

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

**Present : Dr. A.S. SIVAKUMAR
REGISTRAR OF CO-OPERATIVE SOCIETIES
PUDUCHERRY.**

R. P. No. 1 /2018

E. Subramani
Senior Clerk
Jawahar Co-operative Housing Society
Ltd., No. P. 535.
No. 16, III Cross Street
Jawahar Nagar, Bommianpet,
Puducherry – 605 005.

... Petitioner

Vs.

The Administrator,
Jawahar Co-operative Housing Society
Ltd., No. P. 535.
No. 16, III Cross Street
Jawahar Nagar, Bommianpet,
Puducherry – 605 005.

.. Respondent

ORDER

[Issued under Section 141 of the Puducherry Co-operative Societies Act, 1972]

This revision petition was filed under Section 141 of the Puducherry Co-operative Societies Act, 1972 (hereinafter the 'Act') calls in question the sweep, ambit and purlieu of the order No. 2017/2018/101 dated 3.10.2017, reverting the petitioner, who is an employee of Jawahar Co-operative Housing Society Ltd., No. P. 535 (for brief the 'society') from the post of manager to senior clerk.



THE CONTOUR OF FACTS

2. Filtering out unnecessary details, the factual background, as projected by the petitioner in his affidavit, relevant for adjudication of the present revision petition is as below:

(i) While discharging his duties as manager of the society, he was placed under suspension vide order dated 14.3.2017, pending disciplinary proceedings against him in connection with alleged misappropriation taken place in the society.

(ii) A memorandum of charges dated 5.4.2017 was issued to him, directing him to submit his explanation. In his explanation dated 25.4.2017 he denied the charges.

(iii) Not satisfied with his explanation, the respondent appointed Thiru K. Karpaganathan, Deputy Registrar (Retired) as inquiry officer. The petitioner participated in the hearing.

(iv) In pursuance of the inquiry, the respondent issued a show cause notice dated 17.8.2017 directing the petitioner to show cause why punishment of major penalty should not be imposed on him. The petitioner submitted his explanation vide letter dated 30.8.2017 stating that he was in no way responsible for the irregularities that have taken place and requested not to impose any punishment on him.

(v) The respondent passed the impugned order reverting the petitioner from the post of manager to senior clerk. The suspension order was revoked and it was ordered that the suspension period would be treated as on duty and the period of absence would be treated as leave and if no leave was available, then such days would be leave on loss of pay.



(vi) The petitioner in pursuance of the impugned order rejoined the society as senior clerk on 4.10.2017.

THE ASSAIL

3. The portrayal and parodying of the case of the petitioner, quintessentially and precisely, animadverting upon the order dated 3.10.2017, as revealed in this revision petition is focused on the following points:

(i) The respondent was totally inimical and harsh to the petitioner and passed the impugned order and inflicted the punishment of reversion which is quite disproportionate to the alleged misconduct committed by the petitioner. The respondent has not considered the explanation of the petitioner that he was in no way responsible for the alleged irregularities that have taken place in the society and turned a blind eye to the submissions of the petitioner.

(ii) While passing the order of suspension, the respondent was not sure whether any misappropriation has taken place in the society and thus the order of suspension was passed in haste.

(iii) There was no valid reason to keep the petitioner under suspension for a period from 14.3.2017 to 3.10.2007. No review of suspension was made by the respondent and the suspension continued even after the inquiry was over.

(iv) The misconducts alleged in the charge memorandum and the misconducts quoted in the charge sheet are quite irrelevant.

(v) In the charge memorandum dated 5.4.2017 only the irregularities committed by one Thiru G. Vijayakumar were explained and the respondent has merely alleged that the petitioner who was in charge



of overall supervision of accounts has failed to perform his duties properly.

(vi) The respondent has not quoted in categorical terms how the petitioner has caused damage to the society and the charges were vague and without substance.

(vii) The respondent has not forwarded the copy of the inquiry report and was served on him only after his request and that too after the punishment was imposed on him.

(viii) In the show cause notice dated 17.8.2017 the petitioner was directed to show cause why punishment of major penalty should not be imposed on him, where clause 29 of the subsidiary regulations governing the service conditions of the employees of the society does not classify what are the major penalties.

(ix) Without serving a copy of the inquiry report and without considering the convincing explanation of the petitioner, the respondent has hurriedly passed the impugned order just relying on the admission made by the petitioner before the inquiry officer. The inquiry officer has not established how the society has proved that the irregularities against the petitioner were established and substantiated.

(x) Because of the prolonged suspension, which was no fault of the petitioner, the petitioner was directed to remit Rs.61,933 which was calculated as loss of pay during the period of suspension.

CONDONATION OF DELAY

4. The petitioner filed the revision petition beyond 14 days of three months time provided under Section 141 (1) of the Act. After hearing the respondent on the petition filed by the petitioner to condone the delay, the delay of 14 days in preferring the revision petition was



condoned by my order dated 27.3.2018 and the main petition was taken up for disposal on merits. The respondent was directed to file his counter on the main petition.

THE REBUFF

5. Per contra, remonstrating and refuting the allegations/averments of the petitioner, the respondent, in his counter, would submit that:

(i) When the petitioner joined duty as senior clerk on 4.10.2017 in pursuance of the impugned order dated 3.10.2017, it would tantamount that the petitioner has accepted the impugned order and he cannot question the said order by way of revision petition.

(ii) When the petitioner has stated himself as senior clerk in the cause title of the revision petition, the petitioner has accepted the order of demotion.

(iii) While submitting his explanation to the show cause notice dated 17.8.2017, the petitioner has never questioned that he was not supplied with the copy of the inquiry report.

(iv) The petitioner has accepted his guilt unequivocally before the inquiry officer and based on his admission the punishment was imposed on him. Having accepted the guilt, the petitioner cannot turn around and question the quantum of punishment.

(v) The petitioner has not established that prejudice was caused to him by non-supply of inquiry report along with the show cause notice.

6. On the above premised reasons, the respondent sought to reject the revision petition.



THE REJOINDER

7. A copy of the counter filed by the respondent was forwarded to the petitioner and in his rejoinder he submitted that:

(i) Just because the petitioner has rejoined duty as senior clerk, the respondent cannot contend that he cannot question the legality of the order dated 3.10.2017. Further in the cause title, only the present designation alone can be mentioned. These aspects cannot be construed that the petitioner has accepted the punishment order inflicted on him. The claims of the respondent are unknown to service jurisprudence.

(ii) It is the duty of the respondent to furnish a copy of the inquiry report before imposing punishment. Having failed to do that, the respondent cannot contend that just because the petitioner has not demanded a copy, it was not provided to him.

(iii) The respondent was harping on the tune that the petitioner has admitted his guilt and based on the admission the punishment was imposed. The respondent has conveniently not considered the explanation submitted to the charge memorandum and reply to the show cause notice that he was not in any way responsible for the irregularities that have taken place and the misappropriation committed by another employee.

(iv) The respondent has not controverted the infirmities committed by him in violation of subsidiary regulations relating to service conditions of the employees.

THE CARDINAL QUESTION

8. A combined and collective consideration would leave to approach the issue involved in the revision petition in the following dimension, viz,



“Whether the petitioner has disclosed a cause of action in this revision petition to interfere with the impugned order imposing punishment on the petitioner from the post of manager to senior clerk and whether the punishment was disproportionate to the alleged misconduct committed by the petitioner?”

RESOLVING THE QUESTION

9. The revision petition came up for hearing today and the petitioner was present. The respondent chosen to leave a petition in the office seeking adjournment citing the reason that he was on medical leave and there was no second line officer in the society to represent the respondent in this revision petition. In fact, the respondent was represented by Thiru R. Purushothaman, Junior Clerk when the interim application of condonation of delay was taken up for hearing on 27.3.2018. The said junior clerk was appointed as presenting officer in the disciplinary proceedings against the petitioner before the inquiry officer. The respondent cannot be heard to say that Thiru R. Purushothaman, Junior Clerk cannot represent him before me today. I have decided to proceed with the hearing on merits, in the absence of the respondent. The attitude and approach of the respondent are strongly deprecated.

10. The foundation of the disciplinary proceedings against an employee is the charge sheet issued to him, calling for explanation. The charge sheet should be self contained and express in certain terms the misconduct committed by the delinquent, with all supporting evidence and the witnesses through whom the charges would be proved in the inquiry. The serious grouse of the petitioner was that the charge sheet dated 5.4.2017 has only delineated the misconducts committed by one Thiru G. Vijayakumar, Junior Clerk and only a passing charge of imputation was made against the petitioner that he has not exercised due care and caution in checking the accounts of the society. The charge sheet did not disclose, in certain terms, how the

petitioner's alleged negligence has resulted in the misappropriation of funds committed by the said Thiru G. Vijayakumar.

11. I have pored over the charge sheet dated 5.4.2017 and find that the petitioner has a point to score in this regard. Even the perusal of the entire records produced by the respective parties, including the inquiry report, there was no categorical statement of imputation against the petitioner vis-à-vis his duties assigned to him. The petitioner has alleged that certain records like temporary cash receipts never came to him for verification and such receipts were produced only before the cashier of the society. This allegation was not effectively denied by the respondent. To substantiate my view on the ingredients of the charge sheet and how the charges are to be proved in a disciplinary inquiry, I feel persuaded to refer the following decisions rendered by the Hon'ble Supreme Court of India:

- (i) In *M.V. Bijilani vs. Union of India and others*, AIR 2006 SC 3475, the Court held that disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures.
- (ii) Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite.

Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge sheet against quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet if sustained will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication where under quasi-judicial powers are conferred on administrative authorities would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings, vide *Zunjarrao Bhikaji Nagarkar vs. Union of India and others*, AIR 1999 SC 2881 :(1999) 7 SCC 409 : 2000-1-LLJ-728.

12. The respondent appears to have strongly relied only on the admission made by the petitioner before the inquiry officer admitting his guilt and imposed the punishment of reversion from the post of manager to senior clerk. The petitioner, while giving explanation to memorandum of charges, has denied the charges levelled against him, vide letter dated 25.4.2017. While submitting his explanation to the show cause notice dated 17.8.2017, the petitioner stated that he was in no way responsible for the irregularities that have taken place and



brought to light during the inquiry and requested not to impose any punishment. Even the respondent has admitted that the entire misappropriated money was remitted by Thiru G. Vijayakumar and the petitioner has not committed any misappropriation of funds. Even before the inquiry officer the petitioner has stated that he admitted that there was supervisory negligence on his part.

13. What factors should be taken into account while imposing punishment on a delinquent may be seen from the decision of the Hon'ble Supreme Court in *Deputy Commissioner, KVS and others vs. J. Hussain*, AIR 2014 SC 766. The Court held that *it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed on delinquent. This discretion has to be exercised objectively keeping in mind the nature and gravity of charge. The disciplinary authority is to decide a particular penalty specified in the relevant rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any, exist.*

14. The respondent has not controverted effectively the various infirmities pointed out by the petitioner which are repugnant to the subsidiary regulations governing the service conditions of the employees of the society. I am not impressed by the contentions of the respondent, faintly pressed into service, that when the petitioner has taken up the post of senior clerk, in pursuance of the impugned order, he cannot question the punishment imposed on him. Such a stand is made out of desperation and totally unknown to service jurisprudence.

15. The respondent has not convinced how imposition of punishment of demotion would be proportionate to the charges levelled and proved against the

✓

petitioner. As stated supra, even the supervisory negligence was not sufficiently proved. Of course, I do not lose sight of the fact that the petitioner has admitted such fault before the inquiry officer.

16. On the question of non-supply of inquiry report to the petitioner along with show cause notice, it is true that the service regulations mandate that the report should be made available to the petitioner. The respondent has no convincing reason in not providing a copy of the report. But the petitioner has not stated how he was prejudiced by non-supply of the report as he has given his explanation even without getting the report. He made a request to provide the copy of the report only after the impugned order was passed against him. In view of the matter, the non-supply of the report does not go to the root of the case and only on this score, the impugned order cannot be put under fire.

17. While imposing the punishment, vide order 3.10.2017, the respondent revoked the suspension and the suspension period was treated as on duty and period of absence was treated as leave period and if no leave was available in his account, the shortfall would be treated as loss of pay for all purpose. It is really baffling how such a treatment of suspension can be made. When the period was treated as on duty and it cannot be set off against leave, more so on leave on loss of pay. The impugned order dated 3.10.2017 was followed by memorandum dated 11.11.2017, wherein the petitioner was directed to remit Rs. 61,933 towards the loss of pay of 162 days. During suspension period, the petitioner was granted only subsistence allowance and recovery, if any made, would only tantamount recovery from the subsistence allowance which is clearly impermissible.

18. The respondent has not given any reason, much less convincing reason, as to why the petitioner was placed under suspension for 203 days and how the suspension was necessitated even after the inquiry was over. A circular was issued by the department, vide No.RCS/CLC/I&G/2008/219 dated 7.11.2008, prescribing guidelines on suspension of employees of co-operative

societies and taking follow-up action. In paragraph 5 it was stipulated that as suspension constitutes a great hardship in fairness to the employee, its period should be reduced to the barest minimum. If suspension is unduly prolonged, it also entails infructuous expenditure to the society by way of payment of subsistence allowance, often at the enhanced rate, without in any way utilizing his service. Suspension so ordered should be reviewed, as per paragraph 6 of the said circular. The respondent has given scant regard to the said circular and kept the petitioner under suspension for such a long period without an iota of justification. It has needlessly drained the resources of the society by way of subsistence allowance.

19. On considering the facts and circumstances of the case, I am convinced that the punishment of reversion inflicted on the petitioner from the post of manager to senior clerk is quite disproportionate to the charges proved against him and such a punishment defies all logic and canons of punishment. I am quite aware that when the punishment is found to be shocking and arbitrary, the revisional authority cannot act as disciplinary authority and impose a particular punishment. Normally, the matter is to be remitted to the disciplinary authority to take appropriate view by imposing lesser punishment. I am equally aware that if the circumstances warrant to shorten the litigation the revisional authority can impose the punishment to give a quietus to the matter. The law is well settled on this subject. It will be useful to refer the judgment of the Hon'ble Apex Court in *B.C. Chaturvedi v. Union of India and others*, (1995) 6 SCC 749 wherein it was observed:

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion

on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof." [Emphasis added].

THE UPSHOT

20. Resultantly, for the reasons and analysis as aforesaid, well guided by the dictum of the Hon'ble Supreme Court of India, the revision petition stands allowed on the following terms:

(i) The impugned order dated 3.10.2017, imposing the punishment of reversion on the petitioner from the post of manager to senior clerk is set aside;

(ii) As a natural corollary, the memorandum dated 11.11.2017, directing the petitioner to remit Rs. 61,933 towards recovery of loss of pay is unsustainable and hence quashed. The recovery made from the petitioner in pursuance of the said memorandum shall be repaid forthwith.

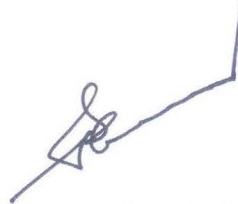
(iii) The period of suspension is treated as duty and for that period the petitioner is not entitled for salary except the subsistence allowance paid. The suspension period is treated as on duty only for the purpose of terminal benefits and he shall be entitled for any bonus or other benefits for the said period.

(iv) As the petitioner admitted that he committed supervisory negligence he is liable to be imposed appropriate punishment. It is ordered that the petitioner has to forego annual increment for a period of three years without cumulative effect. This punishment will meet ends of justice.



21. The revision petition merits acceptance and is allowed to the extent indicated above. However, I leave the parties to bear their respective costs.

Dated, the 26th day of April, 2018.



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

To

The parties