



**HIGH COURT OF ANDHRA PRADESH**  
TUESDAY ,THE THIRTIETH DAY OF NOVEMBER  
TWO THOUSAND AND TWENTY ONE

**PRESENT**

**THE HONOURABLE SRI JUSTICE NINALA JAYASURYA**

**WRIT PETITION NO: 55 OF 2019**

**Between:**

1. SPS MUTYAM S/o. Srivenkateswarlu  
Hindu, aged 32 years  
Occ - Assistant Manager (Now under Termination) R/o.Door No.1-106,  
Neggipudi Village  
Maruteru, Penmantra Mandal  
West Godavari District  
Andhra Pradesh

**...PETITIONER(S)**

**AND:**

1. STATE OF AP S / o. Srivenkateswarlu Hindu, Occ Assistant Manager  
(Now under Termination) R/o.Door No.1-106, Neggipudi Village  
Maruteru, Penmantra Mandal  
West Godavari District  
Andhra Pradesh
2. The District Cooperative Central Bank Limited Rep.by its Chief Executive  
Officer  
Eluru, West Godavari District  
Andhra Pradesh.
3. The Chief Executive Officer The District Cooperative Central Bank Ltd.,  
Eluru, W.G.District, A.P.
4. The Branch Manager The District Cooperative Central Bank Limited  
Elamanchili Branch, Elamanchili  
West Godavari District, A.P.

**...RESPONDENTS**

**Counsel for the Petitioner(s): K CHIDAMBARAM**

**Counsel for the Respondents: GP FOR COOPERATION**

**The Court made the following: ORDER**



**HON'BLE SRI JUSTICE NINALA JAYASURYA**

**W.P.No.55 of 2019**

**ORDER:-**

This writ petition is filed questioning the proceedings of the 3<sup>rd</sup> respondent in Rc.No.Estt./2018-19 dated 05.12.2018 terminating the services of the petitioner as Assistant Manager in the 2<sup>nd</sup> respondent-Bank.

2. Heard Mr. K. Chidambaram, learned counsel for the petitioner, and Sri K. Bharath Ram, learned Standing Counsel for respondent Nos.2 to 4.

3. The brief averments as per the petitioner's affidavit are:

The petitioner was appointed as Assistant Manager in the 2<sup>nd</sup> respondent-Bank on 19.07.2012. He was transferred and posted at Elamanchili Branch in the year 2014 and also discharged the functions as In-charge Manager. The 3<sup>rd</sup> respondent issued a Charge Memo dated 25.05.2018 to him alleging negligence in discharge of his duties and that it lead to heavy loss to the Bank. The petitioner could not submit his explanation to the said Charge Memo, as the same was issued while he was on medical leave. Under the said circumstances, the 3<sup>rd</sup> respondent *vide* proceedings dated 09.08.2018 placed the petitioner under suspension, as no explanation was submitted by him to the Charge Memo. Thereafter, the petitioner submitted explanation to the Charge Memo on 25.09.2018 and *vide* Note orders dated 28.09.2018, the 3<sup>rd</sup> respondent ordered domestic



enquiry and appointed the DGM (Admn.) as Domestic Enquiry Officer and the AGM (LT) as the Presiding Officer. The 3<sup>rd</sup> respondent *vide* communication dated 29.09.2018 requested the Enquiry Officer to conduct enquiry and submit a report within 15 days, pursuant to which, the enquiry was conducted and the Enquiry Officer submitted a report on 13.11.2018. Basing on the report of the Enquiry Officer, the 3<sup>rd</sup> respondent issued a show-cause-notice dated 20.11.2018 calling upon the petitioner to show cause as to why he should not be dismissed from the services of the Bank. The petitioner submitted his explanation on 25.11.2018 denying the charges and the report submitted against him. The 3<sup>rd</sup> respondent, thereafter, passed the order of termination which is impugned in the writ petition.

4. Learned counsel for the petitioner *inter alia* contended that the order of termination is not sustainable, as the enquiry was initiated in violation of the Employees Service Regulations (for short 'the Service Regulations') of the District Cooperative Central Bank Limited-2<sup>nd</sup> respondent. He submits that it is for the Management to initiate the disciplinary proceedings and the C.E.O.-3<sup>rd</sup> respondent has no power or authority to initiate the same. It is his specific contention that though the 3<sup>rd</sup> respondent can inflict punishment, he cannot initiate the disciplinary proceedings. In support of his contentions, learned counsel for the petitioner refers to the Service Regulations of the Bank, more specifically,



Regulations 61, 62, 63, 66, etc. While drawing the attention of this Court to Regulation 55 (2) of the Service Regulations, he submits that 'Bank' means 'the Board of Management' and it alone has power to initiate the disciplinary proceedings against the petitioner. He contends that if the Bank/Management takes a decision to initiate the disciplinary proceedings, the competent authority has to take further action. He submits that in the present case, there is no decision of the Management as contemplated under Regulation 63 of the Service Regulations and issuance of a Charge Sheet in the absence of such decision taken by the Bank/Management as contemplated under Rules 63, is not sustainable and therefore, the whole proceedings are vitiated.

i) In elaboration, he submits that in respect of the allegations of misconduct against an employee, as per the procedure contemplated under Regulation 62 of the Service Regulations, it is the 'Bank' which is empowered to appoint an Enquiry Officer and Rule 66 (v) also refers to the steps to be taken by the 'Bank' while appointing an Enquiry Officer. As the Enquiry Officer was not appointed by the Bank, the impugned order on the basis of the report submitted by such Officer is not legally valid. He further submits that Rule 66 (vii) contemplates the manner in which the enquiry is required to be conducted. He contends that though in terms of the said provision, three months' time is contemplated, the enquiry in the present case was completed within one week, which itself would indicate that the



enquiry was conducted without giving any reasonable opportunity to the petitioner. He also contends that Rule 66 (ix), which deals with imposition of penalties, contemplates that if the disciplinary authority is not satisfied with the explanation submitted by the delinquent and major penalty is proposed, the delinquent must be given an opportunity to submit his reply/explanation to the disciplinary authority, but the same has not been complied with. In support of his contentions to the effect that the C.E.O. has no power or jurisdiction to initiate the disciplinary proceedings, learned counsel for the petitioner places reliance on a judgment of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in *Bh. Syam Prasad Vs. Krishna District Co-operative Central Bank Limited*, reported in 2016 (3) ALT 483. Contending so, the learned counsel for the petitioner urges that the impugned termination order is liable to be set aside.

5. Refuting the said contentions, learned Standing Counsel for the respondent-Bank contended that under Regulation 62 of the Service Regulations, which deals with the procedure for imposing any major penalty, the Management or the Disciplinary Authority is empowered to initiate the disciplinary proceedings and accordingly, the Enquiry Officer was appointed. It is contended that a Charge Memo was issued to the petitioner on 25.05.2018 and as no explanation was submitted despite affording ample opportunity, the petitioner was placed under suspension. It is submitted that during



the course of domestic enquiry, the petitioner admitted his guilt before the Enquiry Officer and in view of the same, after serving a copy of the Enquiry Report, the petitioner was called upon to show cause as to why he should not be removed from the Bank for the grave misconduct committed by him. The learned Standing Counsel states that the petitioner submitted his explanation and after due consideration of the same, he was terminated from service, after giving ample opportunity, at every stage of the enquiry. It is pleaded that as the allegations of grave misconduct were proved during the enquiry, the issuance of termination order cannot be found fault with. While submitting that the order impugned has been passed in strict compliance with the principles of natural justice and in terms of the Service Regulations, the learned Standing Counsel contends that no interference is called for in the present writ petition.

i) The learned Standing Counsel also submits that the Service Regulations provides for an appeal to the appellate authority against the order impugned in the writ petition and the petitioner, instead of availing the remedy of appeal, instituted the present writ petition and the same is liable to be dismissed on the ground of availability of alternative remedy. It is also contended that the judgment relied on by the learned counsel for the petitioner is not applicable to the facts of the present case, and submits that the issue raised therein relates to appointment of an Advocate as an Enquiry Officer, which



in fact, was not interfered with by the Hon'ble Court. Making the said submissions, it was urged to dismiss the writ petition.

6. This Court has considered the contentions advanced by the respective Counsel with reference to the material available on record, including the Service Regulations of the respondent-Bank.

7. Chapter-X of the Service Regulations deals with the Conduct, Discipline, Procedure, Suspension, Punishment and Appeal. As per Regulation 55 of the Service Regulations, the Rules of Conduct Discipline and Appeals apply to all the Employees and Officers of the Bank. Regulation 55 (2) envisages that in the said Rules unless and otherwise specifically mentioned, 'Bank' means the 'Board of Management', 'Employee' means the 'Workmen' and also the 'Officers' of the Bank. Regulation 56 deals with 'Misconduct' and what constitutes 'Major Misconduct' is set out in Regulation 58. Regulation 61 deals with major punishments and Regulation 62 deals with the procedure for imposing any major punishments. Regulations 62, 63, 66, which are of immediate relevance for the purpose of considering the submissions, reads thus:

***“62 – PROCEDURE:***

*For imposing any of the above major punishments, the Bank shall follow the following procedure:*

*When an act of malfeasance or misconduct is brought to the notice of the Management and when the Management or the disciplinary Authority is of the opinion that there*



*are prima facie grounds for any enquiry into the truth of misconduct of misbehaviour of an employee it may appoint any officer of the Bank to find out the truth thereof and give the report.*

*The Management need not conduct any preliminary enquiry if the nature of the misconduct is on the basis of the Enquiry, Inspection or Audit done by the financing Bank or by the office of the Registrar of Coop. Societies or by the Internal Audit of the Bank itself. If the Management comes to the conclusion that on the basis of the preliminary enquiry that there is no case for initiating disciplinary proceedings against the employee then the case may be dropped. However, when the act of malfeasance or misconduct prima facie appears and comes to the notice of the Management, it shall serve the memorandum on the employee calling upon him to offer his explanation for the alleged misconduct within a reasonable time. If the employee on whom the memorandum is served when seeking permission for offering his explanation beyond its stipulated time, such permission shall be granted at the sole discretion of the Competent Authority.*

**63. RECEIPT OF EXPLANATION:**

*On receipt of explanation from the employee, Bank may decide to*

- 1) Accept the explanation and close the matter or reject the explanation and advise the employee accordingly or initiate Disciplinary Proceedings.*





2) *In case the Management decides on the initiation of Disciplinary Proceedings, the Competent Authority should frame a detailed charge sheet against the employee concerned and the decisions to initiate disciplinary proceedings, against the employee be communicated to him/her within 15 days thereof.*

**66. (i) CHARGE SHEET:**

*On receipt of explanation from the employee, if the Bank Management is satisfied that there is nothing to proceed against him, the Management may let off the employee and drop further proceedings. However, if the misconduct on the part of the employee is such, that it requires further disciplinary action, the decision by the Bank to initiate disciplinary action against the employee shall be communicated to him and the charge sheet issued for the purpose shall clearly set forth the circumstances operating against him and a date shall be fixed and sufficient time must be given to him to enable him to prepare and give his explanation and also to produce any evidence that he may wish to tender in his defence.*

*Any Notice, Order, Charge sheet Communication or Intimation, which is meant for the employee, shall be in a language to be understood by him/her. In the case of an absent employee, Notice shall be sent to him/her by R.P.A.D. If an employee refused to accept any Notice, Order, Charge sheet, written communication or written intimation, in connection with the Disciplinary Proceedings, such a refusal should be treated as a good service upon him, provided such refusal takes place in the presence of at least 2 persons, including the person who*



*goes to effect service on him. When any Notice, Order, Charge sheet, Intimation or any other official communication which is meant for the individual employee is sent to him by R.P.A.D. at the last recorded address, communicated in writing by the employee and acknowledged by the bank, the same is to be deemed as a good service. The charge sheet must also contain as to how the employee has committed breach of the relevant rules and regulations which are in force in the Bank. The charge sheet must also contain the essential particulars and details to support the charges levelled against the employee. The charge sheet shall be issued by the Competent Authority or the Disciplinary Authority or by the person for whom delegation of disciplinary power has been given.*

**(ii) EXPLANATION TO CHARGE:**

*The charge-sheeted employee shall be called upon to submit his explanation in respect of charges contained in the charge-sheet.*

**(iii) EXPLANATION FOR THE CHARGES:**

*When the employee admits the charges, there is no need for an enquiry and the employer may impose the punishment, other than dismissal. If he proposes to dismiss, then it shall be only after holding an Enquiry or after having a personal hearing in the matter.*

*If the employee concerned denies the charges and explain his conduct in a satisfactory manner, the Bank may accept the explanation and drop further proceedings, which will also lead to dropping of Enquiry. When the charge is refuted by the employee, in his explanation to*



*the charge-sheet and when the Disciplinary Authority does not consider it to be satisfactory and comes to the conclusion that disciplinary action is called for, then further proceedings for conducting a domestic enquiry are to be initiated by appointing an Enquiry Officer and giving Notice of enquiry in the manner described for the purpose.”*

8. A plain reading of Rule 62 of the Service Regulations would go to show that when the Management or the Disciplinary Authority is of the opinion that there are *prima facie* grounds for an enquiry into the allegations of misconduct, any Officer of the Bank may be appointed to find out the truth (emphasis supplied) and to submit a report. Thus, the power conferred on both the Management or the Disciplinary Authority under Rule 62 relates to appointment of an Enquiry Officer to the extent of enquiring into truth or otherwise of the allegations and submission of a report, which in the opinion of this Court, is ordering a preliminary enquiry and calling for a preliminary enquiry report. Therefore, appointment of an Enquiry Officer for the purpose of a preliminary enquiry, either by the Management or the Disciplinary Authority would be valid. However, the matter requires further examination in the context of submissions made by the learned counsel for the petitioner with reference to the other Regulations, that it is the Management alone which is competent to appoint an Enquiry Officer and since in the present case the Enquiry Officer was appointed by an incompetent



authority i.e., the C.E.O. of the Bank, the impugned proceedings are vitiated.

9. The contention of the learned counsel for the petitioner that the Bank/Management alone is competent to appoint an Enquiry Officer also gains significance, in the light of Regulation 66 (v) which deals with Enquiry Officer.

10. A conjoint reading of the second part of Rule 62 and Rule 63 would indicate that on the basis of preliminary enquiry, the 'Management' may drop or take further action, in the event of which, opportunity should be afforded to the delinquent to submit explanation for the alleged misconduct and on receipt of the same, the 'Bank' may either 'decide' to accept the explanation and close the matter or reject the explanation and initiate the disciplinary proceedings. In the event the 'Management' decides to initiate the disciplinary proceedings, the competent authority should frame a detailed charge sheet against the employee concerned and the 'decision' to initiate the disciplinary proceedings shall be communicated to the delinquent. Further, Regulation 66 contemplates that if the 'Bank Management' is satisfied, on receipt of explanation that there is nothing to proceed against the delinquent, it may let him off and if it requires further disciplinary action, the 'decision' of the 'Bank' to initiate disciplinary action against the employee shall be communicated to him apart from issuance of charge sheet and granting sufficient time, for submission



of explanation. Regulation 66 (iii) contemplates, *inter alia*, that if the employer proposes to dismiss the employee/delinquent, it shall be only after holding an enquiry or after a personal hearing in the matter. A reading of second part of Regulation 66 (iii) would again indicate that the 'Bank' may accept the explanation and drop further proceedings, which will also lead to dropping of enquiry. Though there is a reference to satisfaction of the Disciplinary Authority with reference to domestic enquiry by appointing an Enquiry Officer, a reading of Rule 66 (v), which deals with Enquiry Officer, makes the position clear that it is 'Bank' which is empowered to appoint an Enquiry Officer.

11. From a holistic view of these Regulations, though there appears to be some ambiguity, it has to be construed, that the 'Bank' i.e., the 'Board of Management' as defined under Rule 55 (2) of the Service Regulations is required to consider the explanation submitted by the delinquent, take a 'decision' either to drop or proceed further in the matter and appoint an Enquiry Officer, after preliminary enquiry stage is concluded. In the present case, no such 'decision' appears to have been taken as specifically contemplated under the relevant Rules, nor was the Enquiry Officer appointed by the 'Bank'. The Service Regulations only empower the Disciplinary Authority to appoint an Enquiry Officer at preliminary stage as opined earlier, but would not clothe it with the power to appoint an Enquiry Officer, at a later stage. The C.E.O. would be competent to



take further action only after a 'decision' is taken by the Bank/ Board of Management with regard to initiation of disciplinary action and appointment of Enquiry Officer in the given facts and circumstances of the case. In the present case, no material is placed before this Court that after the decision was taken by the Bank/ Board of Management to initiate the disciplinary action on consideration of the explanation submitted by the petitioner, the C.E.O. had taken up further action.

12. Even assuming that the Disciplinary Authority is entitled to consider the explanation and take further action, in the absence of specific power to appoint an Enquiry Officer, which in fact is vested with the 'Bank'; such an appointment would not be valid and further action on the basis of report of the Enquiry Officer would not be sustainable. Though the learned Standing Counsel for the respondent-Bank submits that the action of the C.E.O. is ratified by placing reliance on the Board Resolution dated 22.01.2019, a perusal of the same would go to show that the said Resolution relates to the action of the C.E.O. in issuing the termination orders, but not with reference to authorising the C.E.O. to take further action in the matter after a decision was taken by the Bank/Board of Management to continue disciplinary proceedings on not being satisfied with the explanation of the petitioner and appointing an Enquiry Officer in terms of Regulation 66 (v) of the Bank. Therefore, the contention of the learned Standing Counsel for the



respondent-Bank in this regard merits no consideration. Though the appointment of Enquiry Officer by the Disciplinary Authority at the preliminary stage would be valid, as the Regulations provides, in the event of further action, for taking a decision by the Bank/Board of Management on examination of the explanation of the petitioner and appointment of an Enquiry Officer by the Bank thereafter, non-adherence to the same, would vitiate the proceedings. Therefore, the action of the C.E.O., in the considered opinion of this Court, either in appointing an Enquiry Officer or acting further on the basis of the report submitted by him is not legally sustainable.

13. At this juncture, it would be appropriate to refer to the Judgment in *Bh.Syam Prasad Vs. Krishna District Co-operative Central Bank Limited*, on which strong reliance was placed by the learned counsel for the petitioner. It is a case where the petitioner therein challenged the action of the respondents *inter alia* contending that C.E.O. has no authority to initiate the disciplinary proceedings. The Rules of Conduct of the Bank provides that the Management of the Bank is empowered to appoint any Officer of the Bank as an Enquiry Officer and the appointment of an Advocate as Enquiry Officer is contrary to the Rules. Further, before appointment of an Enquiry Officer, the Management shall issue charge sheet and no such charge sheet has been issued. The learned Judge, while referring to Rule (Regulation) 66 of the Rules of Conduct, held that it is the Bank Management which is empowered



to take a decision on the initiation of disciplinary action against an employee and the C.E.O. being a functionary of the Bank cannot be treated as Management and that it is the Managing Committee or the Board of Directors which constitutes the Management of Bank and therefore, the disciplinary proceedings initiated by the C.E.O. are without jurisdiction. The learned Judge held that under Rule 62 of the Rules of Conduct, for the purpose of finding out the truth of an act of misconduct or malfeasance alleged against an employee, the Management may appoint any Officer of the Bank as an Enquiry Officer for the purpose of holding a preliminary enquiry and further that when it comes to holding of the departmental enquiry, there can be no restriction for appointment of any person of the choice of the Management of the Bank as Enquiry Officer. The learned Judge at paras 7 and 8 of the Judgment held as follows:

*7. Coming to the third submission of the learned counsel, under Rule 66(i) of the Rules of Conduct, if the Bank Management is satisfied that an employee is guilty of misconduct and the same requires initiation of disciplinary action, the decision by the Bank to initiate disciplinary action against the employee shall be communicated to him and charge sheet issued for the purpose shall clearly set forth the circumstances operating against him. This Rule, thus, clearly envisages that the decision of the disciplinary authority i.e., the Bank Management which alone is empowered to issue charge sheet before appointing the Enquiry Officer, shall be communicated to the employee. As no such charge sheet has been issued by the Bank*





*Management, appointment of an Enquiry Officer without issuing charge sheet cannot be sustained.*

8. *For the above mentioned reasons, the impugned proceeding is set aside. However, respondent No.1 is left free to initiate disciplinary proceedings by issuing charge sheet and appoint an Enquiry Officer of its choice.”*

14. The legal position as set out in the above judgment dealing with the initiation of disciplinary action and appointment of an Enquiry Officer in terms of Regulation 66 by the Management of the Bank, applies to the present case. Though the learned Judge dealt with the aspect of the issuance of charge sheet in the facts and the circumstances of the said case, it is felt that the same need not be delved further in view of the conclusions with regard to the power of the disciplinary authority to appoint an Enquiry Officer which were recorded supra. Though the learned Standing Counsel made a submission with regard to remedy of appeal against the impugned order under Regulation 66 (x) of the Service Regulations, the same is not a bar for entertaining the writ petition, more particularly, when the jurisdiction/power of the C.E.O. to appoint an Enquiry Officer is under challenge. Therefore, the said contention is rejected.

15. In the light of the aforesaid analysis of the matter, the impugned proceedings are not sustainable in law and the same are accordingly set aside. It is made clear that this Court has not



examined the truth or otherwise of the allegations levelled against the petitioner and this order will not preclude or come in the way of the concerned authority empowered under the Regulations of the Bank to take appropriate action, in terms thereof and in accordance with law, against the petitioner.

16. Accordingly, the Writ Petition is allowed as indicated above.

No order as to costs.

17. As a sequel, miscellaneous petitions, if any, pending shall stand disposed of.

**NINALA JAYASURYA, J**

30<sup>th</sup> November, 2021  
cbs



HON'BLE SRI JUSTICE NINALA JAYASURYA

W.P.No.55 of 2019

30<sup>th</sup> November, 2021

cbs



**\*HON'BLE MR. JUSTICE NINALA JAYASURYA**

**+WRIT PETITION No. 55 of 2019**

% 30-11-2021

# S.P. Srinivasa Mutyam, S/o Srivenkateswarlu,  
Hindu, aged 32 years, Occ:Assistant Manager,  
R/o.Door No.1-106, Neggipudi village,  
Maruteru, Penmantra Mandal, W.G.Dt., A.P. .... Petitioner

Versus

\$ The State of Andhra Pradesh, rep. by its  
Principal Secretary, Cooperative Department,  
A.P.Secretariat, Velagapudi, Amaravati,  
Guntur District, A.P., and others ....Respondents

< GIST :

>HEAD NOTE :

! Counsel for the petitioner : Mr. K.Chidambaram

^ Counsel for respondent No.1 : Government Pleader  
for Cooperation

^ Counsel for respondent Nos.2 to 4 : Mr. K. Bharath Ram

? CASES REFERRED :

1) 2016 (3) ALT 483



**HON'BLE MR. JUSTICE NINALA JAYASURYA**

**WRIT PETITION No. 55 of 2019**

S.P. Srinivasa Mutyam, S/o Srivenkateswarlu,  
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Versus

The State of Andhra Pradesh, rep. by its  
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A.P.Secretariat, Velagapudi, Amaravati,  
Guntur District, A.P., and others .... Respondents

DATE OF JUDGMENT PRONOUNCED: 30.11.2021

**SUBMITTED FOR APPROVAL:**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to  
see the fair copy of the Judgment? Yes/No

**NINALA JAYASURYA, J**