

(2009) 10 MAD CK 0281

Madras High Court

Case No: Writ Petition No. 5672 of 2003

D. Chandrasekaran

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision: Oct. 22, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Penal Code, 1860 (IPC) - Section 109, 409

Hon'ble Judges: N. Kirubakaran, J

Bench: Single Bench

Advocate: V.K. Rajagopalan, for the Appellant; P. Gurunathan, Government Advocate for RR 1 and 2 and S.V. Durai Solaimalai, for R3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N. Kirubakaran, J.

The writ petition has been preferred by the dismissed Secretary to Umarabad Primary Agricultural Co-operative Bank, Umarabad Post, Vellore District. The dismissal order was passed on 31.8.1999 against which the petitioner preferred a revision which was dismissed by the second respondent by an order dated 29.4.2002 which is impugned before this Court.

2. The facts of the case are as follows:

The petitioner stated that he was appointed as a clerk on 22.1.1990 in the third respondent bank and was holding in charge post of Secretary from 17.3.1992. Certain irregularities were alleged to have been committed by the petitioner, while he was working as Secretary incharge of the society and by one Mr. N.M. Samy, who was serving in third respondent bank as a clerk. Various charges were made against them. There was allegation of misappropriation of amount to the tune of Rs.

8,41,342.85. For the said charges, the petitioner was placed under suspension on 1.10.97 and a charge memo was issued on 31.10.1997 for which the petitioner submitted his explanation on 26.12.1997.

3. A domestic enquiry was ordered and one Mr. P. Natarajan, Deputy Registrar (Retired) was appointed as enquiry officer and he found that out of eleven charges seven charges were proved and gave his report on 30.1.1999. A copy of the enquiry report was served on the petitioner and after giving opportunity to him, the third respondent bank dismissed the petitioner from the service.

4. The petitioner preferred a revision before the second respondent and as no orders were passed by the second respondent. Hence the petitioner was compelled to approach this Court by way of W.P. No. 11821 of 2001 for a direction to dispose of the revision and the same was ordered on 27.6.2001. Pursuant to the orders passed by this Court dated 27.6.2001, the revision petition filed by the petitioner was heard by the second respondent and after hearing both the parties the second respondent confirmed the order of dismissal and against which only the present writ petition has been filed.

5. Mr. V.K. Rajagopalan, learned Counsel for the petitioner submitted that the petitioner was only incharge Secretary and he was in no way involved in the irregularities said to have been committed; that one Mr. Ramaswamy, who misappropriated the money had agreed to pay back the amount and a sum of Rs. 8,41,342.85/- was remitted by him and that he also agreed to remit a sum of Rs. 3,13,242.65/- to the bank. Firstly when the offender himself agreed to remit the misappropriated amount and paid back the money, there was no question of any misappropriation by the petitioner. Secondly he submitted that there may be some dereliction of duties on the part of the petitioner, as he was the Secretary incharge and that the dereliction would not make the third respondent to dismiss the petitioner from the services of the bank.

6. Learned Counsel for the petitioner relied upon a judgement of the Honourable Supreme Court in [Kailash Nath Gupta Vs. Enquiry Officer, \(R.K. Rai\), Allahabad Bank and Others](#). In that case, a bank officer was removed from service on account of some procedural irregularities said to have been committed by him. The procedural irregularities caused loss of small advances to the bank. While dealing with the matter, the Honourable Supreme Court held that when there was no evidence to show that the delinquent officer misappropriated any money or committed any fraud and when the loss caused to the bank may be recovered from the delinquent officer, the procedural irregularities cannot be termed as negligence to award extreme punishment of dismissal from service and the matter was remanded back for reconsideration of quantum of punishment. Relying upon the said judgement learned Counsel for the petitioner strenuously contended that in this case also the petitioner did not commit any act of misappropriation. Whereas the officer Mr. N. Ramasamy, who was responsible for the misappropriation agreed to pay the

amount and accordingly the amount was also paid. When such is the position there was neither loss to the bank nor any misappropriation by the petitioner. Hence he sought for reduction in the punishment awarded by the bank to the petitioner.

7. On the other hand Mr. S.V. Dorai Solaimalai, learned Counsel for the third respondent contended that the petitioner was the Secretary at the relevant point of misappropriation. He was an officer as defined u/s 2(19) of the Tamil Nadu Co-operative Societies Act 1983 and he alone was responsible for day to day administration and management of the third respondent bank which the farmers are depending upon for their agricultural operations.

8. In nutshell learned Counsel for the third respondent said that the petitioner is vested with responsibility of safeguarding the money and property of the third respondent and he miserably failed to do the same. Secondly he submitted that merely because of Mr. Ramasamy, the clerk, took the responsibility of returning money to the bank it would not condone the criminal act committed by the Ramasamy as well as the petitioner and hence no leniency should be shown to the petitioner. He further submitted that most of the Co-operative Societies in Tamil Nadu are suffering from mismanagement and their moneys were looted by their officials resulting in poor agriculturists, who are depending upon the village Agricultural Co-operative Bank are suffering. He finally submitted that u/s 81 of the Tamil Nadu Co-operative Societies Act, statutory enquiry was conducted against the petitioner by the Deputy Registrar and the investigation done by the police officials, revealed the fraud committed by the petitioner along with others. The enquiry finally culminated into criminal proceedings in C.C. No. 18 of 2002 in which a judgement was given by the Judicial Magistrate No. II, Vellore. The petitioner as well as Mr. Ramasamy were found guilty under Sections 409 read with 109 I.P.C. Eventhough they were convicted and they were released under probation of offender Act. Referring to the judgement given by the Criminal Court, learned Counsel for the third respondent Mr. S.V. Dorai Solaimalai submitted that in the criminal case the petitioner and Mr. Ramasamy were found to be guilty and no leniency would be shown to the petitioner.

9. Heard the learned Counsel for the parties and perused the materials on record.

10. Firstly it is an admitted case that during the relevant period of misappropriation the petitioner was the Secretary of the third respondent bank. Mr. Ramasamy, who worked as clerk, misappropriated the money of the third respondent bank and for which the petitioner was found to be assisting, which was proved before the Criminal Court in C.C.No.18 of 2002, wherein a punishment was given to them by the judgement dated 13.4.2002. Even though the findings in the Criminal court are not binding the civil court, the same may be looked into for deciding the case herein. Secondly the petitioner was issued with a charge memo and a domestic enquiry was conducted, where the petitioner also put forth his case and the enquiry officer found that out of eleven seven charges were proved against the petitioner.

The findings of facts given by the enquiry officer cannot be set aside by this Court by exercising writ jurisdiction under Article 226 of the Constitution of India. The finding of the facts had already attained finality. In this case a decision was taken by the third respondent management. It has been laid down in a similar matter in the case of [Employers of Firestone Tyre and Rubber Co. Ltd. Vs. Their Workmen,](#) . It has been decided by the Supreme Court that this Court cannot exercise the appellate power over the decision of the management.

11. It is not the case of the petitioner that the enquiry officer or revisional authority does not look into the evidence in proper perspective or the order of dismissal was passed on no evidence. In the absence of any attack in this regard, the findings of the enquiry officer and the resultant dismissal order and also the confirmation order passed by the Revisional Authority cannot be found fault with. In this case, the findings given by the domestic enquiry officer has been confirmed by the management and the decision cannot be interfered with under Article 226 of the Constitution of India. The above said proposition has been given in 2007 (2) L.L.N. 55. Similarly in the matter of Rahimal (Dead) by LRs and Anr. v. Deputy Director of Consolidation and Ors., (2002) 10 SCC 94 , it was held that the finding recorded is the finding of fact and the same cannot be assailed in the appeal. In [Ranjeet Singh Vs. Ravi Prakash,](#) it has been held by the Honourable Supreme Court that the High Court cannot act as an appellate court and re-appreciate or re-evaluate the evidence while exercising Certiorari or Supervisory jurisdiction. This court cannot act as an appellate forum over the judgement of the lower authority under Article 226 of the Constitution of India. Similar view was also expressed in Shamshad Ahmad and Ors. v. Thilak Raj Bajaj (deceased) through LRs reported in (2008) 9 SCC. In [D.N. Banerji Vs. P.R. Mukherjee and Others,](#) the Honourable Supreme Court laid down the principles that unless there is any miscarriage of justice or error apparent in law calling for intervention, it would not for the High Court under Article 226 and 227 of the Constitution of India to interfere with. Similarly in this case also there is no miscarriage of justice. The petitioner herein was found to be associated with Mr. Ramasamy aiding him for misappropriation and was convicted under Sections 409 read with Section 109 IPC. The order of dismissal was rightly passed by the third respondent. The revisional authority also looked into various aspects and also looked into the statutory enquiry done u/s 81 of the Tamil Nadu Co-operative Societies Act 1983 and rightly concluded the order of dismissal passed by the third respondent.

12. As far as the contention of Mr. V.K. Rajagopalan that when the petitioner was not found to be misappropriating money, he deserves a lesser punishment other than the dismissal from service. When the acts of commission and omission were found to be against the interest of society from which the petitioner was working for his livelihood, he cannot be shown any leniency by this Court. As rightly pointed out by the third respondent that most of the rural banks namely Agricultural Co-operative Societies are suffering because of the acts of mismanagement by their officials. The

acts done by the officials like petitioner make the Co-operative societies sick and consequently affect the Agricultural operation which is the back bone of our country. Needless to state that the agriculture sector is already a neglected sector. Hence no leniency can be shown to the petitioner and accordingly the writ petition is dismissed. No costs. There will be no order as to costs.