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**(2014) 05 AHC CK 0326**

**In the Allahabad High Court**

**Case No : Civil Misc. Writ Petition Mo. 461 of 2014**

Om Prakash

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision : 13-05-2014**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Penal Code, 1860 (IPC) — Section 409, 420, 467, 468, 471  
Uttar Pradesh Co-operative Societies Act, 1965 — Section 65

**Citation : (2014) 7 ADJ 378 : (2015) 2 ALJ 516 : (2014) 6 AWC 5600**

**Hon'ble Judges : Manoj Misra, J**

**Bench : Single Bench**

**Advocate : H.R. Mishra, Satyaveer Singh and Om Prakash, Advocate for the Appellant; Abhishek Mishra and K.N. Mishra, Advocate for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Manoj Kumar Gupta, J.—The petitioner is a class II employee of District Co-operative Bank Ltd. Mirzapur (for short "bank") a Central Co-operative Society, under the provisions of the U.P. Cooperative Societies Act, 1965. The bank provides finance to "various Primary Cooperative Societies, one amongst them being Carabil Arangpani Lampus Co-operative Society" Vikas Khand Myorpur, District Sonabhadra- One Sri Munni Lal was the secretary off the said Society. He committed grave financial irregularities. In a preliminary enquiry held by Dy. General Manager (Development), District Co-operative Bank Ltd. Mirzapur, it transpired that the secretary of the Society, Sri Munni Lal, misappropriated a sum of Rs. 24,75,705/-. In his report dated 2.2.2011, he recommended for immediate suspension of Sri Munni Lal, cadre secretary of the Society. He also recommended that all employees of the Bank at branch Myorpur be immediately attached to the head office and in their place other employees be posted, a detailed enquiry be held, as interpolations and cuttings are being carried out in the records of the bank almost every day. In pursuance thereof, the General Manager of the Bank forthwith attached the petitioner to Robertsganj branch of

the Bank and he was further directed to handover all the documents to the senior most employee of the Bank by order dated 7.2.2011. By letter dated 24.2.2011, the General Manager of the bank required the Dy. General Manager, Joint Organisation, District Co-operative Bank Ltd. Mirzapur to hold an enquiry into the allegations of collusion between the employees of the Co-operative Society and the Bank and submit his report within 15 days. In pursuance thereof, a further enquiry was held by the Dy. General Manager, Joint Organisation, District Co-operative Bank Ltd. Mirzapur and he submitted a report dated 2.12.2011, in which the findings given in the earlier report of Dy. General Manager (Development) dated 2.2.2011, were endorsed. It surfaced that the petitioner is equally responsible, being head of the bank, which disbursed the loan to the Co-operative Society. After such evidence came into existence, the petitioner was issued a show-cause notice dated 23.2.2012 calling upon him to show-cause within 15 days as to why disciplinary proceedings be not initiated against him. In response to the said notice, the petitioner claims to have submitted his explanation on 22.3.2012, which in the opinion of the General Manager of the Bank was not satisfactory. However, instead of placing the matter before the Committee of Management of the Bank, which is the appointing authority of the petitioner, the General Manager of the bank directed for censure entry being recorded in his character roll for the year 2011-12. Petitioner made a representation for expunging such entry, which request was turned down by the General Manager of the Bank by order dated 10.5.2013. On the other hand, the Dy. Registrar, Co-operative Society, Sonbhadra, in exercise of the power u/s 65 of the Act held an enquiry and found that Sri Munni Lal, secretary of the Co-operative Society, in collusion with Om Prakash, Branch Manager of District Co-operative Bank, Mirzapur have succeeded in swindling and misappropriating fund? of the Bank and the Society to a tune of Rs. 24,63,555/-. He submitted a report in this regard on 14.10.2013. On basis of said report, a first information report was lodged by the Dy. Registrar himself on 19.10.2013 against the petitioner and Sri Munni Lal, erstwhile secretary of the Co-operative Society under Sections 467, 468, 420, 471, 409 I.P.C. being crime case No. 329 of 2013. It was then, that the matter was taken up for consideration by the Committee of Management of the Bank, which in the meeting held on 19.11.2013, resolved to place the petitioner under suspension and to hold regular disciplinary proceedings against him. The aforesaid decision of the bank taken in its meeting held on 19.11.2013 was communicated to the petitioner by Secretary/Chief Executive Officer of the Bank by its letter dated 23.11.2013, which is impugned in the present writ petition. The petitioner has also challenged the entire disciplinary proceedings by seeking writ of mandamus restraining the respondents from holding further disciplinary proceedings.

2. The parties have exchanged their affidavits and with their consent, this writ petition was heard and is being decided finally as per Rules of the Court.

3. The main contention of learned counsel for the petitioner, Sri H.R. Mishra, senior advocate, assisted by Sri Satyaveer Singh, is that the present: disciplinary

proceedings are based on same charges for which the petitioner was punished earlier, by imposing censure entry and therefore, the present proceedings are liable to be quashed. It is further contended that the petitioner was never arrested in pursuance of the first information report in question and therefore, Rule 83 is not applicable. Consequently, suspension order is illegal.

4. On the other hand, Sri K.N. Mishra learned counsel appearing on behalf of respondent No. 5 & 6 submits that fee punishment of censure entry in the character roll was the minor punishment based on different charges, but after discovery of fresh material, the employer has got all the rights to initiate disciplinary proceeding, which according to Mum are based on substantially different charges. He submits that there is no interdict in this regard under general law or U.P. Co-operative Societies Employees Service Regulations, 1975 which governs the services of the petitioner. He further submits that the enquiry u/s 65 of the Act by the Dy. Registrar in which the petitioner is found to have misappropriated huge amount of Rs. 23 Sacs and odd in collusion with Sri Munni Lal, is the genesis for initiating disciplinary proceedings against the petitioner and the petitioner cannot be said to be subjected to disciplinary proceedings twice for the same charge. He further submits that the allegation against the petitioner are such that it does not warrant interference by this Court.

5. I have considered the rival submissions by learned counsel for the parties and perused the record.

6. The services of the petitioner are regulated by the U.P. Co-operative Societies Employees Service Regulation, 1975 (hereinafter referred as "the Regulation"). A perusal of the impugned suspension order reveals that it is based on enquiry report by Dy. Registrar, Co-operative, Sonbhadra in proceedings u/s 65 of the Act. Copy of the said report has been brought on record by way of Annexure CA-9 in which the Dy. Registrar has found that the erstwhile secretary of the Co-operative Society and the petitioner who was posted as Branch Manager of Myorpur branch District Mirzapur were hand in gloves and succeeded in misappropriating a sum of Rs. 24,63,555/-, resulting in the financial loss to the bank and the Co-operative Society. The other document referred to in the suspension order is the first information report dated 19.10.2013 being crime case No. 329 of 2013 under Sections 467, 468, 420, 471, 409 I.P.C. lodged by Dy. Registrar himself against the petitioner and Sri Munni Lal, secretary of the Co-operative Society. Admittedly, the aforesaid material was not before the authorities when initially on basis of preliminary enquiry, show-cause notice was issued to the petitioner and thereafter, by order dated 29.9.2012 censure entry was recorded in the character roll of the petitioner for the year 2011-12.

7. The first and foremost question for consideration is whether the petitioner is being proceeded against on the basis of same charges. The earlier punishment viz. censure entry was inflicted on the basis of show-cause notice dated 23.2.2013 containing five articles of charges. The gravamen of these charges is that the petitioner had worked against the rules and had not performed his

duties befitting the Branch Manager. There was no charge of misappropriation of the funds by the petitioner. Petitioner submitted his reply to the show-cause notice and whereafter, the General Manager of the Bank, who is not the appointing authority of the petitioner but was competent to direct recording of censure entry, which is minor punishment, awarded the same to him. As a result thereof, the following entry came to be recorded in character roll of the petitioner in the year 2011-12:

8. The Registrar of the Co-operative Society is under mandate of law to keep vigil over the affairs of the Co-operative Societies. In this regard, he is vested with the powers u/s 65 of the Act, whereunder, he is empowered to hold enquiry into the financial condition of a Cooperative society. In exercise of such power, he held an enquiry himself and in his report dated 14.10.2013, he found active connivance of the petitioner with the secretary of the society, Sri Munni Lal in misappropriating the fund to a tune of Rs. 24,63,553/-. Thereafter, the Dy. Registrar Co-operative Societies lodged first information report against the petitioner and Sri Munni Lal under Sections 467, 468, 420, 471, 409 I.P.C. being crime case No. 329 of 2013 on 19.10.2013. Taking notice of these developments, the Committee of Management of the Bank (respondent No. 5), which is the appointing authority, resolved to hold regular disciplinary proceedings against the petitioner and to place him under suspension in the meantime. Though, the contention of the petitioner is that charges are identical but it has not been disclosed in the writ petition, if any charge-sheet has been issued or not, and if it has been issued, what are the specific charges on which disciplinary proceedings are being held. Infact, this itself is sufficient to refuse to go into the contention raised by learned counsel for the petitioner that the present disciplinary proceedings are based on same charges.

9. Nonetheless, even if the controversy is examined on the basis of allegations made in the suspension order, which is based on the enquiry report of the Dy. Registrar dated 14.10.2013 and F.I.R. dated 19.10.2013, I find that the charges on which the petitioner has now been placed under suspension, are regarding misappropriation of funds in collusion with Sri Munni Lal, secretary of the society, which is quite different from the charges relating to dereliction of duties. Charge of misappropriation of funds, defalcation of account are much more serious in nature. Earlier petitioner was proceeded against on the charge that he had failed to observe the Rules and established accounting practices but now charge is of criminal breach of trust and misappropriation of funds in collusion with Sri Munni Lal, secretary of the society. Thus, while earlier charge was inaction on part of petitioner in doing what was required to be done, while, now the charge is regarding a positive act with animus to do something which is inherently illegal. Thus, it cannot be said that the charge on which the petitioner is now being proceeded against, is the same for which the censure entry was awarded to him. Consequently, the submission of the petitioner in this regard cannot be accepted.

10. It is noteworthy that appointing authority of the petitioner is the Committee

of Management of the bank (respondent No. 5) in view of regulation 2(iii). It alone is competent to award major penalty in view of regulation 84(iv)(b). However, censure entry, which is a minor penalty, can be inflicted without holding regular disciplinary proceedings by the General Manager of the Bank. In view of such power, the General Manager of the Bank itself issued show-cause notice dated 23.2.2012 calling upon the petitioner to show-cause why regular disciplinary proceedings be not initiated against him. In spite of having found that the explanation is not satisfactory, the General Manager did not place the matter before the appointing authority, but directed for censuring the conduct of the petitioner by making an entry in this regard in his character roll for the year 2012-13. Thus, earlier the petitioner was never subjected to regular disciplinary proceedings which is sine qua non for infliction of a major penalty in view of proviso to regulation 48(iv) (a). But now, after the report of the Dy. Registrar dated 14.10.2013 and first information report dated 19.10.2013, the matter was considered by the appointing authority, viz. Committee of Management of the bank and which had resolved to hold regular disciplinary proceedings and during the pendency of such proceedings, place the petitioner under suspension. Such power is specifically conferred on it by regulation 85(vi). Thus, I am of the firm opinion that there is neither any illegality in the suspension order nor the disciplinary proceedings.

11. Further, I find that the allegation levelled against the petitioner are very serious in nature and if proved, would entail imposition of major penalty. In these circumstances, I do not find it a fit case to interfere with the disciplinary proceedings, at this stage, in exercise of discretionary jurisdiction under Article 226 of the Constitution.

12. The next submission of learned counsel for the petitioner is that the impugned suspension is in violation of Rule 83, as there is no assertion in the suspension order that the petitioner has been arrested and is thus, being suspended. Regulation 83 provides for placing an employee under suspension from the date of his arrest. Perusal of the impugned order would show that it is not based on Regulation 83, though it does refer to lodging of the first information report against the petitioner. The suspension order has been passed in exercise of power under Regulation 85(vi) whereby, the appointing authority is authorized to place an employee under suspension when an enquiry into his conduct is immediately contemplated or is pending and his further continuance on the post is considered detrimental to the interest of the society or when the authority is satisfied that a prima facie case exists, which is likely to result in removal, dismissal or reduction in rank of the employee. It is clear from the tenor of the suspension order dated 23.11.2013 that the Committee of Management of the Bank was of the opinion that the petitioner had conducted himself in a manner which was detrimental to the interest of the bank, and was thus placed under suspension pending regular disciplinary proceedings. Consequently, reliance placed on Regulation 83, is wholly misplaced. In view of the discussion made above, the writ petition lacks merits and is dismissed.