

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.7553 of 2010

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Tribal Development Co-operative
Corporation of Orissa Ltd. (TDCCOL),
represented through its Managing Director,
At- Rupali Square, P.S. Sahid Nagar,
Bhubaneswar, Dist: Khurda. ... Petitioner

-Versus-

Registrar, Co-operative Tribunal,
Orissa, Bhubanewar and another. ... Opp. Parties

For Petitioner : M/s. Bhagaban Mohanty,
D. Chhotrary, B. Moharana &
S. Mohanty.

For Opp. Parties : M/s.P.K. Padhi, P.K. Panda,
D.K. Nayak, S. Nayak &
A. K.Rath (O.P. 2)

P R E S E N T:

THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgment: 30.04.2013

B.N. Mahapatra, J. This writ petition has been filed at the instance of the petitioner-Tribal Development Co-operative Corporation of Orissa Ltd. (for short, 'TDCCOL'), to quash the order dated 15.03.2010 (Annexure-8) passed by opposite party No.1-Member, Co-operative Tribunal, Orissa, Bhubaneswar in Service Dispute No.4 of 2009 wherein the order dated 24.11.2008 (Annexure-6) dismissing opposite party No.2 from service and directing recovery of Rs.172.84 of 2001-02 and Rs.78,868.73 for 2002-03 from him was set aside.

2. Petitioner-TDCCOL's case in a nut-shell is that the TDCCOL is a Co-operative Society registered under the Orissa Co-operative Societies Act having its registered office at Bhubaneswar and Branch Offices at different places in the State of Odisha. The object of TDCCOL is to ensure the economic development of the Tribal people and landless forest labourers engaged in agriculture, collection of forest produces and other ancillary works in the State of Odisha. Petitioner-TDCCOL is facing heavy loss since 1974 and the accumulated loss as on 31.03.2003 was more than Rs.65.0 crores. When the amount of loss increased year after year and it was even difficult to pay the regular salaries of the employees, a decision was taken in the public interest to down size the surplus employees of TDCCOL by giving them compulsory retirement under Rule 38 of the TDCC Service Rules, 1990 reviewing their past performance. Accordingly, the performances of the employees, who had attained 50 years of age or completed 20 years of service, were reviewed and a decision was taken to give compulsory retirement to 22 employees including opposite party No.2. Subsequently, on the direction of the Government in S.T. and S.C. Development Department, the case of opposite party No.2 was reviewed and the office order dated 29.09.2003 giving CRS to opposite party No.2 was revoked and he was directed vide office order No.203 dated 25.01.2006 to join his post. Accordingly, opposite party No.2 joined in the said post.

3. Basing upon the books of account and other relevant records/documents of the Central Godown, of which opposite party No.2

was in charge, a disciplinary proceeding vide D.P. No.3198 dated 03.09.2003 was initiated against him under the provision of TDCCOL Employees Disciplinary Proceedings and Appeal Rules, 1988.

4. Opposite party No.2 was charged with misappropriation of funds of the Corporation totalling to Rs.33,414/- in fraudulent manner and Rs.56,316/- by making fictitious transactions in books of accounts. Rs.38,558.65 has been misappropriated through shortage in various items of consumer goods. Another irregularity is irresponsibility and negligence in stock management that resulted in damage of huge stocks.

5. The charge sheet with above regard was duly communicated on 04.09.2003 and opposite party No.2 was directed to submit his written statement of defence within 30 days from the date of receipt of the charge sheet. Opposite party No.2 was also permitted to verify/inspect the relevant records and take extract thereof with prior permission from the Branch Manager (Marketing), TDCCOL, Head Office. Opposite party No.2 neither requested for verification of the records nor submitted his written statement of defence within 30 days of receipt of the charge sheet, though sufficient opportunity was given to him. The enquiry was temporarily postponed from 04.11.2004 to 22.01.2006 and 08.06.2006 to 30.11.2006 on account of transfer and posting of new Manager (Finance & Audit), who was appointed as the Enquiry Officer. The enquiry was first conducted on 13.07.2004 and subsequently adjourned to 18 times, out of these 18 occasions, opposite party no.2 took four adjournments for submission of his written

statement. Although the prayer was allowed and opposite party No.2 was granted not less than one month's time on each occasion, he could not submit his defence statement. On 09.06.2008, the Enquiry Officer passed order for final hearing on 23.06.2008. Pursuant to order dated 09.06.2008, the enquiry was conducted on 23.06.2008 and on the said date, opposite party no.2 filed his written statement of defence. After recording the statement of opposite party no.2 and going through the relevant records, books of account, the enquiry was closed. Opposite party No.2 also filed another additional written statement of defence. Though the matter was posted for final hearing, opposite party No.2 again for the purpose of prolonging the matter prayed for time to submit elaborate reply.

6. Opposite party No.2 in his statement admitted that proceeding has been initiated on the basis of special audit report dated 26.07.2003 and also while admitting the liability of Rs.172.84 for the year 2001-02 and Rs.78,868.73 for the period 2002-03 he stated that he may be allowed shortage of stock due to shrinking, which was not at all admissible. The Enquiry Officer submitted his report on 08.08.2008 suggesting recovery of an amount of Rs.172.84 for the year 2001-2002 and Rs.78,868.73 for the year 2002-03. It is further suggested to impose major penalty under TDCC Employees Disciplinary Proceedings and Appeal Rules, 1988 (for short 'Rules, 1988') against the Delinquent Officer. Copy of the enquiry report was duly communicated to opposite party no.2 on 01.11.2008 and he was directed to submit his comments

on the enquiry report within a period of 15 days of receipt thereof. Though the Enquiry report was received on 01.11.2008 again opposite party No.2 instead of submitting his comments within the period of 15 days, filed an application on 12.11.2008 praying for two months' time to submit his reply. The Managing Director, who being the appointing authority and disciplinary authority rejected the application for time and after examining the records passed order dated 24.11.2008 dismissing opposite party No.2 from service.

7. Being aggrieved, opposite party no.2 preferred an appeal before the appellate authority and during pendency of the appeal also, filed an application before the State Co-operative Tribunal, Orissa under Section 67-B of the Orissa State Co-operative Societies Act, which has been registered as Service Dispute No.4 of 2009. Pursuant to the direction of the Tribunal on 21.11.2009, the petitioner-TDCCOL produced the entire records relating to the enquiry and also filed evidence on affidavit. The learned Tribunal after recording the evidence of the parties passed order dated 15.03.2010 allowing the Service Dispute by setting aside the order of dismissal. Hence, the present writ petition.

8. Mr.B. Mohanty, learned counsel appearing for the petitioner submitted that the impugned order dated 15.03.2010 passed by the learned Tribunal is against the weight of evidence available on record and therefore, liable to be set aside. The impugned order is based on surmises and conjectures and therefore not sustainable in the eye of

law. There was no need to pass a resolution authorizing the Managing Director to be the Disciplinary Authority which is highly misconceived and not sustainable in the eye of law. The learned Tribunal grossly erred in ignoring the proceeding of the Managing Committee dated 06.11.1992 authorizing the Managing Director to function as the Appointing Authority as well as Disciplinary Authority. Since the date of such authorization, the Managing Director is functioning as the Appointing Authority and Disciplinary Authority in respect of all Grade-I, Grade-II, Grade-III and Grade-IV employees. Disciplinary proceeding against opposite party no.2 was drawn-up under Rules, 1988, whereas the order of compulsory retirement was subsequently passed under Rule 38 of the TDCC Employees Service Rules, 1990 (for short, 'Rules, 1990') after examining his overall performance and past service records. As such, the compulsory retirement under the Service Rule and Disciplinary Proceeding are quite distinct having no relevance or nexus with each other. Even if an employee takes voluntary retirement or retires on superannuation or given CRS from service, there is no bar to continue the Disciplinary proceeding till its finalization. The finding of the learned Tribunal that the disciplinary proceeding against opposite party no.2 lapsed after he was allowed to retire and cannot be revived on his fresh entry into service and no punishment could be awarded, is highly misconceived and not sustainable in the eye of law. Finding of the learned Tribunal with regard to Issue Nos.2 and 3 is against the materials available on record.

9. Opposite party No.2 who was in-charge of the Central Godown purposefully did not maintain the records properly. The charges based on documentary evidence were verified by opposite party No.2 and in spite of several opportunities given, opposite party No.2, deliberately for the purpose of prolonging the matter, did not file any written statement of defence. On 09.06.2008, when the Enquiry Officer passed order posting the matter to 23.06.2008 for final hearing, opposite party no.2 on 23.06.2008 filed his written statement of defence under Annexure-2 and again prayed for time to file elaborate written statement of defence. Opposite party No.2 while admitting his liabilities only prayed for allowing him natural shortage in consumer goods. In the written statement, opposite party no.2 has not made any statements regarding prejudice caused to him for non-examination of any record. Learned Tribunal without going through the record, which was produced by the petitioner as per direction under Annexure-6 grossly erred in recording the finding that Enquiry Officer himself had gone through the audit report and submitted his report which is contrary to the materials available on record.

10. It was argued that law is well settled that the departmental enquiry is not governed by the strict and technical rules of Evidence Act and opposite party No.2 having neither at any point of time submitted his list of witness nor asked for cross-examination of any witness, the finding of the learned Tribunal is not sustainable in the eye of law. As most of the charges are based on documentary evidence and opposite

party No.2 never refuted the same but admitted the liability, the learned Tribunal should not have interfered with the order passed by the Disciplinary Authority. Concluding his agreement, Mr. Mohanty submitted to allow the writ petition.

11. Mr. A.K. Rath, learned counsel appearing on behalf of opp. Party no.2 submitted that there is no illegality or infirmity in the impugned order passed by the Tribunal warranting interference by this Court. The present writ petition has been filed in order to deprive opp. Party no.2 of getting the benefit of reinstatement in service in terms of judgment under Annexure-8. Opp. Party no.2 was in no way responsible for the loss sustained by the petitioner since 1974. Opp. Party no.2 while working as Shop-supervisor in the establishment of the petitioner-society was subjected to a departmental proceeding. He was served with the memorandum of charges vide Charge Memo No.3198 dated 3.9.2003 (Annexure-1) and was directed to submit his written statement of defence within 30 days from the date of receipt of charges. Prior to completion of 30 days for submission of written statement of defence, opp. Party no.2 was given compulsory retirement with effect from 30.9.2003 vide order No.4618 dated 29.9.2003. When such compulsory retirement was found illegal and unreasonable by the State Government in its Department of S.C. and S.T. Development, opp. Party No.2 was reinstated in service with effect from 25.01.2006. Thus, opp. Party no.2 was not in service from 30.9.2003 till 24.01.2006 and thereby the “master and servant” relationship between the petitioner-society and this

opp. Party no.2 was not in existence during that period. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Bhagirathi Jena Vs. Board of Directors, OSFC and others*, AIR 1999 SC 1841, it is submitted that when a master and servant relationship between opp. Party no.2 and the petitioner-society was not existing during the period from 29.9.2003 to 25.1.2006 and when there was no rule of the petitioner-society to authorise for such continuance, continuance of the disciplinary proceeding against the opp. Party no.2 during the said period is not permissible in law and therefore the same is illegal and the Tribunal has also rightly taken the same view.

12. The Managing Director of the petitioner-society who proceeded against opp. Party no.2 in the Departmental proceeding during the relevant period, was not the disciplinary authority of this opp. Party no.2. The said Managing Director has not followed due procedure and principle of natural justice. The alleged shortage of stock was due to shrinking of forest produce which is a natural cause. The Managing Director should have allowed permissible shortage at the rate which was allowed to the predecessors of opp. Party no.2 and in that event there would be no shortage of stock. Mr. Rath, further submitted that two of his predecessors, namely, B.D. Mishra and L.D. Pal have been allowed shortages due to natural loss, whereas the same has not been allowed to opp. Party no.2. In spite of misappropriation, Mr.B.D. Mishra was reinstated in service whereas opp. Party no.2 without committing shortage was imposed with punishment of dismissal by the Managing

Director who is not competent to do so. In view of amendment of Section 67-B of the OCS Act vide OCS (Amendment) Act, 1991, appeal to the Chairman of the petitioner-society was futile proceeding. The appeal before the Chairman of the Society was filed on 1.12.2008, but no action was taken till 5.4.2009, i.e., for about five months for which opp. Party No.2 filed Dispute Case vide S.D. No.04 of 2009. The dispute case filed under Section 67-B of the OCS Act is to be decided by the Tribunal as per the procedure prescribed in Rule-82-A of the OCS Rules, 1965 and other provisions mentioned in the said Rule. Before the Tribunal, six issues were framed. After filing of the written statement by the petitioner-society, both the parties, i.e., petitioner-society and opp. Party no.2 adduced their respective evidence before the Tribunal with reference to the issues framed. Learned Tribunal after examining the case passed the impugned order under Annexure-8.

13. Mr. Rath, learned counsel further submitted that the provision of appeal against the order of punishment passed by the Disciplinary Authority lies under Rule 12 of the Rules, 1988 which was prepared by the Registrar of Co-operative Societies, Odisha exercising power conferred under Section 33-A of the OCS Act in the year 1988. Prior to amendment of Section 67-B of the OCS Act, the Tribunal had no authority to examine the legality and propriety of the disciplinary action taken against an employee other than workman of one Co-operative Society. After amendment of Section 67-B came into force by virtue of OCS (Amendment) Act, 1991, i.e., Orissa Act 28 of 1991, the provision of

appeal as contemplated under Rule 12 of Rules, 1988 became redundant. Learned Tribunal had authority to examine the legality and propriety of the order of punishment imposed upon opp. Party no.2. Accordingly, the Dispute case was filed by opp. Party no.2. During the course of hearing before this Court on the above point, learned counsel for the petitioner-society fairly conceded the legal position.

14. The Managing Director of the petitioner-Society cannot act as an appointing authority and the Disciplinary Authority of opp. Party no.2 in view of the detailed discussion made in Issue No.4 in the impugned order. As per own admission of the petitioner-society, under Annexure-5, the Committee of Management is the Disciplinary Authority of opp. Party no.2 which had authorised the Managing Director to act as such as per Resolution dated 6.11.1992. The resolution dated 6.11.1992, according to the Managing Director, was passed as per the provisions of bye-law No.18(z) (c-2) to exercise the power of the Committee mentioned under bye-law No.18(1) only. The argument advanced by the petitioner-society that Managing Director was delegated with the power of appointment and disciplinary action vide Resolution dated 6.11.1992 is not in conformity with Rule 4 of the TDCC Employees Service Rules, 1990 is not correct.

15. As per Rule 4 of the Rules, 1990, delegation of power can be made only for a particular period with certain conditions in case of exigency. Such a delegation cannot be for an indefinite period, that too, for about 20 long years against the letter and spirit of the Rule 4 framed

by the Registrar which tantamounts to amendment of the Rules by an incompetent body. Therefore, such a delegation, if any, vesting of powers of the committee with the Managing Director to act as the Disciplinary Authority is illegal and arbitrary in law. The action of Managing Director in initiating disciplinary proceeding and imposing punishment on opp. Party No.2 has not been ratified by the Committee of Management. Thus, it cannot be held in law that the Managing Director has exercised the power as the Disciplinary Authority in terms of Rule -4 of the Rules - 1990. The schedule appended to Rules, 1988 is not in consistent with the Rules framed by the Registrar of Co-operative Societies, Odisha by exercising his power under Section 33A of the OCS Act. Schedule is also opposed to Rule-4 of the Rules, 1990 where the Managing Committee is only vested with the power to act as a Disciplinary Authority. Thus, the said schedule is not at all enforceable. Therefore, the initiation of disciplinary proceeding against opp. Party no.2 by the Managing Director is an action without authority and consequentially the punishment imposed on opp. Party no.2 is unlawful and not sustainable in law.

16. Rule 9 of the Rules, 1988 prescribes the detailed procedure to be followed for imposition of major penalty on an employee. Sub-rule (3) of Rule 9 of the Rules, 1988 mandates that an employee against whom charges have been framed shall be supplied with all the records basing on which those charges/allegations are based for the purpose of preparation of the statement of defence. Opp. Party No.2 was never supplied with either by the Disciplinary Authority or by the Enquiring

Officer the documents on the basis of which charges were framed. This opp. Party no.2 was not allowed to rely upon the said documents. It is evident from the enquiry file produced by the petitioner-society that Enquiring Officer following the procedure prescribed in Sub-rule (6) of Rule 9 concluded the enquiry and submitted his finding in vogue. The Marshalling Officer has never taken any action levelled against opp. Party no.2. Opp. Party No.2 during the course of enquiry has also denied the charges. The witness examined on behalf of the petitioner-society before the Tribunal admitted that the Enquiring Officer turned down the statement of opp. Party no.2 on the basis of the special audit report. Law is well settled that on the basis of audit report no employee can be punished unless and until the facts based on the audit report is proved through process of law. Opp. Party No.2 was never issued with any half-margin memo by the Auditor for compliance. The special audit, if at all conducted, then that audit report cannot be relied upon particularly when that was prepared behind back of opp. Party no.2.

17. In the memo of charge, opp. Party No.2 was charged for misappropriation of funds to the tune of Rs.1,30,941.30 paise whereas in the enquiry report the Enquiring Officer fixed responsibility on him for Rs.79,041.57 paise. Under the RTI Act, 2005, opp. Party No.2 sought for information from the petitioner-society vide his applications dated 6.10.2009 and 16.11.2009. Pursuant to such application, opp. Party No.2 was intimated by the petitioner-society vide its letters dated 5.11.2009 and 29.01.2010 that no special audit report was ever sent to

this opp. Party for compliance. Concluding his argument, Mr. Rath submitted for dismissal of the writ petition.

18. On the rival contentions advanced by the parties, the following questions fall for consideration by this Court:

- (i) Whether during pendency of the appeal before the Chairman of the Petitioner-Society, service dispute before the Tribunal under Section 67B of the OCS Act is maintainable?
- (ii) Whether the Departmental Proceeding initiated prior to giving compulsory retirement revives after reinstatement of opp. Party no.2 in service?
- (iii) Whether the Managing Director of the petitioner-society who proceeded against opposite party No.2 in the departmental proceeding is the Appointing Authority as well as Disciplinary Authority of opp. Party No.2?
- (iv) Whether initiation of disciplinary proceeding against opposite party No.2 by the Managing Director is an action without authority and consequently the punishment imposed on opposite party No.2 is not sustainable in law?
- (v) Whether the Managing Director of the Petitioner-Society has followed the procedure and principle of natural justice before passing the impugned order under Annexure-8?
- (vi) Whether opposite party No.2 was supplied with all the documents on the basis of which charges were framed

either by the disciplinary authority or by the Enquiry Officer?

(vii) Whether the special audit report on the basis of which charges were framed was supplied to opposite party No.2?

(viii) What order?

19. Question No.(i) is whether during pendency of the appeal before the Chairman of the petitioner-Society service dispute before the Tribunal under Section 67B of O.C.S. Act, 1962 is maintainable.

After substitution of Section 67B of the Act, 1962 by Orissa Act No.28 of 91 dated 31.12.1991, which came into force with effect from 01.05.1993, the Tribunal had authority to examine the legality and propriety of the disciplinary action taken by the petitioner-Society or its Committee against any of its paid servant who is not a workman within the meaning of clause (s) of Section 2 of the Industrial Disputes Act, 1947. Under Section 67 B(iii), all the disputes arising in connection with the disciplinary action taken by the Society or its Committee against any paid servant of the Society with whatever authority under this Act/ Rules/ any regulation framed under this Act pending as on the date of commencement of the Orissa Cooperative Society (Amendment) Act, 1991 shall stand transferred to the Tribunal which shall dispose of the same in accordance with law.

In view of the above, during pendency of appeal before the Chairman of Petitioner-Society service dispute before the Tribunal filed by opposite party No.2 is maintainable.

20. Question No.(ii) is whether the disciplinary proceeding initiated prior to giving compulsory retirement revives after reinstatement of opposite party No.2 in service.

While dealing with issue No.(vi) in the impugned order, the learned Tribunal relying on the decision of this Court in the case of ***Pratap Kishore Das Vs. High Court of Orissa, represented by its Registrar (Admn.) and others***, 109 (2010) CLT 12 has held that a disciplinary proceeding against an employee after he was allowed to retire cannot be survived on his fresh entry into service and no punishment could be awarded.

Undisputed facts in the present case are that the Departmental Proceeding was initiated against opposite party No.2 on 03.09.2003. During pendency of such proceeding opposite party No.2 was given compulsory retirement with effect from 30.09.2003. Subsequently, opposite party No.2 was taken into service on 25.01.2006.

At this stage, it would be relevant to note here the background, on which opposite party No.2 was given compulsory retirement and subsequently he was reinstated in service. Petitioner-TDCCOL was facing loss since 1974 and since the accumulated loss increased year after year and it became difficult on the part of the petitioner to pay regular salaries to the employees, a decision was taken in the public interest to downsize the service of employees of TDCCOL by giving them compulsory retirement under Rule 38 of the Rules, 1990 reviewing their past services. Accordingly, performance of the employees

who had attained 50 years age or completed 20 years service were reviewed and decision was taken to give compulsory retirement to 22 employees including opposite party No.2. Subsequently, on direction of the Government in ST and SC Development Department, the case of opposite party No.2 was reviewed and the Office order dated 29.09.2003 giving CRS to opposite party No.2 was revoked and he was directed vide Office order No.203 dated 25.01.2006 to join in his post. Accordingly, opposite party No.2 joined in the said post.

In the above circumstances, the employee and employer relationship is restored and there is no snapping of the relationship. Hence, the Disciplinary Proceeding initiated prior to giving compulsory retirement revives after reinstatement of opposite party No.2 in service.

The fact of the case in *Pratap Kishore Das* (supra) wherein the case of *Chandra Singh Vs. State of Rajasthan and another*, AIR 2003 SCW 2889 was referred to is not similar to the fact of the present case and therefore the same is not applicable to the instant case. The distinguishing feature in the present case is that after taking a decision to give compulsory retirement to opposite party No.2 the said decision was reviewed and the order giving CRS to opposite party No.2 was revoked and he was directed to join the post pursuant to which opposite party No.2 joined the post.

21. Question Nos.(iii) and (iv) being inter-linked they are dealt with together.

Petitioner's case is that the Committee of Management being the Disciplinary Authority of opposite party No.2 has authorized the Managing Director to act as such as per resolution dated 06.11.1992. The resolution dated 06.11.1992 was passed as per the provisions of bye-law No.18(z)(C-2) to exercise the power of the Committee mentioned under bye-law No.18(1) only. As per bye-law No.18(1), the entire administration of the Corporation shall vest in the Managing Committee.

The case of opposite party No.2 employee is that the Managing Director of the petitioner-Society is not competent to act as Appointing as well as the Disciplinary Authority in view of the discussions made and finding of the learned Tribunal under Issue No.4 in the impugned order. It is further submitted that Annexure-5 at page 42 of the writ petition, which is an extract of a resolution, said to have been passed on 06.11.1992 under which the Managing Director of the petitioner-Society acquired power to initiate proceeding against opposite party No.2 was not in existence and the same is fabricated for the purpose of filing of the writ petition. Further case of opposite party No.2 is that even if such a resolution is in existence, the Managing Director cannot act as Appointing Authority as well as the Disciplinary Authority of opposite party No.2. Consequently, initiation of disciplinary proceeding against opposite party No.2 is without authority of law and punishment imposed on him is not sustainable in law.

22. At this juncture, it is necessary to refer to some of the provisions of the Rules, 1990.

Rule 8.1 of the Rules, 1990 reads as follows:-

“Appointing authority means the Managing Committee, or the Officer specifically empowered by the Committee in the behalf in respect of the Rules as specified.”

Under Clause 18 of the Bye-laws, the entire administration of the Corporation is vested in the Managing Committee. As per sub-clause (l) of Clause 18, the Managing Committee is empowered with following powers:-

“to appoint, suspend, remove or dismiss or otherwise deal with the employees of the Corporation in accordance with subsidiary rules to be framed and approved by the Managing Committee.”

Under sub-clause Z(C)2 of Clause-18, the Managing Committee is empowered as follows:-

“to authorise the President and/or the Managing Director to exercise any or all powers of the Managing Committee in the interest of the Corporation till such time if it is considered expedient and necessary to make such authorization and to ratify such action in the meeting of the Managing Committee if necessary.”

Under the Rules, 1988 the Managing Director is the Disciplinary Authority of the employees whose appointments are made by the Managing Director.

The Tribunal did not accept submission of the petitioner-Society that the Managing Director of the Society was the Disciplinary Authority as per the resolution passed by the Managing Committee in its

meeting held on 06.11.1992 on the ground that no such resolution has been proved or admitted into evidence by the petitioner-Society. Therefore, the Tribunal held that mere assertion in the evidence of PW-1 that the Managing Director is the Disciplinary Authority of opposite party No.2-employee as per resolution of the Managing Committee dated 06.11.1992 would fall short to prove that he was the Disciplinary Authority.

23. Before this Court it is contended on behalf of the petitioner-Society that the Managing Committee in its meeting dated 06.11.1992 resolved to authorise the Managing Director to function both as Appointing Authority and The Disciplinary Authority in respect of Grade-I, II, III and IV employees and the said proceeding was confirmed by the Managing Committee on 03.03.1993 and as per Clause 8 read with Clause 5 of the Rules, 1990 the Managing Director is empowered to impose punishment on opposite party No.2. The copy of the resolution dated 06.11.1992 has been annexed to the writ petition as Annexure-5. Along with the written statement, the petitioner-Society also annexed the extract of the Managing Committee meeting held on 03.03.1993. In the said meeting, proceeding of the Managing Committee meeting held on 06.11.1992 as circulated in TDCCOL memo No.9338 dated 21.11.1992 was confirmed. From the impugned orders, it appears that these documents, i.e., resolution dated 06.11.1992 and the proceeding dated 03.03.1993 of the Managing Committee were not proved or admitted into

evidence by the petitioner-society for which the contention of the petitioner-Society was not accepted by the Tribunal.

24. Apart from above, the assertion of opposite party No.2 is that as per Rule 4 of the Service Rules, 1990, delegation of powers can be made only for a particular period with certain conditions in case of exigencies. Such a delegation cannot be for an indefinite period, that too for a 20 long years against the letter and spirit of Rule 4 framed by the Registrar which tantamounts to amendment of Rules by an incompetent body. Thus, it cannot be held in law that the Managing Director has exercised the power as Disciplinary Authority in terms of Rule 4 of the Rules, 1990. It is further contended by opposite party No.2 that the Schedule appended to the Rules, 1988 is not consistent with the Rules framed by the Registrar, Cooperative Societies, Odisha by exercising power conferred under Section 33A of Orissa Cooperative Societies Act. Thus, the said Schedule is not at all enforceable.

Further case of opposite party No.2 is that as per Bye-law No.18(1), the entire administration of the Corporation shall vest in the Managing Committee. Among others, the powers of the Managing Committee shall be (i) to appoint, suspend, remove or dismiss or otherwise deal with the employees of the Corporation in accordance with the subsidiary rules to be framed and approved by the Managing Committee. The Rules, 1988 has not been framed or approved by the Managing Committee. The said Rules have been framed by the Registrar of Cooperative Societies, Odisha by exercising his power conferred under

Section 33-A of the OCS Act. Therefore, it is the Registrar of the Co-operative Societies, Odisha, who can only confer any or all powers under the said Rules to any authority of the Society including its Managing Director by way of amendment. The exercise of power as the Disciplinary Authority of opp. Party no.2 by the Managing Director in the guise of purported resolution dated 6.11.1992 is an action without jurisdiction. The resolution dated 6.11.1992 (Annexure-5) does not say anything about Rule 4 of the Rules, 1990. Therefore, the argument advanced by the petitioner-society that the Managing Director was delegated with the power of appointment and disciplinary action vide Resolution dated 6.11.1992 was not in conformity with Rule 4 of the TDCC Employees Service Rules, 1990.

All the above aspects need thorough examination.

25. Since question Nos. (v), (vi) and (vii) are inter-linked they are dealt with together. The Member, Cooperative Tribunal, Odisha, Bhubaneswar while dealing with issue Nos. (iv) and (v) in the impugned judgment held in detail as to how reasonable opportunity of hearing was not afforded to opposite party No.2 before submission of the enquiry report. From the order, it reveals that audit report has not been admitted into evidence during the enquiry by the Marshaling Officer. The Enquiry Officer himself had gone through the audit report and other records and submitted his report, which has been held by the learned Tribunal to be illegal.

Needless to say that audit report is not sufficient to fix any liability on a Delinquent Officer unless it is proved. In the impugned order, it is observed that the Enquiring Officer vide order dated 20.06.2007 in the disciplinary proceeding has noted that the Marshaling Officer failed to produce the record as it had not been supplied to him which had been requisitioned vide letter dated 16.02.2007 and sought for extension of time for production of the same. Opposite party No.2 also requested to allow him to verify the record relating to the above proceeding for submission of written statement of defence. The Marshaling Officer was advised to supply the record to the Delinquent Officer on receipt of the record from the office. Thereafter, the proceedings suffered four adjournments and the relevant records are silent regarding production of records by the Marshaling Officer and supply of the same to opposite party No.2. The next order dated 26.03.2008 reveals that both the Marshaling Office and the Delinquent Officer are present. Enquiry was taken up and at the enquiry stage the Delinquent Officer filed his statement of defence. His statement was also recorded by the Enquiry Officer relating to two Disciplinary Proceedings initiated against the Delinquent Officer and the enquiry was completed. From the order sheet entry, the learned Member, Cooperative Tribunal found that no evidence was adduced by the Marshaling Officer in support of the charge levelled against the Delinquent Officer. On the other hand, statement of the Delinquent Officer was recorded by the Enquiry Officer with regard to charges which he (delinquent officer)

denied. The learned Tribunal further observed in the last paragraph of the impugned order that the Delinquent Officer asserted that the charges framed against him were baseless. Therefore, the learned Tribunal came to the conclusion that in absence of any evidence in support of charges, the charges levelled against the plaintiff must have been overthrown. The learned Tribunal further observed that the Enquiry Officer in his report (Exhibit-7) has mentioned that the Delinquent Officer was permitted to verify the relevant records for inspection and to take extract thereof from the Branch Manager (Marketing) of TDCCOL, Head Office, Bhubaneswar which is not borne out from the record of enquiry. The learned Tribunal also noticed that the Enquiry Officer has mentioned that the liability register was not taken into consideration as it was found haphazardly maintained. Therefore, the learned Tribunal observed that a strange procedure was adopted by the Enquiry Officer by which without any evidence adduced by the Marshaling Officer, the plaintiff was asked to defend his case. Learned Tribunal further observed that the Delinquent Officer admitted his liability for the year 2001-02 and 2002-03 is contrary to the evidence discussed earlier.

26. In course of hearing, it was not brought to the notice of this Court that opposite party No.2 was supplied with the documents/materials including copy of the special audit report on the basis of which charges have been framed either by the Disciplinary Authority or by the Enquiry Officer.

27. Therefore, this Court is of the view that reasonable opportunity of hearing was not afforded to opposite party No.2 and therefore, the matter needs to be remanded back to the stage of enquiry and opposite party No.2 shall be supplied with all the documents including special audit report on the basis of which charges were framed against him and to proceed thereafter.

28. In the result, the order of the Tribunal impugned herein is set aside. The matter is remanded back for holding fresh enquiry from the stage of furnishing of all the documents/materials including copy of the special audit report on the basis of which charges were framed against opposite party No.2 and intended to be utilized against him. It is open to opposite party No.2 to raise all his contentions both factual and legal before the Enquiry Officer as well as the Disciplinary Authority. It is further directed that the Disciplinary Proceeding shall be concluded within a period of four months from the date of production of certified copy of this order before the petitioner-society.

29. The writ petition is disposed of accordingly. No costs.

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B.N.Mahapatra,J.