IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 31ST DAY OF AUGUST, 2018

BEFORE

THE HON'BLE MR.JUSTICE RAVI MALIMATH

WRIT PETITION No.32432 OF 2010 (S-RES)

BETWEEN:

1. THE PRESIDENT
   NO. 2804, POLLIBETTA VYVASAYA SEVA,
   SAHAKARA SANGHA NIYAMITHA,
   POLLIBETTA, VIRAJPET TALUK,
   KODAGU DISTRICT.

2. THE SECRETARY
   NO.2804, POLLIBETTA VYVASAYA SEVA,
   SAHAKARA SANGHA NIYAMITHA,
   POLLIBETTA, VIRAJPET TALUK,
   KODAGU DISTRICT.

... PETITIONERS

(BY SRI. K.V.NARASIMHAN, ADV.)

AND:

1. K.N.ACHAPPA
   AGED ABOUT 58 YEARS,
   S/O. K.G.NANAIAH,
   R/AT MEKOOR VILLAGE,

POLLIBETTA P.O. VIRAJPET TALUK,
KODAGU DISTRICT.

2. THE ASSISTANT REGISTRAR
OF CO-OP. SOCIETIES,
MADIKERI,
KODAGU DISTRICT.

... RESPONDENTS

(BY SRI.L.MAHESH, ADV. FOR RESPONDENT NO.1
SRI.E.S.INDIRESH, ADDL. GOVERNMENT ADVOCATE FOR RESPONDENT NO.2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 26.07.2010 IN APPEAL 6/1996 PASSED BY THE KARNATAKA APPELLATE TRIBUNAL, BANGALORE, WHICH IS PRODUCED & MARKED AS ANNEXURE – V TO THE WRIT PETITION.

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THIS WRIT PETITION COMING ON FOR HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

Respondent No.1 was appointed by the petitioner as a Clerk-cum-Accountant in the year 1976. He misbehaved with the Management. A show cause notice was issued to him. He was placed under suspension by the resolution

dated 26.4.1989. He replied to the show cause notice and submitted his apology. In view of the apology being submitted, the suspension was revoked. On 22.11.1991, he absented himself without leave or permission. 23.11.1991 was declared as a holiday. On 24.11.1991 also, he remained absent. On 25.11.1991 he was issued with a memo to show cause as to why disciplinary action should not be taken against him. On the same day, he abused the Secretary and threatened to kill the Secretary. Thereafter, a show cause notice was issued to him. He submitted his reply. Thereafter he was placed under suspension. Thereafter an enquiry was held. He was dismissed from service. Questioning the same, he raised a dispute before the 2nd respondent, which was dismissed. Thereafter, he approached the Karnataka Appellate Tribunal, wherein by the order dated 24.12.1993, the appeal was allowed and the matter was remanded to the 2nd respondent. Thereafter, the second respondent – the Assistant Registrar, passed an order rejecting the dispute.

He once again filed an Appeal before the Karnataka Appellate Tribunal. By the Order dated 7.9.1998, the Appeal was allowed. Thereafter a Review Petition was filed by the petitioners. By the Order dated 4.9.2002, the Review Petition was allowed and the Appeal was restored to file. Thereafter by the order dated 19.09.2002, the appeal was dismissed for non prosecution which was challenged in W.P.No.44883/2002. By the order dated 20.01.2009, the petition was allowed and the matter was remanded to the Tribunal for a fresh disposal. Thereafter the impugned order is passed by the Tribunal allowing the appeal. Hence, present petition by the Society.

2. Sri.K.V.Narasimhan, learned counsel for the petitioners contends that the Tribunal misdirected itself in allowing the appeal. That it lost sight of the charges framed against the respondent. The charge is one of misconduct and disorderly behaviour, etc., The Tribunal bestowed greater attention on the absence of the respondent. Even otherwise, the evidence of the

witnesses would clearly indicate that the respondent had abused and threatened his superior, therefore the same amounts to disorderly behaviour, subversive of discipline and endangering the safety of the official superior. Therefore, the evidence of the witnesses clearly indicated the acts committed by the respondent. Hence, the Tribunal committed an error in allowing the appeal.

3. On the other hand, the learned counsel for the respondent disputes the same. He submits that the evidence is not sufficient to prove the charges especially when there is no clear statement made by the witnesses, in support of the charges. His first contention is that the charge is not clear. That in the absence of any clarity in the charges, the proceedings could not have been initiated. Secondly, there is no proper appreciation of the evidence. Thirdly, that the penalty imposed is disproportionate to the acts of misconduct.

4. After conclusion of arguments, the petitioners made an offer of payment of a sum of Rs.1,50,000/- to the respondent to settle the dispute. On time being granted, the respondent declined to accept the said offer.

5. So far as the charge is concerned, the same reads as follows:-

> *"1) On 25.11.1991 you entered into the bank section of the Society and abused and threatened Sri.P.C.Krishna the Secretary of the Society in the presence of Sri.B.M.Gopalakrishna, Miss. B.K.Mahadevi, Sri.M.H.Iqbal, Sri.P.A.Shaidalavi, Smt.T.B.Padmavathy, Sri.M.C.pandy and the staff members. You abused him in filthy languages about his caste, parents and occupation and threatened to kill him and send his body to his home.*
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> *Your above acts amounts to "DISORDERLY BEHAVIOUR SUBVERSIVE OF DISCLINPLINE AND ENDANGERING THE SAFETY OF YOUR OFFICIAL SUPERIOR."*

6.(a). Therefore he pleads that when the charge is not clear it has hampered the respondent. In support of his case, he relies on the judgment of the Hon'ble Supreme Court reported in AIR 1971 SC 752 [Surath Chandra Chakrabarty –v- State of West Bengal] to contend that when the charges and allegations are vague, indefinite and lacking any material particulars, the same would vitiate the entire enquiry. Therefore, he pleads, that based on this judgment, the petition requires to be dismissed.

(b). The facts in the aforesaid Judgment of the Hon'ble Supreme Court, would indicate that the moment the Articles of charge were issued to the Delinquent, he replied to the same. He stated that the allegations were vague, indefinite and lacking any material particulars. It was further pointed out that until and unless the charges are made specific to the point and contain full details with date, time, place and person etc., it is not possible for him

to meet the said allegations. It is on this ground that the Hon'ble Supreme Court held that when a specific plea was taken by the Delinquent at the earliest point of time, the same should have been properly responded to. The respondents therein having failed to do so and when the charges are vague and lacking in material particulars, the legal right of the Delinquent stands affected.

(c). However, that is not the case herein. The reply to the Show Cause Notice filed by the respondent could be seen at Annexure – J (page -62). I have considered the same at length. There is a total denial of the charges. There is not even a whisper made by him that he does not understand the charges. There is not even a statement made by him that the charges framed against him are vague and he is not capable of understanding it. On the contrary, having understood the charges, he has denied the charges levelled against him. Therefore, for him to rely on the aforesaid Judgment of the Hon'ble Supreme Court is erroneous. The said judgment would not be of

any avail to him. The respondent has clearly and completely understood the charges levelled against him and has properly replied to the same. Hence, the first contention cannot be accepted.

7. The second contention advanced is that there has not been proper appreciation of evidence and therefore the enquiry report suffers from infirmity. The petitioner led-in the evidence of nine witnesses and the same has been discussed by the Tribunal in the impugned order from paragraph 28 onwards. At paragraph 29 the evidence of Sri.M.H.Iqbal has been considered. The exact words used by the respondent have been narrated. The abusive language has been narrated. The threat meted out by the respondent by stating that he will kill him, has also been narrated. I do not find anything worthwhile in the cross examination to disbelieve the evidence. In fact, the only suggestion is the motive of the witness in giving the statement against the respondent. Notwithstanding the same, the Tribunal has shot down the evidence, by giving

its own reasons. It has merely stated that the evidence of this witness cannot be believed, because if such an event had taken place, nothing prevented him from giving a complaint either to the Secretary or to the President. The reasons assigned by the Tribunal of lodging a complaint or otherwise is not even the suggestion made in the cross-examination. It is a reason assigned by the Tribunal which is not the case of any of the parties. Therefore, the assumption made by the Tribunal is uncalled for. The Tribunal is required to weigh the evidence as it is on record. It cannot cast aspersions on the witness and create its own reasons to disbelieve it.

8.(a) In the evidence of Smt. Mahadevi, she has narrated the statements made by the respondent. She has stated that the appellant came to the room of the Secretary when she and other person who had come for loans were present. The statement is that the respondent has stated that he would kill the Secretary. This has been disbelieved by the Tribunal on the ground that she has not

stated this issue at the first instance, before the Enquiring Officer in the domestic enquiry. That what was stated before the Assistant Registrar of Co-operative Societies was quite different from the evidence led-in before the Domestic Enquiry. Therefore, there was no consistent statement made by the witness.

(b). I have considered the evidence led-in by the witness before the Assistant Registrar of Co-operative Societies. The very same evidence has been led in before respondent No.1. The evidence is consistent. Therefore, for the Tribunal to come to the conclusion that the statement before the Enquiry Officer and respondent No.1 are different, is wrong. It is a thorough misreading of the evidence. The witness has been consistent. The statements made before the Assistant Registrar as well as before the Enquiry Officer are identical and similar. Therefore the finding of the Tribunal to disbelieve the witness is an error of fact. The same cannot be accepted.

9. With regard to the evidence of Sri.K.K.Lakshmana, the attender of the Society, he has stated that on 25.11.1991, the Secretary had given notice to be served on the respondent. The respondent did not sign on the copy of the notice, but he took those notices to the chamber of the Secretary and abused him and threatened him with life. This statement made by him has also been narrated by him in the evidence. The evidence of this witness has been disbelieved on a very flimsy ground. The reason assigned by the Tribunal is that the said witness had left the services of the petitioner but had rejoined subsequently. Therefore, if the witness had left the job on his own, as to how he could rejoin the Society without there being any assurance from any of the Directors or orders from the Society. There is no explanation as to why he left the job. When he has not given any explanation as to why he left the job and how he rejoined the services, it supports the suggestion of the respondent that he is deposing falsely at the instance of

one of the Directors. The reason assigned by the Tribunal is unacceptable. If the witness is to be disbelieved, the same has to be done on the material that exists on record. The character of the witness cannot be doubted by disbelieving his statement. He has stated facts in his evidence. The same has not been dislodged in the cross examination. On the other hand, by giving reasons which are unacceptable, the Tribunal has committed a blunder in rejecting the evidence of Sri.K.K.Lakshmana.

10. The crucial evidence is that of the Secretary – Sri.P.C.Krishna. He has stated that the Chairman and the President of the Society who had issued a Show Cause Notice on 25.11.1991 to the respondent with regard to his absence. It was sent through the attender-Sri.K.K.Lakshmana, who was the other witness. The respondent did not accept the notice served on him by signing. He took the notice and went to the chamber of witness-Secretary and abused him and threatened to kill

him. The abusive language has been extracted. The threat of death has also been extracted. In the cross-examination, substantial questioning was made to the witness with regard to the issuance of the notice, the declaration of the holiday, absence of the President and related matters. It is for this reason that the Tribunal disbelieved the evidence of this witness. It is rather shocking that the Tribunal missed sight of the dispute at large. The charge against the respondent is one of abusive language and threatening to kill. There is not even a whisper in the entire cross-examination on the charge. The witness has stated in examination-in-chief, the abusive language and threat of life meted out to him. It is this that the respondent had to defend himself. Rather than doing so, cross examination has been carried out on matters which are not relevant to the charges. Whether it is a holiday, whether the President was available or matters of the like nature, have no nexus with the charges. In the absence of even a single question with regard to the

abusive language or the threat of life, I fail to understand as to how the Tribunal could have rejected the said evidence. The evidence of the witness on the question of the charges against the respondent has gone uncontested. Therefore, the rejection of the evidence of the Secretary has resulted in gross miscarriage of justice.

11. As regards the evidence of respondent No.1 is concerned, he has denied the charges. Under these circumstances, the contention of the respondent that the evidence has not been properly appreciated requires to be accepted against his own interest. There is a failure of appreciation of evidence by the Tribunal. The reason assigned for discarding the evidence is unacceptable. Reasons cannot be created or found by the Court to disbelieve the evidence. The wrong appreciation of evidence by coming to the conclusion that there is a divergence is opposed to facts. The rejection of the evidence of Smt.Mahadevi, of being inconsistent with the evidence before the Assistant Registrar of Co-operative

Societies and the evidence before the Enquiry Officer, is a grave error on fact. The rejection of the evidence of the Secretary on that ground is an error committed by the Tribunal.

12. Under these circumstances, when the Management have led in substantial evidence, the Tribunal committed an error in disbelieving the findings recorded by the Enquiry Officer. The evidence so far as these witnesses are concerned, are clear and consistent. They have clearly narrated the abusive language used by the respondent and the threat to kill which has not been dislodged by him. Under these circumstances, the appreciation of evidence by the Tribunal being fatal, the same requires to be set aside.

13. The last contention advanced by the respondent is one of proportionality of the punishment. It is contended that in similar cases where abusive language was used, the Courts have taken a lenient view in reducing

the punishment from dismissal to a lesser punishment. In support of his contention, the respondent relied on the Judgments in the case of Ved Prakash Gupta –vs- Delton Cable India (P) Ltd., reported in AIR 1984 SC 914 and in the case of Collector Singh –v- L.M.L.Ltd, Kanpur (Civil appeal No.10125 of 2014 DD 11.11.2014 with reference to paragraphs 12, 13 and 15). Hence, he pleads that the Court should reduce the quantum of punishment. The same is objected to by learned counsel for the petitioners by placing reliance on the Judgment of the Hon'ble Supreme Court in the case of L.K.Verma –v- H.M.T. Ltd. and Another reported in AIR 2006 SC 975, with reference to paragraphs 22 and 25, wherein the Hon'ble Supreme Court held that the quantum of punishment with regard to verbal abuse is held to be sufficient for inflicting a punishment of dismissal.

14. The earlier view expressed by the Hon'ble Supreme Court in the case of Hombe Gowda Education

Trust and another –vs- Government of Karnataka reported in 2005 (10) Scale 307 was relied upon. The question for consideration with regard to proportionality of punishment has been stated in paragraph 13 of the Judgment of the Hon'ble Supreme Court in Collector Singh's case (supra). Therein the Hon'ble Supreme Court held that the abusive language is to be understood in the environment in which the person is situated and its surrounding circumstances. That there can be no strait-jacket formula for adjudging the same. That each case has to be considered on its own facts. Therefore, it is apparent, that until and unless the punishment that has been awarded to the Delinquent shocks the conscious of the court, there cannot be any interference so far as punishment is concerned. Thus the Disciplinary Authority would determine the penalty to be imposed on the Delinquent. Interference by the Court could only be on the ground that the punishment shocks the conscious of the court. If it does not, there is no interference. So far as the

Judgments relied upon by the respondent are concerned, they are subjective. Following the Judgment in the Collector Singh's case (supra) there cannot be a precedent with regard to punishment. Punishment is relative. It is subject to the facts involved in each case. involved. Therefore each case would have to be weighed on its own merits and the conduct of the Delinquent. Therefore, it cannot be said that in a given case where abusive language is used and the punishment is reduced, then in all abusive cases, the punishment should be similar. Such an interpretation cannot be accepted. Keeping in mind the facts and circumstances of this case, I do not find that the punishment that is imposed by the petitioner is unreasonable. It is neither shocking nor disproportionate. In fact, it is just and reasonable. It is what the respondent deserves.

15. The Tribunal was at a tangent in considering the case. It was guided more by the fact of a holiday being declared and matters related thereto. It was more

concerned with the fact that a day's absence of the respondent cannot be a ground for removing him from service. The same is asserted by the Tribunal in paragraph 61 of the impugned order. In other paragraphs too, the Tribunal makes the very reference. This is the grave error that has been committed by the Tribunal. It was at a tangent in deciding the issue at large. The question herein is not of one day's unauthorized absence. In fact, that is the argument being advanced even before this Court that an employee has been dismissed from service for absence of one day. On considering the entire material, it is clear that that is not why he was charged. The charge was not of one day's absence. The charge was using abusive language and threatening to kill. It was that issue which the Tribunal should have been concerned with and not anything else. The issue was considered in the background of the understanding of the Tribunal that the respondent was terminated because of one day's absence. It is that factor that heavily weighed on the Tribunal while passing

the impugned order. The charges have been proved by the evidence let in by the Management. The evidence has gone unchallenged.

16. I'am of the considered view that the Tribunal committed a perversity in misreading the evidence on record. It has failed to properly consider the evidence let in by the petitioners. It has misdirected itself in recording wrong reasons. The entire order of the Tribunal suffers from perversity, leading to miscarriage of justice.

17. For the aforesaid reasons, the petition is allowed. The Order of the Karnataka Appellate Tribunal dated 26th July, 2010 passed in Appeal No.6 of 1996 Annexure-V is set-aside. Consequently the order of dismissal passed by the Disciplinary Authority is upheld.

SD/-
JUDGE

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