

**(2007) 07 MAD CK 0072**

**In the Madras High Court**

**Case No :** W.A. No"s. 96 and 201 of 2006 and W.A.M.P. No"s. 1 and 143 of 2006

Sp. Spl. 30 Srivilliputhur Primary Agricultural Co-operative Bank Ltd. APPELLANT

Vs

R. Perumal, The Joint Registrar of Co-operative Societies and The Deputy Registrar of Co-operative Societies RESPONDENT

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**Date of Decision :** 19-07-2007

**Acts Referred:**

**Citation :** (2007) 07 MAD CK 0072

**Hon'ble Judges :** A.P. Shah, C.J.;P.D. Dinakaran, J

**Bench :** Division Bench

**Advocate :** S. Sreenivasagam, for the Appellant; R. Janakiramulu, Special Government Pleader for Respondent Nos. 2 and 3 and Jawahar, for G. Ethirajulu, for the Respondent

**Final Decision :** Allowed

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## Judgement

A.P. Shah, C.J.—These two appeals involve common questions of law and fact and can be conveniently disposed of by this common judgment.

2. The appellant in these two appeals Srivilliputhur Primary Agricultural Co-operative Bank is a Society registered under the Tamil Nadu Co-operative Societies Act 1983 (hereinafter referred to as "the Act"). The first respondent R. Perumal was appointed as Clerk on 16.05.1977 in the appellant bank and worked as Senior Clerk between 1996 and 1998. While he was working as Senior Clerk, he was suspended from service by the bank on 31.12.1999. Subsequently, on 11.02.2000 six charges have been framed against him, for which the first respondent has submitted his explanation on 21.02.2000. Subsequently, the bank has issued the second

charge memo on 01.04.2000 alleging certain misconduct. An enquiry was conducted in respect of charge memo dated 11.02.2000, in which the charges in charge memo dated 01.04.2000 were not included. On the basis of a Report of the Enquiry Officer dated 30.10.2000, show cause notice came to be issued on 09.11.2000 for which the first respondent has submitted his explanation on 15.11.2000. Ultimately, by an order dated 07.03.2001, the first respondent was dismissed from service. On an appeal filed by the first respondent against the said order, the Joint Registrar, Co-operative Society by his order dated 29.06.2001 while allowing the appeal, remanded the case for fresh enquiry on the ground that criminal court recorded a finding in favour of the first respondent by acquitting him. Thereafter, again fresh enquiry was conducted not only in respect of the charge memo dated 11.02.2000, but also in respect of the charge memo dated 01.04.2000 and second show cause notice dated 10.04.2002 came to be issued to the first respondent as to why he should not be dismissed from service. The second show cause notice dated 10.04.2002 was challenged by the first respondent by filing W.P. No. 20525 of 2002 and the said writ petition was admitted on 13.06.2002 and stay was granted, which is pending.

3. In the meantime, the Joint Registrar ordered an enquiry u/s 81(4) of the Act. Pursuant to which, enquiry notice dated 11.08.2004 was issued directing the first respondent to appear for the enquiry on 19.08.2004. No enquiry report was submitted to the first respondent. However, the enquiry report was duly forwarded by the Deputy Registrar of Co-operative Society to the appellant bank. On the basis of the enquiry report u/s 81(4) of the Act, the appellant bank issued another show cause notice dated 12.05.2005 and also issued a detailed charge memo dated 29.07.2005 on the basis of the said report. In the meantime, the first respondent filed W.P. No. 8313 of 2005 challenging the suspension order dated 31.12.1999. The said writ petition was admitted, but no interim order was passed and consequently, the first respondent continued under suspension. By order dated 22.09.2005, learned single Judge on the basis that the suspension order was against the provisions of Section 76(1) of the Act, since specific period has not been given in the suspension order, allowed W.P. No. 8313 of 2005 and set aside the suspension order

dated 31.12.1999. Writ Appeal No. 96 of 2006 is directed against the order of the learned single Judge dated 22.09.2005.

4. At this stage, it may be noted that the first respondent was reinstated in service on 10.10.2005 pursuant to the order of the learned single Judge.

Subsequently, however, having regard to the fact that against the second show cause notice after the enquiry, the High Court has granted stay of

the disciplinary proceedings in W.P. No. 20525 of 2002 and also having regard to the fact that allowing the first respondent in service is against

the interest of the bank and hence, the first respondent was directed to be kept under temporary suspension with effect from 27.10.2005 for a

period of six months. This order was challenged by the first respondent in W.P. No. 9991 of 2005, which came to be allowed by the learned

single Judge vide order dated 10.04.2006. As against the said order, W.A. No. 201 of 2006 has been filed.

5. We have heard learned Counsel appearing for the appellant, learned Counsel for the first respondent and also learned Special Government

Pleader for Respondents 2 and 3.

6. There is no dispute that the first respondent is facing as many as three enquiries. The charges levelled against the first respondent pertains to

misappropriation of funds of the bank and in both the enquiries, which were conducted pursuant to the first and second charge memo dated

11.02.2000 and 01.04.2000, the enquiry officer has found the first respondent guilty of charges levelled against him. The order of suspension

dated 31.12.1999 was set aside by the learned single Judge, following the judgment of the Division Bench reported in Special Officer, Vellakovil

Primary Agricultural Co-Operative Bank, Vellakovil, Erode District v. C. Poongodi and Ors. 2004 (5) C.T.C. 299. This Judgment of the Division

Bench is over-ruled by a Full Bench in the decision reported in A.S. Subramani Vs. The Deputy Registrar of Cooperative Societies and The

Special Officer, . The Full Bench held that the suspension of an employee by the society pending disciplinary action would be covered by Bye-

laws and not by Section 76 of the Act and a suspension order is not rendered violative merely because the period of suspension is not mentioned.

In the light of the Full Bench Judgment, the order of the learned single Judge dated 22.09.2005 cannot be sustained and W.A. No. 96 of 2006 is

liable to be allowed.

7. W.A. No. 201 of 2006 is directed against the order of the learned single Judge dated 10.04.2006 whereby order of suspension dated

27.10.2005 was set aside. The suspension was necessitated in view of the stay granted to the proceedings in second show cause notice in

W.P.M.P. No. 28396 of 2002 in W.P. No. 20525 of 2002. In fact, while setting aside the earlier order of suspension dated 31.12.1999, learned

single Judge has clearly observed that the order would not preclude the bank, if it is so advised, from proceeding further, in accordance with the

statutory provision. Considering the serious nature of charges, the bank was fully justified in continuing the order of suspension vide its order dated

27.10.2005. In our opinion, there is no illegality or infirmity attached to the order of suspension. Under the Bye-laws, the bank has power to

suspend the first respondent, pending domestic enquiry. Apart from that, in the Larger Bench decision reported in K. Marappan Vs. The Deputy

Registrar of Co-operative Societies and The Special Officer, Vattur Co-operative Agricultural Bank, it has been held that writ petition against Co-

operative Society is not maintainable.

8. In the result, both the writ appeals are allowed and the impugned orders under appeals are set aside. However, there will be no order as to

costs. Consequently, the connected W.A.M.P. Nos. 143 and 1 of 2006 are closed.