2025:KER:28427

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947

WP(C) NO. 7904 OF 2022

PETITIONERS:

1 CHAMPAKKARA SERVICE CO-OPERATIVE BANK
LTD NO. 3511
KARUKACHAL P.O.KOTTAYAM,
REPRESENTED BY ITS SECRETARY

2 THE BOARD OF MANAGEMENT,
CHAMPAKKARA SERVICE CO-OPERATIVE BANK
LTD NO 3511, H.O. KARUKACHAL.KOTTAYAM,
REPRESENTED BY ITS PRESIDENT

BY ADVS.GEORGE POONTHOTTAM (SR.)
NISHA GEORGE,A.L.NAVANEETH KRISHNAN
ANSHIN K.K,CHITHRA P.GEORGE
REGINALD VALSALAN

RESPONDENTS:

S.GEETHAMANI
KRISHNA KRIPA HOUSE, KARUKACHAL P.O,
KOTTAYAM-686 540

BY ADVS.
T.R.HARIKUMAR
ARJUN RAGHAVAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:28427

VIJU ABRAHAM, J.

.....

W.P.(C) No.7904 of 2022

.....

Dated this the 3rd day of April, 2025

JUDGMENT

The above writ petition is filed challenging Exts.P14 and P16 and for other consequential reliefs.

2. The averment in the writ petition, in brief, is as follows: The 1st petitioner is a co-operative bank. Alleging malpractice and irregularities, the respondent who was working as Secretary was suspended from service and the sub committee was authorized to verify and submit a report in this regard. Later show-cause notice was issued and a three-member disciplinary committee was constituted for enquiry. An enquiry officer was appointed who submitted Ext.P4 enquiry report finding that the management had failed to prove the charges against the respondent and she was found to be not guilty. The report was deliberated by the disciplinary sub-committee. Before taking a final decision, the Chairman of the sub-committee resigned and later a new three-member committee was constituted. They considered the report and found that the findings in the report are wrong and after analysing the report and the evidence adduced in the enquiry, they found that charge Nos.1, 2, 4, 8, 9, 12, 13, 14, 15, 17, 18

and 19 stand proved. The respondent was given a copy of the decision of the sub-committee as per Ext.P6 and afforded an opportunity of being heard to the respondent. Reply was submitted and later by Ext.P8, the sub-committee accepted the domestic enquiry report with the modification and intimated the respondent. The sub-committee later decided to dismiss her from service and issued Ext.P9 show-cause notice and thereafter Ext.P10 decision was taken to dismiss the respondent from service and was communicated as per Ext.P11. Statutory appeal was filed before the Board of Directors which is dismissed as per Ext.P12. Challenging the same, respondent approached the Arbitration Court, filing ARC No.22 of 2016 which was allowed as per Ext.P14 award. Aggrieved by the same, appeal was preferred before the Arbitration Court which was also dismissed as per Ext.P16. It is challenging the said orders that the present writ petition has been filed.

3. The learned counsel appearing for the petitioners contends that the disciplinary sub-committee is well within its powers to either accept the report or to modify it and to find the delinquent guilty. The enquiry officer is appointed for the sake of convenience but the enquiry officer has accepted the appointment with an intention to absolve the respondent of the charges than properly performing his duties as an enquiry officer. The second disciplinary sub-committee has re-

appreciated the report of the enquiry officer and came to a different conclusion for which they are legally authorized to. Once the report is discarded and the disciplinary sub-committee takes a fresh decision, the enquiry report has no value and therefore the Arbitration Court went wrong in examining the enquiry officer and entered a finding in favour of the respondent. The finding of the Tribunal that the respondent was never issued with a notice about the modified report is not correct in the light of Ext.P8 notice issued in this regard. If the management loses trust towards its employee, that too with an allegation of misappropriation of money, the reasonable punishment is a dismissal.

4. A detailed counter affidavit has been filed by the respondent submitting that Exts.P14 and P16 does not suffer from any material illegality or irregularity warranting interference by this Court exercising the extraordinary jurisdiction under Article 226 of the Constitution of India. The factual finding entered by the Statutory Authorities/Tribunals cannot be re-appreciated by this Court exercising the discretionary jurisdiction under Article 226 of the Constitution of India as reiterated by the Apex Court in **Pravin Kumar v. Union of India, (2020) 9 SCC 471**. The allegation of malpractice, etc. are without any basis and all proceedings were initiated only at the instance of her four juniors who were appointed on the same day with the respondent and if the respondent continues in service, none of the four persons will get a

chance for being appointed as Secretary of the bank. The memo of charges is issued by the sub-committee itself and the same is in violation of Rule 198 of the Kerala Co-operative Societies Rules, 1969 in as much as it is only the managing committee who is empowered to issue the same as held by this Court in **Kodencherry Service Cooperative Bank Ltd. v. Joint Registrar of Cooperative Societies, 2020 (4) KLT 129.** Further contention that the earlier sub-committee did not take any decision on 06.06.2015 is without any basis and the sub-committee has taken Ext.R(a) decision on 06-06-2015 accepting the enquiry report and exonerating the respondent of all the charges levelled against her. It is after that a fresh sub-committee was constituted without notice to the respondent. The sub-committee newly constituted entered a finding of guilt against the respondent contrary to the findings in the enquiry report without giving an opportunity of hearing and the same is arbitrary and unjust. The procedure to be followed when the disciplinary authorities disagree with the findings of the enquiry officer has been settled by a catena of judgments by the Apex Court and by this Court in **Punjab National Bank v. S.P Goel, AIR 1998 SC 2713, Somarajan C.G. v. Joint Registrar of Cooperative Societies and Others, 2009 (3) KHC 304** and **Steel Authority of India Ltd. v. M.R. Surendradas, 2014 (2) KHC 474.** In the light of the above, respondent sought for dismissal of the writ

petition.

5. A petition has been filed by the petitioners seeking to accept certain documents and on the basis of Annexure -1 minutes, dated 03.06.2015, it is contended that the sub-committee adjourned the consideration of the enquiry report to 06.06.2015 and on 05.06.2015, the Chairman of the sub-committee resigned as per Annexure-2 letter and later the Board meeting held on 08.06.2015 accepted the resignation and constituted a new sub-committee as per Annexure-3 decision and the new disciplinary committee discussed in detail about the findings in the enquiry report as evidenced from Annexure-4 minutes and later by Annexure-5 decision, the report was accepted with modifications and finding that the respondent is guilty of charge Nos. 1, 2, 4, 8, 9, 12, 13, 14, 15, 17, 18 and 19. The said decision was upheld in appeal also and therefore the interference by the Arbitration Court and the Tribunal is without any basis.

6. I have heard the rival contentions on both sides.

7. Admittedly an enquiry was conducted on the allegations against the respondent and after a detailed enquiry Ext.P3 enquiry report was submitted by the enquiry officer wherein it is clearly found that the management was not able to prove any of the charges levelled against the respondent, the delinquent employee. It is thereafter that a new sub-committee was constituted, which entered a finding of guilt

against the respondent in respect of charge Nos.1, 2, 4, 8, 9, 12, 13, 14, 15, 17, 18 and 19 and thereafter decided to dismiss the respondent from service as per Ext.P10 proceedings. The specific contention raised by the respondent is that the same has been done without following the procedures established by law. The Co-operative Arbitration Court by Ext.P14 interfered with the said finding. The Arbitration Court entered a finding that both the petitioners and respondent were given sufficient opportunity to defend their case and they were represented through counsel and only after a detailed/elaborate enquiry the enquiry officer has submitted an enquiry report finding that the respondent is not guilty of any of the charges levelled against her. It was also found that the petitioners could not establish that the charges levelled against the respondent are proved with material evidence. The Co-operative Arbitration Court also entered a finding to the effect that there is clear violation of the principles of natural justice. In the appeal preferred before the Tribunal against Ext.P14, the Tribunal while issuing Ext.P16 judgment has clearly entered a finding to the effect that charge No.1 which is relied on by the disciplinary sub-committee to dismiss the respondent from service is in respect of the salary disbursed to the wife of a deceased employee and before the enquiry officer wife of the deceased employee was examined as a witness and she deposed that she had already received

part of the salary of her deceased husband and on the basis of the same the Tribunal found that the same would show that the finding of the disciplinary sub-committee on charge No.1 is without any basis. There is a further finding by the Tribunal that though the disciplinary sub-committee could take a different view than that was taken by the enquiry officer, the procedures, including affording an opportunity of hearing to the respondent, were not followed. The Tribunal, after elaborately considering the enquiry report and evidence adduced as well as the decision of the disciplinary sub-committee finding that charge Nos.1, 2, 4, 8, 9, 12, 13, 14, 15, 17, 18 and 19 are proved, found that there is absolutely no basis or any evidence, documentary or otherwise to come to the said conclusion and therefore did not interfere with the order of the Arbitration Co-operative Court.

8. Admittedly Ext.P4 enquiry report is in favour of the respondent wherein the enquiry officer, after conducting a detailed enquiry and after recording the evidence, entered a finding that none of the charges could be proved by the management. Thereafter a fresh sub-committee was constituted and the said committee issued Ext.P8 communication intimating the respondent that the enquiry report has been rejected and they have entered a finding to the effect that the charges against the respondent in respect of charge Nos.1, 2, 4, 8, 9, 12, 13, 14, 15, 17, 18 and 19 are proved against her and the order

imposing punishment will be issued to her soon. The respondent submits that the said procedure as seen from Ext.P8 is against the law. In Ext.P16 judgment in appeal, the Tribunal has also entered such a finding. The Apex Court in **S.P Goel**'s case cited supra has held that whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings and when the disciplinary authority disagreeing with the findings of the enquiry officer, the disciplinary authority must give an opportunity of hearing to the delinquent officer. Paragraphs 17 and 19 of the said judgment read as follows:

> *"17 These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (supra) quoted earlier and would be applicable at the first stage itself: The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case (supra) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must*

give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority.

....

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation.7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer. "

This Court in **Steel Authority of India Ltd.**'s case cited supra has also held that when the disciplinary authority disagrees with the enquiry officer, the finding which is disagreed upon has to be identified and

notified. Paragraph 2 of the said judgment reads as follows:

> *"2. Enquiry officer found that none of the charges is proved. The disciplinary authority issued Ext. R3(a) memo saying that memo of charges is established. There is not a syllable in Ext. R3(a) dated 24/04/2002 whether the disciplinary authority has disagreed or has stated reasons for such disagreement as regards any of the findings of the enquiry officer. It is trite law that when a disciplinary authority disagrees with enquiry officer, the finding, which is disagreed upon, has to be identified and notified. The reasons for the disagreement have also to be notified to the delinquent. Otherwise, the opportunity extended to the delinquent to show - cause upon such undisclosed disagreement and undisclosed reasons, therefore, would be meaningless. Without the proposal for disagreement and the reasons for the proposed disagreement being on record, the delinquent cannot be required to answer any proposal for the disciplinary authority's disagreement to the findings of the enquiry officer. The delinquent cannot be expected to assume or make an enquiry by himself, roving into the vicissitudes of the spectrum of thoughts of the disciplinary authority; even without being notified of the proposed disagreement or reasons therefor. The delinquent cannot be legally expected to show - cause on the basis of the assumed proposal to disagree or the assumed reasons for the disagreement, which are not disclosed by the disciplinary authority. Those could be even fertile zones of imagination, not eligible to legal and constitutional comprehension in terms of the Constitution of India and the laws. The delinquent cannot be expected to anticipate such matters. In Ext. R3(a), as already noted, there is no expression of disagreement even. Under such circumstances, we do not find any ground to set aside the decision of the learned Single Judge in this intra - Court appeal."*

This Court in **Somarajan C.G.**'s case cited supra has considered

similar issue relating to a co-operative society itself and held that when the enquiry officer has exonerated the delinquent of all charges and if the sub-committee disagree with the findings of the enquiry officer, the sub-committee is empowered to do so only after putting the delinquent on notice. Paragraph 6 of the said judgment reads as follows:

> *"6. Insofar as the first contention is concerned, a reading of Ext. P6, the report submitted by the Enquiry Officer appointed by the Bank for conducting enquiry into Ext. P3 memo of charges show that, the Enquiry Officer held the evidence in the enquiry insufficient to conclude the guilt of the petitioner and on that basis exonerated him of the charges. The report of the Enquiry Officer was considered by the Sub Committee appointed as per Ext. P7 and the Sub Committee straight away, disagreed with the findings of the Enquiry Officer and recommend the petitioner's termination. If a report of the Enquiry Officer is in favour of the delinquent, although it is perfectly within the power of the disciplinary authority to disagree with the findings, the disagreement can only be after putting the delinquent on notice and after disclosing to him the tentative grounds on which it is proposed to disagree with the findings of the enquiry officer. The delinquent should also be given an opportunity to make his representations in the matter. Ext. P8 shows that no such notice was given and that an opportunity was not given either by the Sub Committee or by the Board of Directors when it resolved to terminate the petitioner as per Ext. P9. Therefore, the said decision to disagree with the findings of the Enquiry Officer in favour of the delinquent is violative of the principles of natural justice and for that reason the said action of the Sub Committee of the Board cannot be sustained. The other plea that is raised by the counsel for the petitioner is regarding the incompetency of the Board of Directors to have passed Ext. P9 proceedings. The disciplinary authority, who could impose the punishment is the one mentioned in*

> *R.198(3) of the Kerala Cooperative Societies Rules. Petitioner is a Salesman in the Bank. The punishment of termination as provided under R.198(1)(h) could be imposed only by the President of the Bank. On the other hand in this case, such punishment has been imposed by the Board of Directors, which has been conferred with the appellate jurisdiction as per R.194(4) of the Rules. The resultant position is that the petitioner has lost the right of appeal. In my view, this could not have been done, particularly in the light of the judgment of this Court in President, Pudupariyaram Service Cooperative Society v. Rugmini Amma and Others, 1996 KHC 25 : 1996 (1) KLT 100 : 1995 (2) KLJ 715 : ILR 1996 (1) Ker. 674.”*

Going by the decisions cited supra, whenever the disciplinary authority disagrees with the enquiry authority on any of the charges before it records its finding on such charge, notice of hearing should be afforded to the delinquent officer. A perusal of Ext.P8 would reveal that they have entered into a finding that the respondent is guilty of charge Nos. 1, 2, 4, 8, 9, 12, 13, 14, 15, 17, 18 and 19 but no opportunity of hearing was given to the respondent before issuing Ext.P8 order. A perusal of Ext.P8 also revealed that they have already taken a decision to impose punishment on the respondent and stated therein that the intimation regarding imposition of punishment will be served on the respondent soon. In view of the above, it is without any doubt that the proceedings in Ext.P8 finding the respondent guilty of said charges are without following the procedures laid down as held by the decisions of the Apex Court and this Court cited supra and therefore imposition of punishment

on the respondent is in clear violation of the principles of natural justice. All these aspects were correctly considered in detail by the Arbitration Court as well as the Tribunal.

9. Though a contention was raised by the respondent alleging lack of competency of the sub-committee to issue memo of charges, I am not inclined to accept the said contention raised based on the decision in **Kodencherry Service Cooperative Bank Ltd.**'s case cited supra in view of the Full Bench decision of this Court in **Mattanur Co-operative Rural Bank Ltd. v. The Co-operative Arbitration Court and others, 2023 (5) KLT 312**.

10. The Apex Court in **Pravin Kumar**'s case cited supra has considered the scope of interference by this Court exercising the power of judicial review and held that judicial review is an evaluation of decision making process and not merits of decision itself, and the same is to ensure fairness in treatment and not fairness of conclusion. The Arbitration Court as well as the Tribunal has entered into a finding that the procedure followed for imposing the punishment on the respondent is wrong and also entered a specific finding on fact to the effect that there is no basis or proof for the petitioners to come to a different conclusion from that of the enquiry officer who has found the respondent not guilty of the charges against her. The Tribunal has also entered a finding that though the management took a different decision

than that of the enquiry officer, they have not explained the grounds of disagreement and the reasons for disagreement have not been notified to the delinquent employee. The respondent has already retired from service.

Taking into consideration the above facts and circumstances and considering the dictum laid down by the Apex Court in **Pravin Kumar**'s case cited supra regarding scope of interference in such matters and having found that the decision of the disciplinary sub-committee in entering a finding that the respondent is guilty of the charges levelled against her was without following the procedures contemplated and that the Tribunal has entered a finding that there is absolutely no material provided by the management to take a different view than that of the enquiry officer, I find no reason to interfere with the orders impugned herein. Accordingly the writ petition is dismissed.

Sd/-

VIJU ABRAHAM
JUDGE

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APPENDIX OF WP(C) 7904/2022

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE SHOW CAUSE NOTICE ALONG WITH THE ALLEGATION DATED 31.7.2014 ISSUED BY THE 2ND PETITIONER TO THE RESPONDENT**
Exhibit P2	**TRUE COPY OF THE REPLY DATED 8.9.2014 SUBMITTED BY THE RESPONDENT TO THE 2ND PETITIONER**
Exhibit P3	**TRUE COPY OF THE MEMO OF CHARGES DATED 20.10.2014 ISSUED BY THE 2ND PETITIONER TO THE RESPONDENT**
Exhibit P4	**TRUE COPY OF THE DOMESTIC ENQUIRY REPORT DATED 27.5.2015**
Exhibit P5	**TRUE COPY OF THE JUDGMENT DATED 18.6.2015 IN WPC NO 16098 OF 2015 OF THIS HON'BLE COURT**
Exhibit P6	**TRUE COPY OF THE COMMUNICATION DATED 26.6.2015 ISSUED BY THE CHAIRMAN DISCIPLINARY SUB-COMMITTEE, CHAMBAKKARA.**
Exhibit P7	**TRUE COPY OF THE RE4PLY DATED 2.7.2015 SUBMITTED BY THE RESPONDENT TO THE CHAIRMAN, DISCIPLINARY SUB-COMMITTEE, CHAMBAKKARA**
Exhibit P8	**TRUE COPY OF THE COMMUNICATION DATED 25.7.2015 ISSUED BY THE CHAIRMAN, DISCIPLINARY SUB-COMMITEE, CHAMBAKKARA TO THE RESPONDENT**
Exhibit P9	**TRUE COPY OF THE SHOW CAUSE NOTICE DATED 28.7.2015 ISSUED BY THE CHAIRMAN, DISCIPLINARY SUB-COMMITTEE, CHAMBAKKARA TO THE RESPONDENT**
Exhibit P10	**TRUE COPY OF THE RESOLUTION DATED 4.8.2015 OF THE DISCIPLINARY COMMITTEE**
Exhibit P11	**TRUE COPY OF THE COMMUNICATION DATED 6..8.2015 ISSUED BY THE CHAIRMAN, DISCIPLINARY SUB-COMMITTEE, CHAMBAKKARA TO THE RESPONDENT**

Exhibit P12	**TRUE COPY OF THE APPEAL DECISION DATED 5.2.2016 OF THE 1ST PETITIONER**
Exhibit P13	**TRUE COPY OF THE COMMUNICATION DATED 10.2.2016 OF THE 1ST PETITIONER TO THE 2ND PETITIONER**
Exhibit P14	**TRUE COPY OF THE AWARD DATED 17.3.20121 IN ARC NO 22/2016 OF THE CO-OPERATIVE ARBITRATION COURT, THIRUVANANTHAPURAM**
Exhibit P15	**TRUE COPY OF THE APPEAL DATED 7.7.2021 FILED BY THE PETITIONERS BEFORE THE CO-OPERATIVE ARBITRATION COURT, THIRUVANANTHAPURAM**
Exhibit P16	**TRUE COPY OF THE JUDGMENT DATED 3.1.2022 IN APPEAL NO 5/2021 PASSED BY THE LEARNED KERALA CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM**

RESPONDENT EXHIBITS

Exhibit R(a)	**A TRUE COPY OF THE PROCEEDING OF THE DISCIPLINARY SUB COMMITTEE MEMBERS DATED 06-06-2015.**

PETITIONER ANNEXURES

Annexure 1	**TRUE COPY OF THE MINUTES OF THE SUBCOMMITTEE MEETING DATED 03.06.2015**
Annexure 2	**TRUE COPY OF THE RESIGNATION LETTER DATED 5.6.2015 SUBMITTED BY ONE MR.MOHANDAS KURUP TO THE 1ST PETITIONER BANK**
Annexure 3	**TRUE COPY OF THE MINUTES OF THE MEETING DATED 08.06.2015**
Annexure 4	**TRUE COPY OF THE MINUTES OF THE MEETING DATED 10.06.2015**
Annexure 5	**TRUE COPY OF THE MINUTES OF THE MEETING DATED 24.6.2015**