

W.P.(MD).No.16590 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.09.2023

PRONOUNCED ON : 01.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.16590 of 2023

and

W.M.P(MD)Nos.13876 & 13877 of 2023

P.M.Jegadeesan

... Petitioner

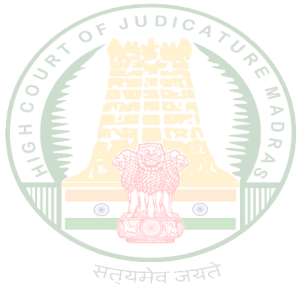
Vs.

1.Tamil Nadu Grama Bank,
Represented by its Chairman,
No.6, Yercard Main Road,
Hasthampatti, Salem – 636 007.

2.The Human Resource Manager /
Disciplinary Authority,
Tamil Nadu Grama Bank,
No.6, Yercard Main Road,
Hasthampatti, Salem – 636 007.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in his impugned charge memo No.TNGB/VIG/CS/10/2020-21, dated 22.07.2020 and quash the same as is in violation of Section 30 of the Regional Rural Banks Act, 1976 and consequently reinstate the petitioner in his original appointed place with all monetary and service benefits.



W.P.(MD).No.16590 of 2023

WEB COPY

For Petitioner : Mr.Ananth C.Rajesh

For Respondents : Mr.N.Dilip Kumar

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned charge memo dated 22.07.2020, as it is in violation of Section 30 of the Regional Rural Banks Act, 1976 and consequently reinstate the petitioner in his original appointed place with all monetary and service benefits.

2.Case of the petitioner:-

2.1.The petitioner was employed as an Office Assistant – Multi purpose in the erstwhile Pandian Grama Bank, Pasuvanathanai Branch, Thoothukudi District with effect from 24.06.2013. Thereafter, he was transferred to Ottapidaram Branch, Thoothukudi District with effect from 26.11.2014 and once again, he was transferred to Sayalkudi Branch, Thoothukudi District with effect from 28.08.2017. While he was working in Sayalkudi Branch, the petitioner was served with a show-cause notice dated 28.02.2020 calling for an explanation for the irregularities committed by the General Manager. In the meanwhile,

2/54



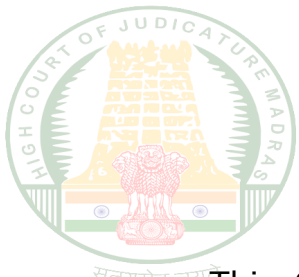
W.P.(MD).No.16590 of 2023

WEB COPY

the petitioner was transferred to the Regional Office, Tirunelveli Town on 16.03.2020. After joining the Regional Office, the petitioner submitted his explanation for the said show-cause notice on 20.03.2020. Despite his explanation, the Chief Manager HR by an order dated 27.05.2010, suspended the petitioner from service. Subsequent to that, after a delay of two months, a charge memo was issued by the second respondent on 22.07.2020. The petitioner submitted his explanation on 20.08.2020. Without considering the said explanation, the second respondent appointed an enquiry officer by an order dated 03.09.2020 to conduct an enquiry for the charge memo dated 22.07.2020. The enquiry officer proceeded with the enquiry in a biased manner. Hence, the petitioner made a representation to the second respondent seeking to change the enquiry officer. Since the same was rejected, the petitioner filed a Writ Petition in W.P(MD)No. 11817 of 2023.

2.2.To be specific, the petitioner filed the said W.P(MD)No. 11817 of 2023 seeking to call for the records of the second respondent in his impugned order, dated 22.07.2020 and quash the same and consequently, direct the respondents to close the disciplinary proceedings in charge memo, dated 22.07.2020 against the petitioner.

3/54



W.P.(MD).No.16590 of 2023

WEB COPY

This Court in the said Writ Petition on 21.06.2023 passed an order directing the second respondent to appoint any other enquiry officer with a specific mandate to conduct a fair enquiry and further directed the petitioner to extend his cooperation with a condition that if the petitioner fails to appear on any hearing date, he can even be set ex-parte and the enquiry will be concluded within a period of twelve weeks from the date of receipt of copy of that order. Even before appointing the enquiry officer by the respondents, the petitioner filed this Writ Petition seeking to quash the impugned charge memo dated 22.07.2020 and consequently, reinstate the petitioner in his original appointed place.

3.Preliminary Objection on Maintainability:-

3.1.The learned Standing Counsel appearing for the respondents submitted that the Writ Petition is not maintainable. The same is hit by (i) the principles of constructive res judicata (ii) the principles enshrined under Order II Rule 2 of C.P.C and (iii) without seeking the leave of this Court, the petitioner is not entitled to challenge the charge memo dated 22.07.2020 subsequent to the disposal of the Writ Petition in W.P(MD)No.11817 of 2023, for

4/54



W.P.(MD).No.16590 of 2023

WEB COPY

which he relied upon the order passed by the Hon'ble Apex in ***M.J.Exporters Private Limited Vs. Union of India and others*** reported in ***(2021) 13 SCC 543***. The relevant portion relied by the learned standing counsel for the respondents is extracted as follows:-

"13.Mr. K. Radhakrishnan, learned Senior Counsel appearing for the Department, has drawn our attention to the order dated 2-8-2004 which was passed in Writ Petition No. 1278 of 2004. His submission was that in the earlier round of litigation before the High Court when the demand of interest was questioned, it was given up inasmuch as after arguments on this issue, the counsel for the Appellant had withdrawn the writ petition. At that time, while allowing the Appellant to withdraw the writ petition, the dispute was confined only to the calculation of interest as is clear from the order dated 2-8-2004 itself which specifically referred to the averments made in Paragraphs 6 and 7. These paragraphs have already been extracted above. In Paragraph 6 particularly, respondent No.1 made some remarks about the calculation of the interest and had stated that it needed re-calculation. Therefore, after the dismissal of the said writ petition as withdrawn, the only issue that remains for consideration was how much interest is payable and the correct calculations thereof. It is a matter of record which flows from the



WEB COPY



W.P.(MD).No.16590 of 2023

correspondence exchanged thereafter between the parties that insofar as Department is concerned, it only re-worked the amount of interest and demanded interest in the sum of Rs. 4,67,02,251/- after reducing the figure from 8,43,62,504/- because of the reasons already stated above.

14. Consequently in the second writ petition, when the Appellant as well as its counsel knew that the issue as to whether the interest is payable or not on other grounds had already been foreclosed in the earlier writ petition, the counsel for the Appellant did not make any submission with regard to the aforesaid plea raising the issue in show-cause notice and limited his prayer from the date from which the interest was to be paid.

15. In these circumstances, we feel that when this issue was raised and abandoned in the first writ petition which was dismissed as withdrawn, the principles of constructive res judicata which is laid down Under Order 23 Rule 1 of the Code of Civil Procedure, 1908, and which principles are extendable to writ proceedings as well as held by this Court in 'Sarguja Transport Service v. State Transport Appellate Tribunal 1987 (1) SCR 200 would squarely be applicable.'



W.P.(MD).No.16590 of 2023

WEB COPY

3.2.He also relied upon the order passed by the Hon'ble Supreme Court in ***Bharat Amratlal Kothari and another Vs. Dosukhan Samadkhan Sindhi and others*** reported in **(2010) 1 SCC 234**. The relevant portion relied by the learned standing counsel for the respondents is extracted as follows:-

"29.The approach of the High Court in granting relief not prayed for cannot be approved by this Court. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner is entitled or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for any particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished.

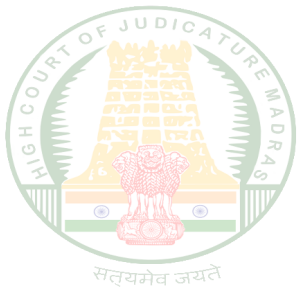
30.Though the provisions of the Code are not made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the petitioner to claim all reliefs he seeks from the court. Normally, the court will grant only those reliefs specifically prayed by the petitioner. Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."



WEB COPY

3.3.The learned Standing Counsel appearing for the respondents also submitted that this Court in W.P(MD)No.11817 of 2023, vide order dated 21.06.2023 has rejected the petitioner's claim to direct the respondents to close the disciplinary proceedings in the charge memo, dated 22.07.2020 against the petitioner for the reason that he failed to challenge the said charge-memo in the aforesaid Writ Petition.

3.4.The learned counsel appearing for the petitioner drew my attention to the fact that the second respondent issued the impugned charge memo dated 22.07.2020 under Regulation 39 of the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019. As per Section 30 of the Regional Rural Banks Act, 1976, the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019 has to be notified by the first respondent Bank, after consultation with the sponsor bank and the National Bank NABARD. Since the said regulation under which the charge memo has been issued is not notified, the entire proceeding against the petitioner stands vitiated. The first respondent Bank is the Tamil Nadu Grama Bank.



WEB COPY

W.P.(MD).No.16590 of 2023

3.5.By filing a petition for a writ under Article 226 of the Constitution, the extraordinary jurisdiction of this Court is invoked. This jurisdiction is undoubtedly special and exclusive. Though Section 141 of C.P.C would apply in terms of writ proceedings instituted under Article 226 of the Constitution, the learned Standing Counsel appearing for the respondents has raised the preliminary objection by taking a plea of constructive res judicata and has also emphatically stated that this Writ Petition is hit by Order II Rule 2 of C.P.C.

3.6.The Hon'ble Apex Court in the case of ***Writ Petition (Civil) No.59 of 2019, dated 05.02.2020 [Brahma Singh and others Vs. Union of India and others]*** has dealt with the applicability of Order II Rule 2 of C.P.C to a petition for a high prerogative writ under Article 226 of the Constitution and the relevant portion of which is extracted as follows:-

"In relation to applicability of Order II Rule 2 of the Civil Procedure Code, 1908 this Court has held in Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh and Others reported in AIR 1962 SC 1334 as follows:



WEB COPY



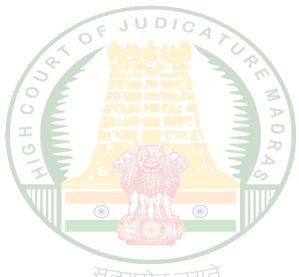
W.P.(MD).No.16590 of 2023

"12. ...The bar of O.2 R. 2 of the Civil Procedure Code on which the High Court apparently relied may not apply to a petition for a high prerogative writ under Art. 226 of the Constitution, but the High Court having disallowed the claim of the appellant for salary prior to the date of the suit, we do not think that we would be justified in interfering with the exercise of its discretion by the High Court."

Placing reliance on the case of *Devendra Pratap Narain Rai Sharma (supra)*, this Court in *Gulabchand Chhotalal Parikh v. State of Gujarat*² in relation to Order II Rule 2 held as follows:

"23. ...By its very language, these provisions do not apply to the contents of a writ petition and consequently do not apply to the contents of a subsequent suit...""

3.7.As far as the question of constructive res judicata is concerned, the learned Standing Counsel appearing for the respondents relied upon the case of ***M.J.Exporters Private Limited Vs. Union of India and others*** reported in **(2021) 13 SCC 543**, in which, the Hon'ble Apex Court has dealt with the case where the same parties to a subsequent Writ Petition have already filed a first Writ in



W.P.(MD).No.16590 of 2023

WEB COPY

an earlier round of litigation before the High Court and when the demand of interest was questioned, it was given up inasmuch as after arguments on that issue and the counsel for the appellant had withdrawn the Writ Petition. Thereafter, the second Writ Petition was filed by the same parties with respect to the same issue. In such circumstances, the Hon'ble Apex Court held that when the issue of demand of interest was already raised and abandoned in the first Writ Petition which was dismissed as withdrawn, the principles of constructive res judicata and the provisions laid down under Order 23 Rule 1 of C.P.C would vitiate the subsequent Writ Petition.

3.8.Relying on the same, the learned Standing Counsel appearing for the respondents vehemently submitted that in the earlier writ petition in W.P(MD)No.11817 of 2023 by not challenging the impugned charge memo dated 22.07.2020, the petitioner has abandoned his right to challenge the same and hence, in this subsequent Writ Petition he is not entitled to raise the same since his case is hit by principles of constructive res judicata.

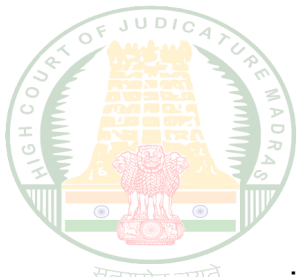


W.P.(MD).No.16590 of 2023

WEB COPY

3.9.However, this is a peculiar case, wherein in the first round of litigation this Court categorically directed the respondent Bank to appoint a new enquiry officer setting aside the order of appointment of the enquiry officer, dated 27.03.2023 and the said order was passed on 21.06.2023. However, the petitioner submitted that in terms of the order passed by this Court, a new enquiry officer is not appointed by the respondent Bank so far. Defending the same, the respondent Bank has filed a counter-affidavit wherein they have submitted that the appointment of the enquiry officer will be done on receipt of the copy of the web copy / certified copy of the order passed by this Court in W.P(MD)No.11817 of 2023. But the web copy of the said order was circulated to this Court by the Standing Counsel for the respondent at the time of arguments. Hence, the submission made by the learned Standing Counsel appearing for the respondents that the appointment of the enquiry officer is getting delayed due to the non-receipt of the web copy / certified copy of the order passed in W.P(MD)No.11817 of 2023 is not sustainable. That apart, a question of law is involved in the challenge to the impugned charge memo dated 22.07.2020. This Court has already held that the enquiry conducted by the enquiry officer has become vitiated. The petitioner was also directed to extend his co-operation on the appointment of a new

12/54



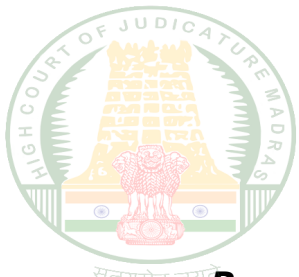
W.P.(MD).No.16590 of 2023

WEB COPY

enquiry officer, and the enquiry was also directed to be concluded within a period of 12 weeks from the date of receipt of a copy of that order.

3.10. Though the learned Standing Counsel appearing for the respondent Bank submitted that since the petitioner failed to challenge the impugned charge memo dated 22.07.2020 at the first instance in his first Writ Petition, he has no right to raise the same in this subsequent Writ Petition, this Court is inclined to observe that the question raised by the petitioner in this Writ Petition is one purely of law. The question of law involved is that the impugned suspension order dated 22.07.2020 is issued under Regulation 39 of the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019. Section 30(1) of the Regional Rural Banks Act, 1976, mandates that the Board of Directors of the Regional Rural Bank after consultation with the sponsored Bank, NABARD and with the previous sanction of the Central Government on making regulations should publish the same in the official Gazette and the aforesaid regulations would come into force only after publication of the same in the official Gazette. But such an exercise has not been done in the case of the respondent Bank. The Hon'ble Supreme Court in the case of **Mathura**

13/54



W.P.(MD).No.16590 of 2023

Prasad Bajoo Jaiswal and others Vs. Dossibai N.B.Jeejeebhoy

WEB COPY

reported in **AIR 1971 SC 2355**, while dealing with the applicability of the rule of res judicata in cases involving an exclusive question of law has held that when the question is one purely of law by resorting to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata for a rule of procedure cannot supersede the law of the land and the relevant portion of which is extracted as follows:-

"13.It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided-in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be, reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same for the expression "the matter in issue" in s. 11 Code of Civil Procedure means the right litigated between the parties,



WEB COPY

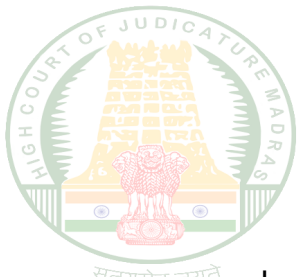


W.P.(MD).No.16590 of 2023

i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land.”

3.11.A rule of procedure under Section 11 and 23(1) of the Code of Civil Procedure, 1908 cannot supersede the mandate of Section 30(1) of the Regional Rural Banks Act, 1976. “Whether the suspension order passed under a regulation which has no statutory force is sustainable? is a pure question of law, which flows from the power conferred on the Board of Directors of a Regional Rural Bank under Section 30 of the Regional Rural Banks Act, 1976, to make regulations with the previous sanction of the Central Government, by notification in the official Gazette.

3.12.Precisely, the regulations unless published in the official Gazette would not become legal. The Regional Rural Banks Act, 1976 is a substantive law which fixes duties and establish the rights



W.P.(MD).No.16590 of 2023

WEB COPY

and responsibilities of the body corporate of the said Bank. The Regional Rural Banks Act, 1976, deals with the rights and obligations of the various office bearers, Board of Directors and staffs of the said Bank. Hence, ignoring the import and effect of Section 30 of the Regional Rural Banks Act, 1976, can this Court validate the impugned suspension order passed by the second respondent under the provisions of a regulation which do not have statutory force. In the instant case, giving effect to the preliminary objection of constructive res judicata would amount to giving effect to the Tamil Nadu Grama Bank Service Regulations, 2019 contrary to the statutory direction in Section 30(1) of the Regional Rural Banks Act, 1976. Hence, the principles of constructive res judicata has no applicability in this case and thus the preliminary objection is hereby negated.

4.Two primordial questions:-

“1) Whether the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019 would have statutory force unless and until the same is notified in the official Gazette as mandated in Section 30(1) of the Regional Rural Banks Act, 1976?



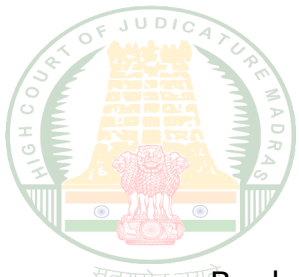
W.P.(MD).No.16590 of 2023

WEB COPY

2) Whether the impugned suspension order passed under clause 39 of the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019, is sustainable?"

5.Discussion:-

5.1.The petitioner is employed as Office Assistant – Multipurpose in the erstwhile Pandian Grama Bank, Pasuvanthanai Branch, Thoothukudi District with effect from 24.06.2013. While he was working at the Regional Office, Tirunelveli Town, he was called for to submit an explanation to a show-cause notice dated 28.02.2020, which was served on him while he was working in Sayalkudi Branch for the irregularities committed by the General Manager. The petitioner submitted his explanation on 20.03.2020, following which, the Chief Manager, HR, by order dated 27.05.2020, suspended the petitioner from service. Pursuant to the same, after a period of two months, a charge memo was issued by the second respondent on 22.07.2020, for which the petitioner submitted his explanation on 20.08.2020. Following the same, an enquiry officer was appointed by order, dated 03.09.2020 to conduct an enquiry for the charge memo, dated 22.07.2020. The petitioner made an application to the respondent



W.P.(MD).No.16590 of 2023

WEB COPY

Bank to change the enquiry officer for having conducted the enquiry in a biased manner. However, the same was not considered and his request came to be rejected by the second respondent vide impugned order, 27.03.2023. Contending that the enquiry officer proceeded with the enquiry in a biased manner, the petitioner filed a Writ Petition in W.P(MD)No.11817 of 2023 to quash the impugned rejection order of the second respondent Bank, to change the enquiry officer dated 27.03.2023 and seeking to direct the respondents to close the disciplinary proceedings in charge-memo, dated 22.07.2020. This Court was pleased to partly allow the aforesaid Writ Petition on 21.06.2023, by directing the respondent Bank to appoint a new enquiry officer and directing the new enquiry officer to proceed with the departmental enquiry from the stage where it is entrusted to him. That apart, the petitioner was also directed to extend his cooperation for the departmental enquiry and the disciplinary authority was directed to take further action as per law. Pursuant to the said order, this Writ Petition came to be filed challenging the impugned charge memo, dated 22.07.2020 and to quash the same as it is in violation of Section 30 of the Regional Rural Banks Act, 1976 and consequently, reinstate the petitioner in his original appointed place with all monetary and service benefits.

18/54



W.P.(MD).No.16590 of 2023

WEB COPY

5.2.The petitioner was originally appointed as an Office Assistant – Multi Purpose in the erstwhile Pandian Grama Bank. The Pandian Grama Bank was one of the Regional Rural Banks, which operated in the State of Tamil Nadu. The conditions of services of the employees of the said Bank were governed by the Pandyan Grama Bank Staff (Officers and Employees) Service Regulations, 2010. While so, the Ministry of Finance, vide notification, dated 28.01.2019 in consultation with the National Bank for Agriculture and Rural Development (NABARD), the Government of Tamil Nadu, the Indian Bank and the Indian Overseas Bank decided to amalgamate the Pallavan Grama Bank and Pandyan Grama Bank into a single Regional Rural Bank. Pallavan Grama Bank was sponsored by the Indian Bank and the Pandyan Grama Bank was sponsored by the Indian Overseas Bank in the State of Tamil Nadu respectively. In view of amalgamating both the Banks into a single Regional Rural Bank, namely Tamil Nadu Grama Bank, the said notification came to be notified by the Central Government with effect from 01.04.2019.

5.3.All the Regional Rural Banks are governed by the Regional Rural Banks Act, 1976. The said Act is one which provides for the incorporation, regulation and winding up of Regional Rural Banks

19/54

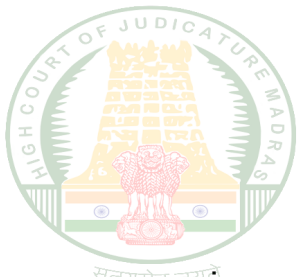


W.P.(MD).No.16590 of 2023

WEB COPY

with a view to develop the rural economy by providing for the purpose of development of agriculture, trade, commerce, industry and other productive activities in the rural areas, credit and other facilities, particularly to the small and marginal farmers, agricultural labourers, artisans and small entrepreneurs. In the exercise of the powers conferred by sub-Section (1) of Section 23A of the Regional Rural Banks Act, 1976, the Central Government provided for the amalgamation of two Regional Rural Banks ie., Pallavan Grama Bank and Pandyan Grama Bank into a single Regional Rural Bank namely Tamil Nadu Grama Bank. It was notified vide notification, dated 28.01.2019 with its head office at Salem under the sponsorship of Indian Bank. In furtherance to that, vide such notification from the effective date of amalgamation ie., from the first day of April, 2019, the transferor Regional Rural Banks namely Pallavan Grama Bank and Pandyan Grama Bank ceased to carry on the business and started functioning together in the amalgamated nomenclature namely Tamil Nadu Grama Bank ie., the transferee Regional Rural Bank. As a consequence of the said amalgamation, the service of all the employees of the transferor Regional Rural Banks continued in the transferee Regional Rural Bank at the same remuneration and on the same terms and conditions of service by which they were governed

20/54



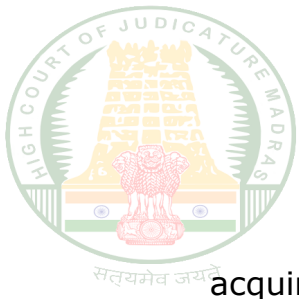
W.P.(MD).No.16590 of 2023

WEB COPY

immediately before the effective date of amalgamation and the area of operation of the transferee Regional Rural Bank namely Tamil Nadu Grama Bank extended across the State of Tamil Nadu except Chennai. Under such background, the petitioner was suspended on 27.05.2020 ie., after one year and three months from the date of amalgamation of Pallavan Grama Bank and Pandyan Grama Bank into Tamil Nadu Grama Bank. As such, while he was serving in the Tamil Nadu Grama Bank he was visited with the aforesaid suspension order which was followed by the impugned charge memo, dated 22.07.2020.

5.4.The pertinent issue raised by the writ petitioner in this Writ Petition itself is that the petitioner has been visited with the charge memo, dated 22.07.2020 under Regulation 39 of the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019, which has no statutory value. On that basis, the petitioner claimed that the said impugned charge memo has no statutory force and has to lapse in limine for want of statutory value. The categorical contention of the petitioner is that the charge memo is per se illegal since the same has been issued under Regulation 39 of the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019, for having been issued under a provision of a regulation which would

21/54



W.P.(MD).No.16590 of 2023

WEB COPY

acquire statutory force only on notification of the same as mandated in Section 30 of the Regional Rural Banks Act, 1976.

5.5. Section 30 of the Regional Rural Banks Act, 1976 is extracted as follows:-

*“30. Power to make regulations.- The Board of Directors of a Regional Rural Bank may, after consultation with the Sponsor Bank and the National Bank and with the previous sanction of the Central Government, **[by notification in the Official Gazette], make regulations, not inconsistent with the provisions of this Act and the rules made thereunder,** to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.*

[(2) Every regulation shall, as soon as may be after it is made under this Act by the Board of Directors, be forwarded to the Central Government and that Government shall cause a copy of the same to be laid before each House of Parliament, while it is in session, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree



WEB COPY



W.P.(MD).No.16590 of 2023

that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the regulation.]”

5.6. That apart, Regulation 1(2) of the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019, (herein after to be mentioned as 'Regulations, 2019) further strengthens the petitioner's argument that the said Regulations 2019 shall come into force only on being notified and for better appreciation, Regulation 1 of the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019 is extracted as follows:-

"1.Short title, commencement and application.- (1) These regulations may be called the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019.

(2) They shall come into force on the date of their publication in the Official Gazette."



W.P.(MD).No.16590 of 2023

WEB COPY

5.7.This Court is of great concern and in compulsion to decide whether such a hyper-technical stand taken by the petitioner would aid him in saving him from the disciplinary proceedings initiated against him by the second respondent. No doubt, the amalgamation of Pallavan Grama Bank and Pandyan Grama Bank was effected by the Central Government in exercise of the powers conferred by sub-Section (1) of Section 23A of the Regional Rural Banks Act, 1976, which mandates that the employees of the transferor Bank would be governed by the same terms and conditions of service which was applicable to them when they were in the service of the transferor Bank and they are entitled to receive the same remuneration.

5.8.Section 23A(3) of the Regional Rural Banks Act, 1976 is extracted as follows:-

"23A. Amalgamation of Regional Rural Banks.- (3) Every notification issued under sub-Section (1) may also provide for all or any of the following matters, namely:-

(a) the continuance in service of all the employees of the transferor Regional Rural Banks (excepting such of them as not being workmen with the meaning of the



WEB COPY



W.P.(MD).No.16590 of 2023

Industrial Disputes Act, 1947 (14 of 1947) are specifically mentioned in the notification) in the transferee Regional Rural Bank at the same remuneration and on the same terms and conditions of service, which they were getting or, as the case may be, by which they were being governed, immediately before the date on which the amalgamation takes effect;

(b) notwithstanding anything contained in clause (a), where any of the employees of the transferor Regional Rural Banks, not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947) are specifically mentioned in the notification, or where any employee of the transferor Regional Rural Banks has by notice in writing given to the transferee Regional Rural Bank at any time before the expiry of a period of three months next following the date on which the amalgamation takes effect, intimated his intention of not becoming an employee of the transferee Regional Rural Bank, the payment to such employee of compensation, if any, to which he is entitled under the Industrial Disputes Act, 1947, and such gratuity, provident fund and other retirement benefits ordinarily admissible to him under the rules or authorisations of the concerned transferor Regional Rural Banks immediately before that date;

(c) the other terms and conditions for the amalgamation of Regional Rural Banks; and



W.P.(MD).No.16590 of 2023

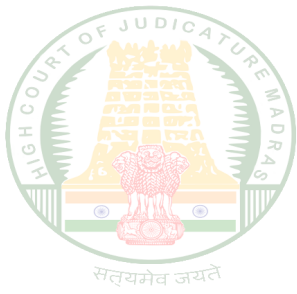
WEB COPY

(d) the continuance by or against the transferee Regional Rural Bank of any pending legal proceeding by or against any transferor Regional Rural Banks and such consequential, incidental and supplemental provisions, as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.”

5.9.To exclusively understand the effect of amalgamation, it is necessary to extract Section 23B of the Regional Rural Banks Act, 1976 and the same is extracted as follows:-

"23B.Notification under section 23A to be sufficient notice to concerned parties.- (1) A notification issued under sub-section (1) of section 23A, shall constitute sufficient notice of the provisions thereof to all the parties concerned and shall be binding on the transferor Regional Rural Banks and the transferee persons having dealings with such banks.

(2) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882) or the Registration Act, 1908 (16 of 1908), any notification issued under sub-section (1) of section 23A shall be sufficient conveyance, in accordance with the provisions of the notification, of the business, properties, assets and liabilities, rights, interests, powers, privileges,



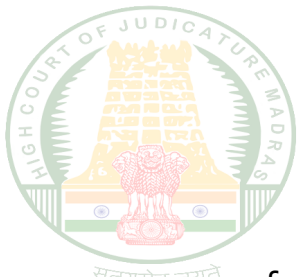
WEB COPY

W.P.(MD).No.16590 of 2023

benefits and obligations of whatever nature of the transferor Regional Rural Banks to the transferee Regional Rural Bank.

(3) On and from the date on which the amalgamation takes effect under Section 23A, any reference to the transferor Regional Rural Banks in any agreement, conveyance, assurance, power of attorney or any other document of whatsoever nature, shall be deemed to be a reference to the transferee Regional Rural Bank and the rights and obligations of the transferor Regional Rural Banks shall be deemed to be the rights and obligations of the transferee Regional Rural Bank to the extent specified in the said amalgamation."

5.10. In terms of the provisions of Section 23B of the Regional Rural Banks Act, 1976, a notification issued under sub-Section (1) of Section 23A would suffice to bring to the notice of all the stake holders including the depositors, creditors, employees and all other persons dealing with the transferor Bank that their transferor Bank namely, Pandyan Grama Bank has been amalgamated with another transferor Bank, namely, Pallavan Grama Bank and has evolved as a new transferee Bank namely Tamil Nadu Grama Bank. Apart from the said notification issued in the exercise of the powers



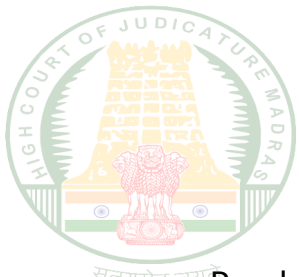
W.P.(MD).No.16590 of 2023

WEB COPY

conferred to the Central Government under Section 23A of the Regional Rural Banks Act, 1976, no other legal formality need to be completed. In addition to that, any reference to the transferor Pandyan Grama Bank in any agreement, conveyance, assurance, power of attorney or any other document of whatsoever in nature shall also be deemed to be a reference to the transferee Tamil Nadu Grama Bank.

5.11. Similarly, the rights and obligations of the transferor Pandyan Grama Bank shall be deemed to be the rights and obligations of the transferee Tamil Nadu Grama Bank to the extent specified in the said amalgamation ie., notification dated 28.01.2019. The said notification in terms of Section 23B of the Regional Rural Banks Act, 1976, would be the basic document which would govern the entire function of the transferee Tamil Nadu Grama Bank till the notification of the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019 as mandated by Section 30(1) of the Regional Rural Banks Act, 1976 and even thereafter. Clause 5 of the said notification mandates that from the effective date of amalgamation, the undertakings of the transferor Pandyan Grama Bank shall be transferred to and shall vest with the transferee Tamil Nadu Grama Bank. Such undertaking of the transferor

28/54



W.P.(MD).No.16590 of 2023

WEB COPY

Pandyan Grama Bank shall include all assets, rights, powers, authorities and privileges and all property movable and immovable, cash balance, reserve funds, investments and all the other rights and interest in or arising out of such property, as are immediately before the commencement of the said notification, in ownership, possession, power or control of the transferor Pandyan Grama Bank and all books of accounts, registers, records and other documents of whatever nature shall also be deemed to include borrowings, liabilities and obligations of whatever kind then subsisting with the transferor Pandyan Grama Bank. The said notification further mandates that all contracts, deeds, bonds, agreements, guarantees, powers of attorney, grants of legal representation and other instruments of whatsoever nature subsisting or having effect immediately before the commencement of the said notification and to which the transferor Pandyan Grama Bank was a party or which were in favour of the transferor Pandyan Grama Bank shall be in full force and effect against or in favour of the transferee Tamil Nadu Grama Bank and may be enforced or acted upon as fully and effectively as if in the place of the transferor Pandyan Grama Bank, the transferee Tamil Nadu Grama Bank has been a party thereto or as if they had been issued in favour of the transferee Tamil Nadu Grama Bank.

29/54



W.P.(MD).No.16590 of 2023

WEB COPY

5.12. Further in pari materia to the provision in Section 23B(3) of the Regional Rural Banks Act, 1976, the Notification also mandates that any reference to the transferor Pandyan Grama Bank in any agreement, conveyance, assurance, power of attorney or any other document shall be deemed to be a reference to the transferee Tamil Nadu Grama Bank. It is pertinent to mention here that Clause 7(a) of the said Notification categorically notifies that the service of all the employees of the transferor Pandyan Grama Bank shall continue in the transferee Tamil Nadu Grama Bank at the same remuneration and on the same terms and conditions of service or as the case may be by which they were governed immediately before the effective date of amalgamation.

5.13. From all the above provisions of the Regional Rural Banks Act, 1976 and the details of the amalgamation notification dated 28.01.2019 of the Ministry of Finance (Department of Financial Services), Government of India, it is palpable that the entire operation including the condition of service of the employees working thereat in the transferor Pandyan Grama Bank has been completely transferred and continues in the transferee Tamil Nadu Grama Bank. No doubt, before amalgamation, the conditions of service of the employees of

30/54



W.P.(MD).No.16590 of 2023

WEB COPY

Pandyan Grama Bank were governed by the Pandyan Grama Bank Staff (Officers and Employees) Service Regulations, 2010.

5.14. On the amalgamation of two transferor Banks namely Pandyan Grama Bank and Pallavan Grama Bank into a single transferee Regional Rural Bank namely Tamil Nadu Grama Bank under the sponsorship of Indian Bank in consultation with NABARD and the Government of Tamil Nadu, the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019, draft notification came to be finalized. To give statutory force to the same, the said Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019 has to be notified by the Board of Directors of the Tamil Nadu Grama Bank in consultation with the sponsored Bank ie., Indian Bank and the National Bank ie., the NABARD with the previous sanction of the Government in the official Gazette and such regulations ought to be made by the Board of Directors of the Tamil Nadu Grama Bank in consistence with the provisions of the Regional Rural Banks Act, 1976. Hence, by all means, to give statutory force to the said Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019, the same has to be notified in the official Gazette by the Board of Directors of the Tamil Nadu Grama Bank.

31/54

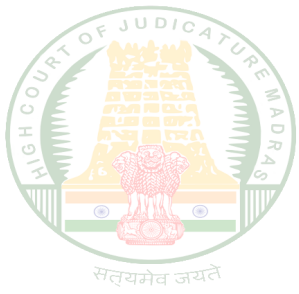


WEB COPY

5.15.The Hon'ble Apex Court in the case of **Noor Mohammed Vs. Khurram Pasha** reported in **AIR 2022 SC 3592** has held as follows:-

"13..... It is well known principle that if a statute prescribes a method or modality for exercise of power, by necessary implication, the other methods of performance are not acceptable. While relying on the decision of the Privy Council in Nazir Ahmad v. King Emperor AIR 1936 Privy Council 253 (2), a Bench of three Judges of this Court made following observations in State of Uttar Pradesh Vs. Singhara Singh and Others reported in AIR 1964 SC 358:-

7.In Nazir Ahmed case, MANU/PR/0111/1936 : 63 Ind. App 372 : AIR 1936 PC 253 (2) the Judicial Committee observed that the principle applied in Taylor Vs. Taylor [(1875) 1 Ch D 426, 431] to a Court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden...."



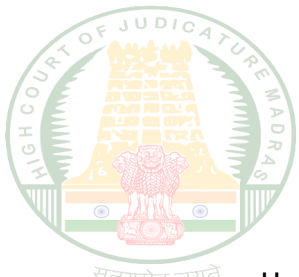
WEB COPY

W.P.(MD).No.16590 of 2023

5.16. Applying the principle adopted in Taylor Vs. Taylor (1875) [1 Ch.D.426], this Court necessarily has to hold that to give statutory force to the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019, the same has to be notified by the Board of Directors of the Tamil Nadu Grama Bank in the exercise of the powers conferred on the Board by Section 30(1) of the Regional Rural Banks Act, 1976. Until and unless the same is notified the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019 will not have any statutory force. But will that vitiate the entire disciplinary proceedings initiated as against the petitioner, only because of the reason that the second respondent has visited the petitioner with charge memo under Regulation 39 of the aforesaid un-notified Regulations 2019?

5.17. It is needless to state that there is no right for an employee outside the rules governing the services. It is true that the origin of Government service is contractual. But once appointed to this post, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. The extent to which the law is context to bring the

33/54



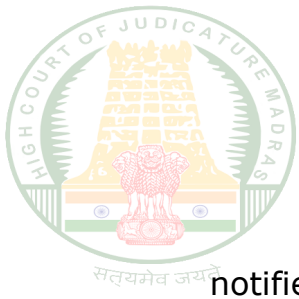
W.P.(MD).No.16590 of 2023

WEB COPY

matter within the sphere of status is a matter depending on considerations of public policy.

5.18. Once the petitioner fully accepted the offer of appointment made by the Pandyan Grama Bank at the first instance and joined duty as Office Assistant – Multipurpose on 24.06.2013 in Pasuvanthanai Branch, he acquired the status of a Government servant. Hence, he is fully bound by the contract of appointment. However, once he acquires the status of Government servant, in view of the relevant statutes, his rights and obligations would be framed and altered by the decision of the Government. In the instant case, though the petitioner was originally the employee of the transferor Pandyan Grama Bank till the date of amalgamation he was governed by the Pandyan Grama Bank Staff (Officers and Employees) Service Regulations, 2010. But from the date of amalgamation with effect from 01.04.2019, he would be governed by the mandates of Regional Rural Banks Act, 1976 and the notification in S.O.476(E), Ministry of Finance (Department of Financial Services) Government of India, New Delhi, dated 28.01.2019. Only in pursuance to the said notification, a draft Regulation 2019 has been arrived at by the Board of Directors of the transferee Tamil Nadu Grama Bank. However, the same is yet to be

34/54



W.P.(MD).No.16590 of 2023

WEB COPY

notified. But in the meanwhile even before the same is notified and is given statutory force by the Board of Directors of the transferee Tamil Nadu Grama Bank, the petitioner has been visited by the impugned charge memo under Regulation 39 of the unnotified Regulation 2019.

5.19.However, the learned counsel appearing for the respondents vehemently submitted that it is not necessary for the transferee Tamil Nadu Grama Bank to get it notified in view of the various decisions taken by the National Bank, NABARD. He drew my attention to the clarification circular of NABARD which clarifies that no further notification of Regulations 2019 is necessary and the same is extracted as follows:-

*"Ref.No.NB.IDD.RRCBD/145/316
(Amalgamation)/2019-2020*

03 May 2019

The Chairman

All amalgamated RRBs

Dear Sir

Amalgamation of RRBs – Operational Issues

- Clarification on pension related regulations

*Please refer to our Ref.No.NB.IDD/1506/316
(Amalgamation)/2018-19 dated 25 March 2019 on*



WEB COPY



W.P.(MD).No.16590 of 2023

captioned subject. In this connection you are advised to refer item No.14 and 15 related to issue of notification of Pension and Service Regulation in case of amalgamated RRBs.

It is advised/clarified that amendment in these regulation for the amalgamated RRB will be passed and adopted by BOD of RRB only. No further notification in Gazette is necessary as the notification of GOI on amalgamation covers all aspects of transfer of asset, liabilities, duties and obligation of transferor bank to transferee bank.

5.20.The reason putforth by the NABARD is that the provisions of the Pandyan Grama Bank (Officers and Employees) Service Regulations 2010 are pari materia in every aspect to the newly finalized draft Regulations 2019. That apart, he placed before me the confidential office proceedings of the Human Resource Management Department of the transferee Tamil Nadu Grama Bank by which the said Department had arrived at Note No.41 of 2019, dated 18.12.2019 in an amendment in the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019 to be placed before the Board of the transferee Tamil Nadu Grama Bank and the same is extracted as follows:-



W.P.(MD).No.16590 of 2023

WEB COPY

“Sub:Amendment in Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019

Board has approved and adopted Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019 in the meeting held on 12.04.2019 and permitted the Bank to publish the same in the Official Gazette of India.

Subsequently, NABARD, vide their Letter No.NB.IDD.RRCBD/145/316 (Amalgamation) 2019-2020 dated 03.05.2019 (copy enclosed), has clarified the operational issues in amalgamated RRBs and advised as follows.

“It is advised/clarified that amendment in Staff Service Regulations and Pension Regulations for the amalgamated RRB will be passed and adopted by Board of Directors of RRB only. No further notification in Gazette is necessary as the notification of GOI on amalgamation covers all aspects of transfers of asset, liability, duties and obligation of transferor Bank to transferee Bank.”

Hence Bank has not published the Staff Service Regulation in the official Gazette of India.

Bank request the Board to amend the following in Section 1 point No.2 of the adopted Service Regulation.



WEB COPY



W.P.(MD).No.16590 of 2023

“They shall come into force on the date of their publication in the official Gazette” as “They shall come into force on the date of amalgamation ie., 01.04.2018 onwards.”

Bank request the Board to approve the same.”

5.21.Per contra, the learned counsel appearing for the petitioner drew my attention to the fact that unless and until the same is notified, the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations 2019 will not have any statutory value and only because of that already the State of Kerala has notified the Kerala Gramin Bank (Officers and Employees) Service Regulations, 2013. Similarly, the State of Punjab has also notified the Punjab Gramin Bank (Employees') Pension Regulations, 2018 to give force to the service regulations of the Regional Rural Banks of their respective States. Hence, the respondents cannot claim their right to implement a regulation which has no statutory value contrary to the mandate of the governing Act namely the Regional Rural Banks Act, 1976.

5.22.It is needless to state that when a statute requires an authority to do a certain thing in a particular way, the said thing must



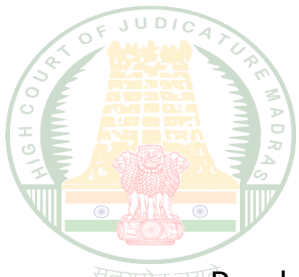
W.P.(MD).No.16590 of 2023

WEB COPY

be done in that way or not at all. Hence, I conclude that it is necessary to notify Regulation, 2019 to give it a statutory value. But that will not shield the petitioner from disciplinary proceedings initiated as against him by the second respondent under Regulation 39 of the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019. The amalgamation notification dated 28.01.2019 which was notified in terms of the mandates of Regional Rural Banks Act, 1976 has fairly and fully covered each and every aspect of the amalgamation and the transfer of rights, powers, authorities, assets, property and privileges from the transferor Pandyan Grama Bank to the transferee Tamil Nadu Grama Bank. Moreover, the said notification has also given effect to all the contracts, deeds, bonds, agreements etc., a full legal force by the strength of the said notification to continue with the same effect as if all those contracts, deeds, bonds, agreements etc., has been effected by the transferee Tamil Nadu Grama Bank.

5.23.It is pertinent to mention here that the service of the petitioner under the transferee Bank is a contract. The Government service of the petitioner is contractual. As already discussed once appointed since he acquired a status he is bound by the policy decision taken by the Central Government to amalgamate the transferor

39/54



W.P.(MD).No.16590 of 2023

WEB COPY

Pandyan Grama Bank into the transferee Tamil Nadu Grama Bank and to transfer all the powers and authorities, contracts and agreements etc to the transferee Tamil Nadu Grama Bank. The terms and conditions of service of the petitioner by the strength of the amalgamation notification are also governed by the procedures as if they existed immediately before the effective date of amalgamation. Regulation 39 of the Pandyan Grama Bank (Officers and Employees) Service Regulations, 2010 deals with penalties and the same is extracted as follows:-

"39.Penalties: Without prejudice to the foregoing regulations of this Chapter, an officer or employee who commits a breach of these regulations or who displays negligence, inefficiency or indolence or who commits acts detrimental to the interests of the Bank or in conflict with its instructions, or who commits a breach of discipline or is guilty of any other acts of misconduct, shall be liable for any one or more penalties as follows, namely;

(1) Officers

(a) Minor Penalties

(i) censure;

(ii) withholding or stoppage of increments of pay



WEB COPY



W.P.(MD).No.16590 of 2023

without cumulative effect;

(iii) withholding promotion;

(iv) recovery from emoluments or such other amounts as may be due to him, of the whole or part or any pecuniary loss caused to the Bank by negligence or breach of order;

(v) reduction to a lower stage in time scale of pay for a period not exceeding two years without cumulative effect;

(b) Major Penalties

(i) Save as provided in item (v) of clause (a) of sub regulation (1) of regulation 39, reduction to a lower stage in time scale of pay for a specified period with further directions as to whether or not the officer shall earn increments of pay during the period of such reduction and whether on expiry of such period the reduction shall or shall not have the effect of postponing the future increments of his pay;

(ii) reduction to a lower grade or post;

(iii) compulsory retirement;

(iv) removal from service which shall not be a disqualification for future employment.

(v) dismissal which shall ordinarily be a disqualification for future employment.

Explanation:



WEB COPY



W.P.(MD).No.16590 of 2023

For the purposes of this regulations, the following shall not amount to be a penalty, namely,

(i) withholding of one or more increments of an officer on account of his failure to pass a departmental test or examination in accordance with the terms of appointment to the post which he holds;

(ii) stoppage of increment(s) of an officer at the efficiency bar in a time scale on the grounds of his unfitness to cross the bar;

(iii) not giving an officiating assignment or non-promotion of an officer to a higher grade of post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case;

(iv) reserving or postponing the promotion of an officer for reasons like completion of certain requirement for promotion or pendency of disciplinary proceedings;

(v) reversion to a lower grade of post of an officer officiating in a higher grade or post, on the ground that he is considered, after trial, to be unsuitable for such higher grade or post or on administrative grounds unconnected with his conduct;

(vi) reversion to the previous grade or post of an officer appointed on probation to another grade or post during or at the end of the period of probation, in



WEB COPY



W.P.(MD).No.16590 of 2023

*accordance with the terms of his appointment or rules,
or orders governing such probation;*

*(vii) reversion of an officer on deputation to his
parent organization;*

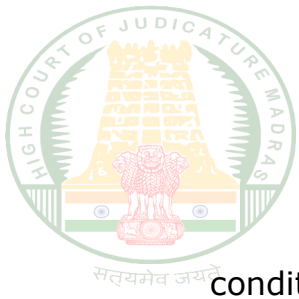
(viii) termination of service of an officer;

*(a) appointed in a temporary capacity otherwise
than under a contract or agreement on the expiration
of the period for which he was appointed, or earlier in
accordance with the terms of his appointment;*

*(b) appointed under a contract or agreement, in
accordance with the terms of such contract or
agreement; and*

(c) as part of retrenchment"

5.24.A perusal of Regulation 39 of the Tamil Nadu Grama Bank (Officers and Employees) 2019 would reveal that there is no change even in a single word with respect to Rule 39 and both are pari materia to each other. That apart, clause 7(A) of the amalgamation Notification categorically mandates that the employees would receive the same remuneration and would continue their service on the same terms and



W.P.(MD).No.16590 of 2023

WEB COPY

conditions of service or as the case may be by which they were governed immediately before the effective date of amalgamation. On the basis of the said amalgamation the transferee Tamil Nadu Grama Bank became fully functional with effect from 01.04.2019 in consonance with all the mandates of the notification, dated 28.01.2019. The entire set of employees who served in the transferee Pandyan Grama Bank including the petitioner continued their service in the transferee Tamil Nadu Grama Bank.

5.25.The Hon'ble Apex Court in the case of **Roshan Lal Tandon Vs. Union of India (UOC)** reported in **AIR 1967 SC 1889** has dealt with this issue and the relevant portion of which is extracted as follows:-

"9. We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade 'D' and the condition of service could not be altered to his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure 'B', laid down that promotion to Grade 'C'



WEB COPY



W.P.(MD).No.16590 of 2023

from Grade 'D' was to be based on seniority-cum-suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Art. 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Art. 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal



WEB COPY



W.P.(MD).No.16590 of 2023

relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:

"So we may find both contractual and status-obligations produced by the same transaction. the one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligations de- fined by the law, itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents.



WEB COPY



W.P.(MD).No.16590 of 2023

The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by mining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status."

10.(Salmond and Williams on Contracts, 2nd edition p. 12).

5.26.In full consonance with the said Judgment discussed supra, I reiterate that the petitioner's duties of status are governed by the law and in the enforcement of these duties the society has a definite interest. Singing in chorus to the tunes of the above discussed Judgment, I reiterate that the relationship between the Government and its servant is not like an ordinary contract of service and the same is a condition of membership of a group of which the powers and duties are exclusively determined by law and not by the agreement between the parties concerned.



WEB COPY

5.27.In the instant case, the petitioner being one among the employees of the transferee Tamil Nadu Grama Bank is fully governed by the powers and duties as determined by the amalgamation Notification, dated 28.01.2019 and the mandates of the Regional Rural Banks Act, 1976 till the new Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019 is given a statutory force by notification in Gazette. Hence, the visitation of the petitioner by a charge memo issued by the second respondent under Regulation 39 of the unnotified Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019 will not vitiate the disciplinary proceedings initiated against the petitioner at all. The petitioner by fully accepting the public notice of the amalgamation notification has continued his service from the date on which the amalgamation came into effect in the service of the transferee Tamil Nadu Grama Bank. A letter of appointment of an employee is a contract which will be concluded on the appointment of the employee and the same are perpetual in nature incorporating within its hold all the subsequent improvements and changes in the conditions of service governing both the employer and employee from time to time as decided by the

48/54



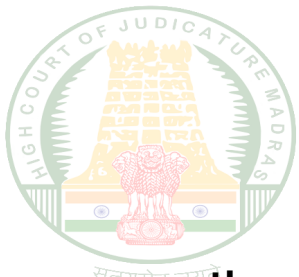
सत्यमेव जयते Government.

WEB COPY

6.Conclusion:-

6.1.From the date of appointment such contract gets acted upon and the same subsists continuously without interruption till the date of the employee attaining superannuation and is allowed to retire automatically or otherwise the employee is subjected to break in service in the instances of resignation by the employee or termination of service by the employer on notice respectively. The petitioner's conditions of service commenced as an employee of the transferee Pandyan Grama Bank and is continuing as an employee of the transferee Tamil Nadu Grama Bank in the exercise of the powers conferred by Section 23(A) of the RRB Act, 1976. Hence, obviously, as a result of the amalgamation and on having been put to public notice by the amalgamation notification and by heeding to the conditions of service as mandated in the said notification by serving for more than one year as an employee of the transferee Tamil Nadu Grama Bank and having received the salary for all through those periods, pursuant to his suspension on 27.05.2020 and having received

49/54



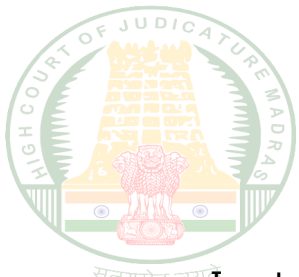
W.P.(MD).No.16590 of 2023

WEB COPY

the subsistence allowance in terms of the conditions of service of the transferee Tamil Nadu Grama Bank, now on the verge of him facing a disciplinary proceeding initiated against him, the petitioner cannot digladiate with the employer Bank, shielding himself with a single hyper technical argument that the disciplinary proceeding is vitiated as the same is initiated under a regulation which has no statutory force. Having submitted himself to the entire procedure undertaken by the employer Bank in view of the amalgamation process, the petitioner cannot question the legality of the disciplinary proceeding which has been initiated against him. Visiting an employee with a charge memo under the wrong provision of law will not vitiate the entire disciplinary proceeding.

6.2.In the instant case, though the disciplinary proceeding has been initiated under a regulation which is not notified, the same has to be appreciated in a positive direction. Since the transferee Bank, that is, the Tamil Nadu Grama Bank is functioning on the guidance/directions of NABARD, especially the clarification circular of NABARD dated 03.05.2019 has curbed the Board of Directors of the Tamil Nadu Grama Bank from notifying the said Regulations, 2019.

50/54



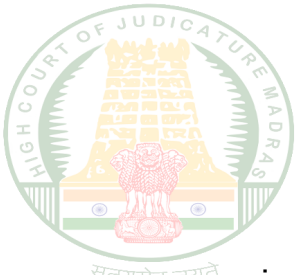
W.P.(MD).No.16590 of 2023

WEB COPY

I categorically observe that such a clarification given by NABARD has no legal basis and has triggered the filing of the present case. On the other hand, it is needless to say that the hypertechnical argument of the petitioner that, the disciplinary proceeding which has been initiated under regulation 39 of the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019 is per se illegal could not be prudent. It is necessary to mention here that he has never ever challenged his suspension either in W.P(MD)No.11817 of 2023 or in this case, but has challenged only the charge memo, dated 22.07.2020.

6.3.In view of the same, this Court hereby direct the respondent Bank, namely the Tamil Nadu Grama Bank to notify the Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019 within a period of two weeks from the date of receipt of a copy of this order and thereafter, appoint an enquiry officer in the matter of disciplinary proceeding initiated as against the petitioner by the issuance of charge memo, dated 22.07.2020 and thereafter, by giving the petitioner to defend himself by furnishing all the documents pertaining to the disciplinary proceeding and the respondents are further directed to conclude the disciplinary proceedings within a

51/54



W.P.(MD).No.16590 of 2023

WEB COPY

period of three months from the date of appointment of enquiry officer and pass appropriate orders in accordance with law.

6.4. Accordingly, the Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

01.11.2023

NCC : Yes
Index : Yes
Internet : Yes
ps



W.P.(MD).No.16590 of 2023

WEB COPY

To

1. Tamil Nadu Grama Bank,
Represented by its Chairman,
No.6, Yercard Main Road,
Hasthampatti, Salem – 636 007.

2. The Human Resource Manager /
Disciplinary Authority,
Tamil Nadu Grama Bank,
No.6, Yercard Main Road,
Hasthampatti,
Salem – 636 007.



WEB COPY

VERDICTUM.IN



W.P.(MD).No.16590 of 2023

L.VICTORIA GOWRI, J.

ps

W.P.(MD)No.16590 of 2023

01.11.2023

54/54