

R.P. No.2/2013

**BEFORE THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
PUDUCHERRY.**

R.P. No.2/2013

Present : **Dr. A. S. SIVAKUMAR**
Registrar of Co-operative Societies
Puducherry.

V. Rasu
No. 52, Main Road
Kalmandapam, Nettapakkam Post
Pondicherry.

.. Petitioner

Vs.

The Administrator
Kalmandapam Co-op. Milk Producers Society
Ltd., No. P. 301
Kalmandapam, Nettapakkam Post
Pondicherry.

.. Respondent

ORDER

(Issued under Section 141 of the Puducherry Co-operative Societies Act, 1972)

Industrial growth and the attendant steady increase in man-power have been phenomenal both in the organized and in the unorganized sectors. Sans discipline, healthy development and involvement of employees are likely to be jeopardized. Disciplining misconduct has to be timely, effective and appropriate with due appreciation of other facts. It is a delicate issue which calls for delicate handling. Misconduct has dangerous potential to pull down the image and statue of the administration which may have startling impact on the running and future of the industrial unit, nay, even the industry as such.

2. In a co-operative organization dealing with disciplinary issues of employees is equally important over the growth of the society. If discipline takes the back seat, the member oriented and democratically elected society will struggle to prosper. Hence, disciplining misconduct assumes serious ramification to betterment of the organization.



THE PRELUDE

3. The episode in this revision petition, filed under Section 141 of the Puducherry Co-operative Societies Act, 1972 (for brevity the 'Act'), has travelled a long journey and crossed many hurdles, before it was taken back on file. The complete chronology of events may be mentioned first, before adverting to the factual details giving rise to this revision petition, as unfurled from the affidavit filed by the petitioner in support of this revision petition.

4. The revision petitioner was an employee of the Kalmandapam Co-operative Milk Producers Co-operative Society Ltd., No. P. 301 (hereinafter the 'society') in the cadre of Secretary. He was terminated from service by then President of the society, vide order dated 8.12.1997. Challenging the said order, the petitioner herein filed an industrial dispute in I.D. No.2/2000 before the Labour Court, Pondicherry. The learned Presiding Officer, in his award dated 11.11.2002 observed that as the petitioner was working as the Secretary of the society which is certainly supervisory in nature he could not be termed as workman within the definition of the Industrial Disputes Act and on this count itself the industrial dispute was not maintainable. However for the purpose of comprehensively deciding the matter, the other points were dealt by the Labour Court and ultimately the industrial dispute was dismissed and the impugned order of termination of service passed against the petitioner was held valid.

5. Aggrieved over the findings of the Labour Court, the petitioner preferred a writ petition before the Hon'ble High Court of Madras in W.P. No. 16674/2013. The writ petition was withdrawn by the petitioner with a liberty to file appropriate petition before the proper forum in the manner known to law. Recording the aforesaid submission, the Hon'ble High Court, by order dated 26.2.2013, dismissed the writ petition giving liberty as prayed for.

6. Animadverting his order of termination from service dated 8.12.1997, the petitioner filed a revision petition, invoking Section 141 of the Act in R. P. No. 2/2013. Before my learned predecessor it was urged, inter alia, that when the Labour Court observed that the petitioner was not a workman within the definition of the Industrial Disputes Act, the said Court ought not to have given a finding on merit. To support this contention, reliance was placed on a judgment of the Hon'ble Supreme Court of India in *Sushil Kumar Mehta vs. Gobind Ram Bohra*, (1990) 1 SCC 193. After hearing the parties, my learned predecessor, vide order dated 17.7.2013, held that when the Labour Court gave a clear finding that the order passed by the society terminating the services of



the petitioner was valid, it cannot be brushed aside as nullity and an order passed by the judicial forum cannot be set to naught by a quasi judicial authority. In fine, the revision petition was dismissed as not maintainable.

7. The aforesaid order was impugned by the petitioner in W.P. No. 26656/2013. The Hon'ble High Court of Madras, vide order dated 5.3.2015, held that the Labour Court has erred in giving a finding on merit and hence the issue requires to be considered by the Registrar afresh on merits. The matter was remitted to the Registrar with a direction to entertain the revision petition and pass fresh orders. This is how the revision petition is restored before me for consideration.

THE ASSAIL

8. In order to appreciate the controversy and the grievance of the petitioner it would be necessary to traverse few facts leading to passing the impugned order of termination of service passed against the petitioner. The petitioner joined as Secretary of the society on 1.4.1984. His last drawn gross emolument was Rs. 2,100. He was discharging day-to-day activities of the society including keeping of accounts, maintaining cash and over all maintenance of the society.

9. When the petitioner pointed the irregularities committed by the President of the society, she became inimical towards him and was waiting for an opportunity to victimize him. A show cause notice dated 6.11.1997 was issued to him levelling some charges. The charges mentioned therein were false and frivolous. The President compelled him to give a letter admitting the guilt, failing which he would be terminated from service. She dictated a letter and got it signed by him. Another notice dated 4.12.1997 was issued indicting some more charges and this time also she exerted pressure on him to submit the explanation as dictated by her. He submitted a letter dated 6.12.1997 admitting the guilt. Though she promised that no disciplinary action would be taken against him, contrary to her assurance, she terminated him from service with effect from 8.12.1997.

10. The petitioner contended that the impugned order was tainted by coercion and undue influence. The very reading of the contents of the show cause notices and the impugned order of termination from service would reveal that the whole exercise was an empty formality to eliminate him from service. No opportunity was given to him to defend the charges and hence the punishment imposed is liable to be interfered with. The petitioner contended further that the action taken by the President to terminate him from service



was contrary to the provisions of bye-law No. 20 of the bye-laws of the society, because only a committee contemplated therein was competent to take disciplinary action against an employee of the society.

11. The petitioner sent an advocate notice, calling upon the management to set aside the impugned order and reinstate him in service, but the respondent gave a reply notice declining his request.

12. In view of the above, the petitioner prayed to set aside the impugned order and direct the respondent to reinstate him as Secretary of the society with all consequential benefits including back-wages, continuity of service and damages for non-employment to the tune of Rs.10.00 lakhs.

THE REFUTATION

13. Per contra, remonstrating and refuting the allegations/averments in the petition, the respondent, in his counter, would state that when the petitioner was issued with memorandum dated 6.11.1997 and 4.12.1997, he admitted the misconduct vide letters dated 8.11.1997 and 6.12.1997 respectively. If at all the petitioner was coerced to give a letter admitting his guilt, he would have made a complaint on such coercion before the proper forum. Having not done that, the petitioner cannot seek reinstatement/re-employment making such a plea. Bye-law No.20, on which reliance was placed by the petitioner, has nothing to do on constituting a committee to deal with disciplinary matter against an employee of the society, but the said bye-law provision talks on the powers of the President and framing of regulations relating to service conditions of the employees with the approval of the Registrar.

14. The respondent contends that the petitioner was downgraded to Assistant Milk Tester from the post of Secretary once. Further the records relating to disciplinary enquiry are not available with the society and the case cannot be reopened after a lapse of 17 years. The society presently has seven employees and working on meager profit. The employees are not paid even their entitlement and hence there is no question of taking back the petitioner into service. The respondent, on the above grounds, seeks the dismissal of the revision petition.

THE ARGUMENTS

15. A copy of the counter filed by the respondent was forwarded to the petitioner.



16. When the revision petition came up for hearing before me, the petitioner was represented by Ms. S. Harinyi, Advocate and the Administrator represented the society.

17. The learned Advocate for the petitioner grounded her pleading on the following premises:

- (i) The order of termination from service was based on alleged admission of charge of misconduct which was obtained by coercion and undue influence;
- (ii) The very reading of the contents of the show cause notice reveals that the then President has already taken a decision to terminate the petitioner from service and issue of show cause notice was a farce and travesty of justice;
- (iii) No enquiry was conducted to prove the charges and the principles of natural justice were given a complete go-by;
- (iv) The order of termination of service contained some extraneous reasons, not adverted in the show cause notices;
- (v) The show cause notices were bereft of details, very general and vague. Nothing was stated how the allegations were substantiated, no witness was cited. The charges were, therefore, bald and blunt.
- (vi) The order of termination from service did not refer the charges. The then President has stated in the impugned order that the explanation given by the petitioner-employee was not satisfactory and it was not recorded that there was an admission of guilt;
- (vii) There was marked discrepancy between the charge sheet and the impugned order;
- (viii) The entire proceedings were done in a haste and this demonstrates that the then President was interested in eliminating the petitioner from the service of the society;
- (ix) When the charges were not specific, the society cannot contend that the admission of charges was explicit;
- (x) Even if the charges are admitted, the punishment was quite disproportionate and excessive;
- (xi) The impugned order was not approved by the Registrar and hence passed without jurisdiction.



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18. To bolster her contentions, the learned Advocate for the petitioner cited the following authorities, which I will deal later in my analysis:

(i) *Jagdish Prasad Saxena vs. The State of Madhya Bharat*, AIR 1961 SC 1070 : MANU/SC/03447/1960;

(ii) *A. Janbah vs. Deputy Examiner of Local Fund Accounts*, MANU/TN/0161/2007 [High Court of Madras].

19. The respondent piloted his arguments on the basis of the following:

(i) The petitioner has candidly admitted the charges levelled against him, and having admitted the misdemeanor, the petitioner cannot heard to assert that he was coerced and the then President exerted pressure on him to sign the dictated letters;

(ii) The petitioner did not complain to anyone about the coercion and undue influence and it was only an after-thought;

(iii) When the charges were admitted by the petitioner unequivocally, no enquiry was considered necessary to prove the charges;

(iv) Before terminating the services of an employee, no approval is required from the Registrar. The impugned order was passed by then President who has necessary authority to do so;

(v) The society is presently having seven employees, of whom four are on time scale and three on daily rated. The employees are paid only on the basis of third pay committee recommendations. It works on scarce profit. When the petitioner was validly terminated, there is no question of reinstating him with attendant benefits. If such a prayer is conceded, it will lead to collapse of the society as a whole and all the employees will be thrown out of employment.

THE ISSUE IN QUINTESSENCE

20. A combined and collective consideration of the averments and counter averments and contentions of the rival parties would lead to approach the issues involved in this revision petition in the following dimensions; viz.,

(i) Whether the impugned order dated 8.12.1997 needs to be interfered on the alleged violation of canons of natural justice?

(ii) If yes, what relief the petitioner is entitled to?



THE APPROACH AND ANALYSIS

21. During the hearing, the learned Advocate for the petitioner took me through the charge memorandum dated 6.11.1997 and 4.12.1997 and the explanation submitted by the petitioner dated 8.11.1997 and 6.12.1997. In the first charge memorandum, the petitioner was indicted that the group insurance amount of Rs.11,000 due to Late Thiru P. Ramakrishnan, though was entered in the day book on 6.6.1997 was disbursed only on 6.11.1997 after the President enquired the matter. The second charge was that the salary due to the daily rated employee @ Rs.50 per month was not paid for 8 months. The amount was paid in one lump sum of Rs.400 to her only after the President has asked for it. To these charges the petitioner has stated that the amount of Rs.11,000 received from LIC was accounted on 6.6.1997 in the day book but was paid to the beneficiary on 6.11.1997. He conceded that he has misappropriated the amount. On the second charge, the petitioner has stated that he has spent Rs.400 due to the daily rated employee and paid her after the President's intervention. He sought apology for the misdeeds committed by him.

22. The second charge memoranda dated 4.12.1997 accused the petitioner with charges that for the years 1994-95 and 1995-96 he has taken the bonus due to certain members by affixing their thumb impression/signatures and he has tampered the day book between 24.4.1997 and 5.5.1997 for an entry of Rs.10,000 after the President and the Supervisor signed the day book. To these charges, the petitioner gave a reply on 6.12.1997 stating that he has misappropriated the amount due to some members during 1994-95 and 1995-96, but settled the amount to them subsequently. On the second charge, he attributed that he has forgotten to bring Rs.10,000 while writing the day book. After the Supervisor found it out, he brought the amount in the book on 24.4.1997 and carried out the correction in the book from 24.4.1997 to 5.5.1997.

23. Referring these charge memorandum, the then President, vide the impugned order dated 8.12.1997, stated that the petitioner has committed fraud on the bonus amount due to the members by forging their signatures and tampered the day book after the Supervisor corrected the record. Further he has brought defame to the society through many misdemeanors. His explanation to the charge memorandum was not convincing and hence he was terminated from service with effect from 8.12.1997.



24. While assailing the said order, the learned Advocate for the petitioner demonstrated that the charges were without supporting details and they should be thrown out lock, stock and barrel. When the charges were not specific, the alleged admission to the charges cannot be given credence, she added.

25. In this background, let me dwell on the case laws cited by the learned Advocate for the petitioner to press her claim that the alleged admission of guilt cannot be a foundation for termination of service of the petitioner. In *Jagdish Prasad Saxena vs. The State of Madhya Bharat*, (supra), the Hon'ble Supreme Court laid down the following dictum:

"In such a case, even if the appellant had made some statements which amounted to admission it is open to doubt whether he could be removed from service on the strength of the said alleged admission without holding a formal enquiry as required by the rules. But apart from this unambiguous admission of his guilt, failure to hold a formal enquiry would certainly constitute a serious infirmity in the order of dismissal passed against him. Under Article 311(2) he was entitled to have a reasonable opportunity of meeting the charge framed against him, and in the present case, before the show cause notice was served on him he has had no opportunity at all to meet the charge."

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"The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services."

26. In *A. Janbah vs. Deputy Examiner of Local Fund Accounts* (cited above), the ratio decidendi of the Hon'ble High Court of Madras is that when the charges levelled against an employee are elaborate, they must be substantiated by evidence to be recorded at that time of enquiry and the delinquent must be given a reasonable opportunity to challenge the charges. The learned Advocate for the petition invited my pointed attention to paragraph 31 of the judgment, which reads:

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"The cardinal principles of labour jurisprudence require the employer to hold regular domestic enquiry against an employee before he is punished for a misconduct. Sufficient law has been developed on this subject. This concept is discussed in detail through various pronouncements of the Apex Court and our High Court. If the delinquent employee admits the guilt, there is no necessity for any enquiry. If an admission from the delinquent is obtained by the disciplinary authority either by coercion or inducement or misrepresentation, then an enquiry is mandatory. Where holding of an enquiry is a mandatory requirement under any statute for dismissing the workman, the employer cannot dismiss him without conducting an enquiry, even if the employee admits the guilt in any forum other than in the course of enquiry proceedings constituted for such purpose."

27. The learned Advocate for petitioner strenuously contended that the alleged admission was obtained by the then President by exercising coercion and undue influence. Had there been a regular enquiry, the petitioner could have effectively denied the charges and come out completely exonerated.

28. The above contention so presented though seemingly plausible, will on deeper scrutiny is found to be without substance. True, there cannot be any direct evidence for coercion or pressure exerted by the then President on the petitioner. But what is relevant is the conduct of the petitioner thereafter. According to the petitioner, he has admitted the guilt inflicted on him only to get away from termination of service and he wrote what was dictated to him. In his letters he has categorically written that -

(a) "அந்த பணத்தை நான் கையாடல் செய்துவிட்டேன் எனவும்"; (b) "வேலை செய்யும் பெண்ணிடம் மாதம் 1க்கு ரூ. 50/- வீதம் பிடித்து நானே செலவு செய்து பின்னர் தலைவர் அவர்கள் விசாரித்த பிறகு ரூ. 400/- ஐம் கொடுத்ததும் தவறுதான் என்றும்"; (c) "சில உறுப்பினர்கள் போனஸ் தொகையை கையாடல் செய்து அத்தொகையைத் திரும்ப சம்மந்தப்பட்ட உறுப்பினர்களுக்கு பட்டுவாடா செய்துவிட்டேன்"; (d) "பின்னர் சூப்பர்வைசர் கண்டுபிடித்தபின் அத்தொகையை 24.4.97லேயே காண்பித்து கணக்கை 24.4.97 முதல் 5.5.97 வரை திருத்தம் செய்து சரி செய்தேன்". [Underlined to add emphasis]

The petitioner cannot be heard to contend that without understanding the import of what was written, he admitted the accusations. As the Secretary of the society and as a person who administered the affairs of the society in a



supervisory capacity, he is not expected to blindly write and sign a statement which would have serious ramification and owning responsibility that he committed various criminal offences, like misappropriation and tampering of records. I find considerable force in the contention of the respondent that if the petitioner alleged that he was forced to admit the charges, he could have represented to the Registrar or any authority about the undue influence exercised against him. The petitioner pleaded that he has taken the promise of the then President that he would be spared if he admitted the charges. When the impugned order of termination was ultimately passed against him, no further damage was possible and the petitioner could have reported the alleged pressure he got from her to any authority for redressal.

29. On poring over the records submitted by the petitioner it is seen that he has submitted a letter dated 15.7.1998 to the Administrator of the society, marking a copy to the Registrar, seeking to reinstate him to service as he unjustly sent out of employment. In this letter, not a whisper was made about the alleged threat and coercion exercised by the former President on him. When this was pointed out during the hearing, the learned Advocate for the petitioner could not give me a convincing reply, but meekly stated that out of fear the petitioner would have omitted to state so. The theory of coercion and undue influence were brought to light for the first time only through advocate notice dated 14.8.1998. If the petitioner was really afraid of the then President, how he changed his mind in one month's time? When he did not make a mention about the alleged force in his representation dated 15.7.1998 what happened in a month's time to disclose the pressure exercised by then President through the Advocate notice dated 14.8.1998.

30. The petitioner was terminated from service vide order dated 8.12.1997 and he alleged threat and coercion were reported only through Advocate notice dated 14.8.1998. He woke up from deep slumber after eight months to disclose such a strong and vital ground which goes to the root of the issue. This unexplained delay appears to be a ruse and an afterthought, just to get over from the admission of guilt. The conduct of the petitioner does not even remotely, far less definitely and unerringly, support the theory of coercion and undue influence against him.

31. The next limb of attack on the impugned order of termination of service is that the charges were not specific and based on the vague charges the petitioner allegedly gave his admission. I have given my thoughtful consideration on this argument. Altogether four charges were levelled against the petitioner. During the arguments, the Advocate to the petitioner was



informed that the charges were framed by an elected representative of the society who is not expected to have all nuances and intricacies of labour laws and the notices/orders drafted by such person cannot be expected to be on par with the communication from the officials of the Government/Corporation. The infirmity in such notices/orders cannot be blown out of proportion. Coming back to the charges, of the four charges three were specific and pointed and one can decipher them without further details. The only charge that was hazy was the charge of non-disbursement of bonus to the members for the years 1994-95 and 1995-96. Here the name of members, the amount of bonus etc., are vital points that were found missing.

32. There is no gainsaying that the charge sheet is the foundation of the disciplinary proceedings. The ingredient of the charge sheet is succinctly brought out by the Hon'ble High Court of Madras in *D. Venkataraman vs. The Secretary to Government, Home (Transport) Department, Chennai*, 2014-2-L.W. 587 : (2014) 8 MLJ 543 thus:

"After all, a charge sheet for misconduct must disclose the rules of conduct which an employee has violated, the allegations containing sufficient materials showing how a person has violated the specified rule of conduct and how he has been ex-facie found to be blameworthy requiring his explanation and the disciplinary rule under which the charges against him are required to be enquired into. Also, the charge sheet must contain a list of documents on the basis of which charges against him are proposed to be established and a list of witnesses for oral evidence. It cannot be gainsaid that issuance of charge memo/charge sheet puts a question mark to an employee's career."

33. The observations of the Kerala High Court in *Suseelan vs. Indian Bank*, 2015 (1) KLT SN 14 (C. No.18) are quite opposite here:

"Natural justice gives a person the right to adequate notice of the date, time and place or the hearing as well as the details of the charge to be met. This information enables the person in an adequate time, to effectively prepare his own case and to answer the charges against him. The non serving of statement of allegation along with the charge sheet could be said to be a form of abuse by the enquiry officer. The affected person usually cannot make effective representations without knowing what factors may weigh against his interests. Therefore fairness will very often require that he is to be



informed of the gist of the case to enable him to defend himself against the allegations. Therefore, requirement of giving statement of facts serves important purposes. Firstly, giving prior statement of facts increases the value of the proceedings. Secondly, when the person knows about the facts he can make useful contribution. The affected person has the right to know what are the allegations levelled against him and mere information regarding hearing is not enough. Thirdly, the disclosure of information opens up the operations of the disciplinary authority to public scrutiny. Therefore, even after issuing of memo of charges, it is the responsibility of the disciplinary authority to furnish statement of allegations along with charge sheet."

34. The alleged defect in the charge sheet in respect of one charge does not go to the root of the matter in as-much-as the petitioner admitted even that charge and stated that he has misappropriated the bonus amount and disbursed the same to the members on a later date.

35. During the hearing the respondent produced the copy of the day book relating to the alleged tampering of entries made therein. The petitioner was candid in admitting that he changed the head of account in respect of withdrawal of money from the bank after the Supervisor corrected the day book. He altered the head of account 'Due to Secretary' into 'Savings bank account'. He deposed that he has forgotten to bring into account Rs.10,000 withdrawn from the bank, which was found out by the Supervisor and accounted as receivable from the petitioner. The petitioner without the knowledge of the Supervisor and President changed the head of account, altered the closing balance for the period from 24.4.1997 to 5.5.1997. The petitioner could not explain how he can forget to bring cash withdrawn from bank, when the closing balance would be higher than the cash on hand. What was done by the petitioner is beyond his authority and certainly amounts to tampering the official record, quite unbecoming of an official of the society.

36. I am not impressed by the averment of the petitioner that the then President of the society was hostile to him just because he pointed out some shortcomings in the working of the society. It is the very same President who paid encomium for his services by giving a letter of appreciation dated 30.6.1997. When she gave charge memorandum, the petitioner cannot say that she was inimical to him. As stated supra, there are material evidence to substantiate that the petitioner has indulged in some misdeeds and the then President was within her right to discipline him.



37. Another allegation levelled by the petitioner is that the impugned order of termination of service was passed without authority, as it was contrary to the provisions of bye-law No. 20 of the bye-laws of the society. As rightly pointed out by the respondent, bye-law No. 20 has not stated anything about constituting a committee to go into the disciplinary action against the employee of the society and no approval is required from the Registrar before terminating an employee of the society.

38. The learned Advocate for the petitioner conceded that she could not lay her hand on the bye-law No.20. The petitioner has invoked an imaginary provision to press his claim and his claim is totally misplaced and misleading. His contention on this score is to be heard only to be rejected.

39. During the arguments, the learned Advocate for the petitioner produced a copy of the voucher to substantiate that Rs. 11,000 was paid to the legal heir of Thiru P. Ramakrishnan on 6.6.1997 itself. In the said voucher, the then President and two directors of the society also have signed, the learned Advocate pointed out. The charge here is that when the amount was recorded in the day book on 6.6.1997 it was paid only on 6.11.1997 to the beneficiary. The petitioner admitted the charge and stated that he has misappropriated the amount and paid it subsequently. If the amount was paid on 6.6.1997, based on the voucher, why the petitioner has admitted the charge and stated that he paid the amount to the beneficiary only on 6.11.1997. The petitioner has no point in his favour on production of the copy of the voucher.

40. The last ground of assail urged on behalf of the petitioner is that when the society inflicted the extreme punishment of termination of service, which is considered to be an economic death sentence, whether dispensing the enquiry is justified. The Andhra Pradesh High Court in *K. Venkateswarlu vs. Nagarjuna Grameena Bank and another*, 1995 (II) LLJ 492, explained the effect of admission on the enquiry proceedings in the following words:

"In disciplinary proceedings, if the delinquent admits the charge or makes an unconditional and unqualified admission, there is nothing to be done by way of departmental enquiry and it cannot be argued that the procedure of departmental enquiry should have been applied notwithstanding such admission or confession. When admission made by the delinquent shows that he had committed the misconduct then the question of violation of principles of natural justice cannot have any relevance."



41. It is well settled in law that admitted facts need not be proved. But when an employee is given the extreme punishment of termination from service, he is shown the exit door. The employer cannot hurriedly ease out an employee just because he is uncomfortable to him. Before imposing the punishment of severing his relationship with the society once for all, he should have been heard and a fair opportunity should be given to meet the charges. There should be a level playing field.

42. Any person having head over shoulder would reasonably think that the speed with which the employee was thrown out of employment was in haste and there is a likelihood of denial of fair play. In the instant case, the first show cause notice was issued on 6.11.1997, reply was received on 8.11.1997, the second show cause notice was given on 4.12.1997, explanation was obtained on 6.12.1997 and the impugned order of termination from service was given with effect from 8.12.1997. How quickly the event came to an end.

43. The Division Bench of the Hon'ble High Court of Madras in *M. Durairajan vs. Union of India, rep. by the Senior Superintendent, Railway Mail Services, Chennai and others*, (2014) 4 MLJ 404, held that the termination order passed without conducting regular enquiry and relying on the statement recorded during the preliminary enquiry is illegal.

44. When it comes to termination of service of an employee, the employer should be extremely cautious. The judgment of the Supreme Court, cited by the learned Advocate to the petitioner in *Jagdish Prasad Saxena vs. The State of Madhya Bharat*, (supra), certainly comes to the rescue of the petitioner to hold that before terminating an employee from service a formal enquiry is considered sine qua non.

45. I am quite aware that when there is any defect in conduct of disciplinary proceedings against an employee the Courts would be extremely reluctant to order reinstatement straight away, but would only direct the authorities to conduct the proceedings de-nova or to continue the proceedings from the point where the infirmity was found. In this case, the respondent has stated that the records relating to the disciplinary proceedings are not available with the society and in such circumstances giving a direction to the society to conduct an enquiry into the charges after some 17 years would only be a futile exercise.

46. At this point of time I should make it abundantly clear that the petitioner cannot be given a clean chit and he cannot be branded as lily white. Further he has to blame himself for the protracted proceedings. He challenged the order of termination in the Labour Court, though not being a workman. When



the Labour Court upheld the impugned order, he agitated over such order before the Hon'ble High Court. When the writ was pending, he withdrew it and approached the Registrar with a revision petition. The revision petition was held not maintainable, as the finding of the Labour Court was subsisting and sustainable. He went back to the Hon'ble High Court and got the revision petition restored. The award of the Labour Court on merits was held a nullity. This process consumed some 15 years. The petitioner was knocking the wrong doors and taking wrong decisions at wrong time. However the petitioner deserves some relief on humanitarian grounds considering his plight and also taking into reckoning the overall situation.

THE ULTIMATE

47. As a sequel to the above analysis and discussion and showing extreme consideration on the petitioner, the only lacuna I find is that the petitioner was unceremoniously thrown out of employment without a formal enquiry and by a laconic order. The following order, in the facts and circumstances of the case, would meet the ends of justice and I order accordingly.

- (i) The petitioner shall be reinstated into service forthwith as Secretary on the same scale of pay of the existing Secretary;
- (ii) He shall not be entitled to any backwages or any other service benefits during the period for which he is out of employment;
- (iii) He shall be ranked as senior to the present Secretary even though there is parity in the scale of pay and total emoluments;
- (iv) The post so created shall continue as long as the present incumbent is in office and thereafter the post shall be abolished.

48. The issues are answered accordingly. The revision petition stands disposed on the above terms. However, I leave the parties to bear their respective costs.

Pronounced in open forum on the 19th day of June, 2015.




[Dr. A. S. SIVAKUMAR]
REGISTRAR OF CO-OPERATIVE SOCIETIES

The parties.