**(2003) 01 AHC CK 0120**

**In the Allahabad High Court**

**Case No :** C.M.W.P. No. 43645 of 2000

Sudhir Singh APPELLANT

Vs

District Co-operative Bank Ltd. RESPONDENT

**Date of Decision :** 06-01-2003

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (2003) 1 AWC 526(2) : (2003) 2 LLJ 428

**Hon'ble Judges :** Yatindra Singh, J;M. Katju, J

**Bench :** Division Bench

**Advocate :** S.C. Dubey and Sudha Dubey, for the Appellant; H.R. Singh Bist, for the Respondent

**Final Decision :** Dismissed

## Judgement

M. Katju, J.—By means of this writ petition the petitioner has challenged the impugned order dated 10.3.1999, Annexure-2 to the writ petition by which he has been removed from service.

2. Heard learned counsel for the parties.

3. It appears that the petitioner was Branch Manager of the Muzaffarnagar District Cooperative Bank Ltd. He was suspended by order dated 2.7.1997 vide Annexure-3 and he was given a charge-sheet dated 22.8.1997 vide Annexure-4 to the writ petition. In this charge-sheet, various allegations of financial irregularities, embezzlement and fraud have been made against the petitioner. The petitioner submitted a reply denying the charges vide Annexure-5 to the writ petition. It is alleged in paragraph 6 of the writ petition that no enquiry was held, instead the petitioner was issued a show cause notice dated 24.7.1998 to which he gave a reply dated 8.8.1998 vide Annexures-6 and 7 to the writ petition.

4. In paragraph 10 of the writ petition, it is stated that the petitioner was not paid subsistence allowance although he sent several letters vide paragraph 11 to the writ petition. It is alleged in paragraph 12 of the writ petition that the denial

of subsistence allowance has resulted in miscarriage of justice as due to the lack of funds the petitioner was not in a position to meet the expenses of the enquiry. The petitioner has relied on the decision of the Supreme Court in Jagdamba Prasad Shukla v. State of U. P. 2000 (4) AWC 2982 (SC) : JT 2000 (5) 650, copy of which is Annexure-11 to the writ petition. It is alleged that the impugned termination order was illegal.

5. A counter-affidavit has been filed by the respondent. In paragraph 3 of the same, it is stated that the petitioner never applied for payment of subsistence allowance and he did not visit the office of the respondent for payment of subsistence allowance. In paragraph 4, it is stated that there were serious complaints against the petitioner regarding huge financial embezzlement. In paragraph 6 of the counter-affidavit, it is denied that the enquiry officer did not give opportunity of hearing to the petitioner. The enquiry officer on 19.9.1997 issued a notice to the petitioner by registered post for hearing on 26.9.1997. This registered letter was served on the petitioner, as it was not sent back by the post office. However, inspite of receiving this registered letter, the petitioner did not appear before the enquiry officer. Photocopy of the registered letter dated 19.9.1997 is Annexure-C.A. 2 to the counter-affidavit. Again on 9.10.1997, the enquiry officer sent another registered letter to the petitioner for appearing on 20.10.1997. This letter was received back by the enquiry officer with the endorsement that the petitioner was not available. Photocopy of the said letter is Annexure-C.A. 3 to the counter-affidavit. The enquiry officer in his report has stated that the petitioner was given full opportunity of hearing but despite this, he did not appear before the enquiry officer. After his suspension on 2.7.1997, the petitioner never attended the head office and his whereabouts were not known, and as such the enquiry officer and the Bank, whenever it was required, sent registered letters at the address to the petitioner to his home address. It is wrong to say that the petitioner sent several letters asking for payment of subsistence allowance. In fact he never sent any such letter and never made any request orally or through letters. Annexures-6 and 7 to the petition have been prepared by the petitioner for the purpose of this writ petition and they are forged documents.

6. In paragraph 10 of the counter-affidavit, it is stated that the petitioner has been paid the entire subsistence allowance of Rs. 64,707-75 vide letter dated 18.11.2000, Annexure-C.A: 6 to the writ petition. In paragraph 11 of the counter-affidavit, it is stated that the petitioner never visited the head office nor did he take subsistence allowance deliberately and avoided the departmental proceedings. The respondent never refused to pay subsistence allowance to the petitioner. The petitioner was never available nor did he attend the head office for a single day although he was required to remain in the head office during the suspension period. In paragraph 12 of the counter-affidavit, it is stated that the petitioner never filed any application praying for subsistence allowance. Several letters were issued to him but he deliberately avoided receiving those letters.

 

7. In paragraph 14 of the counter-affidavit, it is stated that the Supreme Court decision as mentioned above is not applicable because in this case, the petitioner never applied for subsistence allowance nor did he attend the enquiry. It is stated that the respondent was always ready for payment of subsistence allowance but the petitioner never came to attend the office during the suspension period nor did he file any application.

8. On the facts and circumstances of the case, we are not inclined to interfere with the impugned order of termination of service. From the facts disclosed in the counter-affidavit, it is evident that the petitioner did not co-operate in the enquiry and he never even applied for subsistence allowance and hence he cannot complain now. It seems to us that the petitioner committed huge embezzlement and the finding to this effect is a finding of fact. Hence, we cannot interfere with the same in writ jurisdiction. The petitioner was an officer in the Bank where the highest degree of discipline and integrity is required to be maintained in order to maintain public confidence, vide Ram Pratap Sonkar Vs. Chairman and Managing Director, Allahabad and others, : Writ Petition No. 7538 of 2001, Prakash Chandra Bansal v. General Manager, decided on 13.12.2001 and Writ Petition No. 19658 of 2001, K.K. Singh v. Gomti Gramin Bank, decided on 19.12.2001, etc. Non-payment of subsistence allowance does not vitiate the enquiry if no prejudice is caused, vide Shiv Dularey Gupta Vs. Director of Local Bodies and Others,

9. It is also evident that the petitioner was given full opportunity of hearing but he himself avoided appearance before the enquiry officer.

10. There is thus no force in this petition and we are not inclined to exercise our discretion under Article 226 of the Constitution in such a case. The petition is dismissed.

 