsel. Counsel also submits that since the entire disciplinary proceedings culminating in the order of dismissal issued by the administrator is void ab initio the Tribunal could not have considered any of the issues decided by it and, therefore, the fact that the Tribunal independently found the Petitioner guilty on 19 charges cannot overcome the basic defect in jurisdiction of the administrator to take disciplinary action.

8. I have considered the rival contentions on these two issues in detail. Attractive, though the argument of the learned Counsel for the Petitioner is, I am unable to persuade myself to accept the same. The Full Bench decision regarding the power of the administrator to enrol new members cannot be applied to the function of taking disciplinary action against employees of the Society. Enrolling of new members in a Society is such a fundamental power affecting the very constitution of the Society and the democratic process of electing the future managing committee, which

cannot be left to the discretion of one individual administrator or two or three administrators. On the other hand, taking disciplinary action against employees pertain to the day-to-day administration of the Society without which the Society cannot effectively function at all. While deciding the issue regarding power of the administrator to enrol new members, it has been eloquently explained by the Supreme Court in paragraph 6 of the judgment in Kuttappan''s case (supra), as follows:

6. If we carefully analyse the provisions of the Act, it would be clear that the administrator or a Committee appointed while the Committee of Management of the Society is under supersession cannot have the power to enrol new members and such a question ought not to be decided merely by indulging in an exercise on semantics in ascertaining the meaning of the expression have ''power to exercise all or any of the function...''Whether an authority is discharging a function or exercising a power will have to be ascertained with reference to the nature of the function or the power discharged or exercised in the background of the enactment. Often we do express that functions are discharged or powers exercised or vice versa depending upon the context of the duty or power enjoined under the law if the two expressions are inter-changeable. What is necessary to bear in mind is that nature of function or power exercised and not the manner in which it is done. Indeed this Court, while considering the provisions of Section 30A of the Karnataka Act, which enabled a Special Officer appointed to exercise and perform all the powers and functions of the Committee of Management or any officer of the Co-operative Society (and not merely functions), took the view that the administrator or a special officer can exercise powers and functions only as may be required in the interests of the Co-operative Society. In that context, it was stated that he should conduct elections as enjoined under law, that is, he is to conduct elections with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the society. We may add that the Co-operative Society is expected to function in a democratic manner through an elected Committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected Committee rather than an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession. This Court has taken the view it did, bearing in mind these aspects, though not spelt out in the course of the judgment. Even where the language of Section 30A of the Karnataka Act empowered a special officer to exercise and perform all the powers and functions of Committee of Management of a Co-operative Society fell for consideration, this Court having expressed that view, we do not think, there is any need to explore the difference in the meaning of the expressions ''have power to exercise all or any of the functions of the Committee'' in the Act and ''exercise all or any of the functions of the Committee'', in the Karnataka Act as they are not different and are in substance one

and the same and difference in language will assume no importance. What is of significance is that when the Committee of Management of the Co-operative Society commits any default or is negligent in the performance of the duties imposed under the Acts, rules and the bye-laws, which is prejudicial to the interest of the society, the same is superseded and an administrator or a Committee is imposed thereon. The duty of such a Committee or an administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a committee appointed by the Registrar while the Committee of management is under supersession, is as pointed out by this Court, only to bring on an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult.

9. As is clear from the above decision, it is the duty of the administrator to take such action as is necessary to enable the Society to carry on its functions as enjoined by law so as "to bring on an even keel a ship which was in doldrums", as the Supreme Court puts it. For this, it is imperative that there is discipline among the employees of the Society. If the administrator cannot take disciplinary action, how can he maintain discipline? If discipline is not maintained, how can he bring the ship in doldrums on an even keel? If the employees are aware that in law, the administrator cannot take disciplinary action against them we need not go too far to draw the conclusion that the casualty would be discipline. I am also unable to accept the contention of the counsel for the Petitioner that the administrator could have continued the Petitioner under suspension till an elected committee takes charge, leaving it to the new elected committee to take further action in accordance with law. This would be a contradiction in terms also since continuing the Petitioner under suspension is part of the disciplinary proceedings. Further, there is no reason why the Society should lose its good money on subsistence allowance payable to the Petitioner. Therefore, I have no doubt in my mind that the object of Sections 32 and 33 cannot be put into'' practice unless the administrator is invested with the powers to enforce discipline among the employees of the Society one way of doing which is to take disciplinary action against them. As such, the administrator as of necessity should have jurisdiction to impose punishments on employees.

10. Further, it cannot certainly be doubted that the function of the administrator is to see that the day-to-day functions of the Society go on smoothly. Enforcing discipline against employees and taking disciplinary action against erring employees are certainly day-to-day functions of the Society, which functions come squarely within the ambit of the term ''functions'' obtaining in Sections 32(4) and 33(2) of the Act. Therefore, it goes without saying that such functions cannot be denied to the administrator as nobody can deny to the administrator jurisdiction to do day-to-day functions of the Society.

11. Once the power to impose punishments on the employees is conceded to the administrator, the facts that under Rule 198, the Sub-committee is the disciplinary

authority and the Petitioner has a right of appeal to the Managing Committee lose all relevance. By virtue of Section 32, the administrator becomes the President, Sub Committee and Managing Committee all rolled into one. Therefore, all the functions to be exercised by the various authorities contemplated in Rule 198 vests with one authority, namely, the administrator. Such authority cannot be denied to the administrator simply because the Petitioner would lose a right of appeal. Even a construction to the effect that when the administrator is in position, the right of appeal under Rule 198 stands suspended, is not out of place in the scheme of things as envisaged under law.

12. In any event, this is a situation where the doctrine of necessity has to be necessarily applied, although the said doctrine is generally invoked in the context of violation of the principles of natural justice, especially bias. This doctrine permits certain judicial, quasi-judicial and administrative actions to be done as a matter of necessity, even though in the ordinary circumstances, such action would have been held as improper or invalid. In this context, I may refer to two decisions of the Supreme Court where this doctrine has been explained. In Election Commission of India and another Vs. Dr. Subramanian Swamy and another, in paragraph 16, the Supreme Court held as follows:

16. We must have a clear conception of the doctrine. It is well-settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases of bias where mere is no other authority or Judge to decide the Issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit therefrom. Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them a stalemate situation may develop. In such cases the doctrine of necessity comes into play. If the choice is between allowing a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making. In the present case also if the two Election Commissioners are able to reach a unanimous decision, there is no need for the Chief Election Commissioner to participate, if not the doctrine of necessity may have to be invoked.

13. In J. Mohapatra & Co. and Anr. v. State of Orissa and Anr. 1996 (4) S.C.C. 103, it was held as under in paragraph 12:

12. There is, however, an exception to the above rule that no man shall be a judge in his own cause, namely, the doctrine of necessity. An adjudicator, who is subject to disqualification on the ground of bias or interest in the matter which he has to

decide, may be required to adjudicate if there is no other person who is competent or authorised to adjudicate or if a quorum cannot be formed without him or if no other competent tribunal can be constituted. In such cases the principle of natural justice would have to give way to necessity for otherwise there would be no means of deciding the matter and the machinery of justice or administration would break down. Thus, in The Judges v, Attorney-General for Saskatchewan, (1937) 53 T.L.R 464, the Judges of the Court of Appeal were held competent to decide the question whether Judges of the Court of Appeal, of the Court of King''s Bench and of the District Courts of the Province of Saskatchewan were subject to taxation under the Income Tax Act, 1932, of Saskatchewan on the ground that they were bound to act ex necessitate. The doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters...

I am of opinion that the doctrine of necessity as explained in these two decisions squarely applies to the situation at hand. On the appointment of the administrator, the functions of the President, Sub-Committee and Managing Committee contemplated under the Co-operative Societies Act vest in the administrator alone. Without exercising these functions by himself, the Society cannot carry on its business effectively, which is the sole object of appointment, of the administrator, itself, unlike the enrolment of new members to the Society which can certainly wait till an elected body takes charge, without affecting the functions of the Society. Therefore, the facts that under the Rules, Sub Committee is the disciplinary authority, over whose decision the Petitioner has a right of appeal which has been denied to the Petitioner by the administrator by imposing the punishment, cannot affect the validity of the order of punishment imposed by the administrator ex necessitate. Hence, I hold that the administrator had jurisdiction to impose punishment on the Petitioner and the challenge against the order on the two grounds raised by the Petitioner is not sustainable in law.

14. Thirdly, the Petitioner challenges the findings of the Tribunal on the 19 charges found to have been proved on the ground that they are perverse. According to counsel, the charges relate to granting of loans, which is the function of the Managing Committee (Director Board) as per bye-law No. 42 of the Bye-laws of the Society, and not that of the Secretary. The charges found to have been proved against the Petitioner as contained in Ext. P-2 award are the following:

(1) Charge No. 1.

It is alleged against the employee that her husband Poulose obtained a loan for Rs. 5,000 on 10-12-1979 from the Management bank on the security of 60 cents of land comprised in survey No. 755/3 of Thirumukulam Village which was previously encumbered by a mortgage deed executed by her and her husband in favour of Mar Theothios Charities, Thrissur. While this loan was completely in default, yet another loan for Rs. 4,300 was distributed to the said Poulose on the security of the same property after executing a mortgage deed for Rs. 3,600. That apart while the son of

the employee one Paulson was a defaulter in a simple loan for Rs. 500 for years, an L.T.H.L. loan for Rs. 4,100 was got sanctioned in favour of him on the security of the said property. The employee did not take steps to recover the said loans and these loans were got sanctioned by the board because of the suppression of the defaults from the attention of the board by the employee and hence she flouted all the laws governing the distribution of the loans from the Management bank or protect her interest and thereby defrauded the Management bank and the act of the employee constitute grave misconduct and misuse of her power as a Secretary.

(2) Charge No. 2.

The second allegation against the employee is that she failed to recover the correct amount of interest from Smt. Kavutty Amma, d/o. Kozhipilly Thathiamma, Member No. 1527 as per the award in the Management sustained a loss of Rs. 168.85. The actual amount to be recovered from the above loanee was recovered only on 16-1-1988 i.e. after the suspension of the employee from service. According to Management, the above act of the employee constitute falsification of records, breach of trust and cheating the Management as well as the department.

(3) Charge No. 6.

The allegation against the employee under Charge No. 6 are that she suppressed the fact of earlier loans availed by one Devassy, son of Mullakkattuparambil Vareed from the Board of Directors while sanctioning fresh loan for Rs. 1430 on 10-4-1979 and she recovered less amount while closing the other loans distributed to the said Devassy.

(4) Charge No. 9.

The allegation under charge No. 9 is that while the entire loan of Rs. 950 availed of by one Krishnan, son of Thalayakulath Kochuraman, was outstanding another loan of Rs. 1000 was granted to him on the security of the very same property which was pledged for the earlier loan. It is further alleged that the employee did not take any action to recover the above two loan amounts from the said Krishnan. The bond dated 31-8-1983 for the loan amount of Rs. 950 was executed by the employee herself and the bond dated 9-7-1984 for the second loan of Rs. 1000 was executed by her husband Sri M.R Poulose. The further allegation against the employee is that she had not taken any steps to recover the above two loans.

(5) Charge No. 12.

The allegation under Charge No. 12 are that on 10-6-1982 when the employee''s husband and subscriber Poulose had defaulted payment of 18 instalments of Ticket No. 236 of Chitty No. 5180 conducted by the management as the Foreman, the employee allowed her subscriber husband to auction the chitty, in flagrant violation of the provisions of the Kerala Chitties Act and chitty variola. The said defaulted instalments were cleared by the subscriber only on 9-7-1982. It is further alleged

that the amount as per the said chitty ticket was distributed to the subscriber Poulose, by the employee, without the required mandatory sanction, either of the President or of the Governing Body, prior to such distribution, and that the said acts of the employee constitute grave misuse of powers by the employee and violation of the relevant laws and regulations.

(6) Charge No. 13.

The allegations in brief are that on 10-11-1983, when Vareed, s/o. Oozhathukaran Vareed, the subscriber of ticket No. 164 in Chitty No. 5/80 conducted with the Management as the Foreman, had defaulted payment of 8 instalments of the chitty, the employee allowed the said subscriber to auction the chitty, thereby, violating the provisions of the Kerala Chitties Act and the concerned chitty variola, that the chitty in question was not sanctioned for distribution by the President, that all the instalments of the said chitty remain unpaid from 10-6-1985 onwards and that the recovery certificate of the employee seen in the file of the chitty is incomplete.

(7) Charge No. 14.

It is alleged that the employee was a surety for disbursing the chitty amount to Paulson who is her son and she did not produce the salary certificate. That apart, when the employee signed the security bond several instalments were remained unpaid in other chitties in which the employee was surety, and that this aspect was not brought to the notice of the President when the chitty application was sanctioned by the President. On the date of the charge 25 instalments were in default.

(8) Charge No. 15

It is stated under Charge No. 15 mat the employee was a surety for disbursing the chitty amount of Paulson who is her son. Her salary certificate is not counter-signed. When the employee stood as a surety, several instalments were remained unpaid in other chitties in which the employee was surety and this aspect was not brought to the notice of the president when the chitty application was sanctioned by the president. From March, 1986 onwards 25 instalments were unpaid.

(9) Charge No. 16.

In this case also the employee was a surety for disbursing the chitty amount to her son Babu, but without salary certificate. When the employee stood as a surety, several instalments were unpaid in other chitties and loans in which she was surety and this aspect was concealed from the notice of the President for the purpose of getting the chitty application got passed. In this chitty 15 instalments remained unpaid.

(10) Charge No. 17.

The allegations under Charge No. 17 are that Babu, s/o. the employee was allowed to auction his chitty on 5-2-1985 when 7 instalments were remained unpaid in violation of chitty variola and the relevant provisions of law and later 15 instalments of this chitty remained unpaid. This is a misuse of power by the worker.

(11) Charge No. 18.

It is alleged that Babu, son of the employee was allowed to auction his chitty on 11-2-1987 when 19 instalments were remained unpaid in violation of chitty laws and chitty variola. When the worker stood as surety for this chitty, other chitties in which she was a surety were in default. The above said commission and omissions on the part of the employee constitute misuse of powers, cheating and violation of law.

(12) Charge No. 19.

Kennedy, another son of the employee was allowed to participate in the auction of his chitty on 11-10-1985 when 3 instalments were in default in violation Chitties Act and Chitty Variola 25 instalments of this chitty remains unpaid. This act of the worker is a misuse of power.

(13) Charge No. 21.

Parekkat Mathew Joseph who is a relative of the employee was allowed to auction his chitty on 5-6-1985 at the 13th instalment when 12 instalments were remained unpaid, in violation of chitty laws and chitty variola. In this chitty security bond, the employee alone is the surety and the chitty application was not passed by the President and that 24 instalments later remained unpaid. In this chitty application and security bond the signature of the subscriber is also different.

(14) Charge No. 23.

The allegation in brief, is that in violation of the relevant rules and law, the employee allowed herself to be a surety for releasing the chitty amount in Ticket No. 219 of Chitty No. 1/84 subscribed by Mullakkampilly Devassy Souriar, knowing fully well that the employee was disqualified from being a surety for the reason that she was a defaulter in several chitties. It is further alleged that before the sanction of President was obtained for distribution of the chitty amount, the employee did not bring to the attention of the President the fact that she was a defaulter and that such acts of the employee constitute grave misconducts.

(15) Charge No. 24.

The employee stood as surety in a chitty in the name of Smt. T.D. Rosy when in some other chitties in which she was surety, the instalments remained unpaid and that in so doing the employee concealed this aspect from the knowledge of the Governing Body.

(16) Charge No. 35.

The allegation is that even though the employee was directed by the Joint Registrar the communication No. 9487/86 dated 7-8-1987 to produce the minutes book. As she refused to produce the minutes book a fresh minutes book had to be written which is Ext. M-143. The above facts have been spoken by M.W. 5 and M.W. 6. The employee was specifically directed as per Ext. M-144 notice to produce the minutes book and she refused to comply with that direction of the department office.

(17) Charge No. 42.

It is alleged that out of Rs. 20,827.31 standing to the credit of the employee in her Provident Fund Account, she had drawn the loan of Rs. 17,600 on 7-2-1986 from the Management bank instead of drawing the amount from District Co-operative Bank with a view to credit the interest on the entire amount in her favour. This caused a heavy loss to the management and this act of the employee constitute misuse of powers.

(18) Charge No. 44.

According to Management, there is no record to show that notices were given to all the members of the Board of Directors for the meeting alleged to have been held on 18-9-1986 and it is clear from the letter dated 20-9-1986 of the employee that notice was not given to all the director board members. But the employee gave the minutes book to the directors who had signed the no confidence motion, to put their decision in the minutes book. To justify her stand, she sworn in a false affidavit before the High Court of Kerala, in O.P. No. 1384/87, to the effect that the meeting of the board of directors was convened on 18-9-1986 after proper notice to all the director board members.

(19) Charge No. 45.

It is alleged that the employee did not maintain (1) Share Application, (2) Nomination Register of Members, (3) Suspense Account Register, (4) Rectification Register, (5) Loan Application Register, (6) Register of Movable Properties of defaulters and (7) Register of closed loans as contemplated by Section 29 of the Kerala Co-operative Societies Act. Fluid resources register was not properly maintained. As on 21-11-1987, the said register was written only upto 30-6-1987 and this is in violation of Rule 22 and 63 of the concerned Rule. It is further alleged that as per Rule 197 of the Rules framed under the Kerala Co-operative Societies Act, service book of the staff of the society has to be properly maintained by the Secretary and the service book of the Secretary has to be attested by the President. But in keeping the service book the employee had shown grave dereliction of duty. Details are shown in the charge memo dated 28-4-1988. It is further alleged that one of the most important document in the society namely the cash book, was written only upto 7-11-1987 when she handed-over charge on 21-11-1988, and in violation of the office order of the President, dated 29-3-1986, Telephone Trunk Call Register was not properly maintained by the employee. The employee did not

maintain the F.D. loan register and the Register to show the maturity date of the fixed deposits and she did not take care to take proper security bond for chitty and loan. The said omission on the part of the employee is irresponsibility and dereliction of duty.

A conjoined reading of these charges, the discussion of the evidence and the findings of the Tribunal in Ext. P-2 award, does not admit of any conclusion that the findings are perverse. The award shows that the findings are based on evidence adduced before the Tribunal. The Tribunal has given plausible reasons for the conclusions also. This Court, in exercise of jurisdiction under Article 226 of the Constitution of India, cannot reappreciate the evidence to come to a different conclusion in such circumstances. As such, I do hot find any merit in the contentions of the Petitioner in this regard also.

15. The fourth contention of the Petitioner that she has been victimised has been specifically dealt with by the Tribunal and found against. In so far as she has been found guilty of the misconducts, by the Tribunal on evidence adduced before it, the Petitioner cannot validly sustain such a contention. As pointed out by the Tribunal, it is settled law that proved misconduct is an antithesis to victimisation. There is also no evidence to support such contention of victimisation. On the other hand, the nature of the proved misconducts does not give any room for upholding such a contention. Therefore, this contention of the Petitioner also fails.

16. The fifth contention is that the Tribunal has without any pleading or evidence held that the management has lost confidence in the Petitioner, even when the management did not have such case. A reading of the award would show that the Tribunal was not upholding any contention of the management while observing that the management has lost confidence in the employee. The Tribunal held so only in the course of discussion as to the sustainability of the punishment imposed on the Petitioner. Going by the nature of the charges of misconducts proved, no management can repose confidence in the employee, which alone is the import of the observation, which cannot be faulted as the proved charges of misconduct themselves would reveal. The arguments of the counsel for the Petitioner on this count also do not merit acceptance.

17. Lastly, the above discussion would give absolutely no room for doubt that the gravity of the misconducts proved to have been committed by the Petitioner is such that she could not have been imposed with any lesser punishment than dismissal from service. Therefore, the sixth and last contention of the Petitioner also fails.

In the above circumstances, the original petition is bound to fail and accordingly the same is dismissed, but without any order as to costs.