IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 6748 of 2005 (C)

PETITIONER :

A.V.K.NAIR (BRANCH MANAGER, DENA BANK,
G.T.MADRAS BRANCH, T.NAGAR), 51/266
WATER FRONT ENCLAVE ROAD, CHILAVANNOOR, KOCHI-20.

BY ADV. SMT.LIGEY ANTONY

RESPONDENTS :

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1. THE DENA BANK,
REPRESENTED BY THE CHAIRMAN & MANAGING DIRECTOR
7TH FLOOR, MAKER TOWERS E., POST BOX NO.6058
CUFFE PARADE, BOMBAY-400 005.

2. GENERAL MANAGER,
DENA BANK, 7TH FLOOR, MAKER TOWERS E.
POST BOX NO.6058, CUFFE PARADE, BOMBAY-400 005.

3. ASSISTANT GENERAL MANAGER (PERSONNEL),
DISCIPLINARY AUTHORITY, DENA BANK, 7TH FLOOR
MAKER TOWERS E., P.B.NO.6058, CUFFE PARADE
BOMBAY-400 005.

R BY ADV. SRI.PHILIP T.VARGHESE
R BY ADV. SRI.THOMAS T.VARGHESE
R BY ADV. SRI.RAJESH VIJAYENDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 6748 of 2005 (C)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE LETTER DATED 01.02.95 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER

EXT.P2 : COPY OF THE LETTER DATED 20.2.1995 SENT BY THE PETITIONER

EXT.P3 : COPY OF INTIMATION DT.5.6.1995 TO THE PETITIONER BY THE BANK

EXT.P4 : COPY OF LETTER DATED 23.7.95 BY THE PETITIONER BEFORE THE INQUIRY AUTHORITY.

EXT.P5 : COPY OF COMMUNICATION DATED NIL OF THE 3RD RESPONDENT

EXT.P6 : COPY OF LETTER DATED 13.6.1996 TO THE PETITIONER

EXT.P7 : COPY OF LETTER DATED 24.5.1996 SENT BY THE 3RD RESPONDENT

EXT.P8 : COPY OF APPEAL DATED 24.6.1996 BY THE PETITIONER

EXT.P9 : COPY OF REVISION DATED 10.3.1998 BY THE PETITIONER BEFORE THE 1ST RESPONDENT

EXT.P10 : COPY OF LETTER DT.25.5.98 BY THE PETITIONER BEFORE THE 2ND RESPONDENT

EXT.P11 : COPY OF LETTER DATED 1.3.2004 BY THE 3RD RESPONDENT TO THE PETITIONER

EXT.P12 : COPY OF LETTER DATED 3.11.2004 BY THE PETITIONER TO THE 3RD RESPONDENT

EXT.P13 : COPY OF REPLY DATED 24.11.2004 SENT BY THE 3RD RESPONDENT

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.6748 of 2005

Dated this the 21st day of January, 2015

J U D G M E N T

The petitioner while working as a Branch Manager of the Dena Bank was proceeded against, for various acts of omission and commission alleged against him. It was alleged that the petitioner had resorted to manipulation of accounts to the detriment of the Bank. Disciplinary proceedings were initiated against him as per Ext.P1 show cause notice. The petitioner replied to the same by Ext.P2. Thereafter, a domestic enquiry was conducted. Ext.P5 enquiry report found that the petitioner was guilty of the charges levelled against him. Accordingly, as per Ext.P7, the petitioner was dismissed from service. The petitioner challenged Ext.P7 before the appellate authority. As per Ext.P8 dated 24.06.1996, the petitioner's appeal was dismissed confirming the order of dismissal. Though the petitioner had contended that the punishment was disproportionate to the gravity of the offence alleged to have been committed, the appellate authority found that the punishment was commensurate with the gravity of the offence.

2. The petitioner did not challenge Ext.P8 in any further proceedings, immediately. However, it is submitted that the petitioner had submitted a petition Ext.P9 on 10.03.1998 to the 1st respondent seeking review of Ext.P8. According to the Bank, Ext.P9 was not

received. The petitioner sent a further representation, Ext.P10 which according to the Bank was received only in the year 2003. The same was rejected by Ext.P11. Thereafter, the petitioner appears to have submitted Ext.P12 seeking a further review of his case. The same was also rejected by Ext.P13. Though Ext.P13 is dated 24.11.2004, the petitioner is seen to have filed this writ petition only on 25.02.2005.

3. According to Adv.Smt.Ligey Antony who appears for the petitioner, a perusal of the charges would show that, they were not of a grave nature. There was no misappropriation of money by the petitioner causing loss to the Bank or other grave culpable misconduct. What the petitioner has been charged with was only making certain wrong entries in the accounts of the Bank. According to the counsel, such entries were made in the interests of the Bank and not for any benefit of the petitioner. Therefore, it is contended that the punishment of dismissal imposed on the petitioner is disproportionate to the offence that has been established. If the petitioner's punishment is converted to one of compulsory retirement, it is contended that he would be entitled to his pensionary benefits. He is a person who has put in more than 30 years of unblemished service with the Bank and therefore, the punishment is too harsh, according to the counsel. The counsel therefore seeks the issue of appropriate directions reducing the punishment imposed. The dictum laid down by the Honourable

Supreme Court in ***Bank of Baroda v. S.K.Kool [2014 (2) SCC 715]*** is relied upon to point out that, this is a fit case in which, a similar relief as granted in the said case, of entitling the petitioner to his retirement benefits, should be granted.

4. Adv.Sri.Thomas T Varghese appears for the respondents. According to the counsel, there is absolutely no justification for the contentions of the counsel for the petitioner. The petitioner who had a substantial length of service with the Bank and who was sufficiently familiar with the rules and procedures thereof was found to have resorted to manipulation of accounts. Manipulation of accounts by a Branch Manager is a very grave and serious misconduct. The Bank had therefore taken serious note of the conduct of the petitioner. It was only because the conduct was detected at the appropriate time that, the Bank had not suffered any financial loss. Had the misconduct not been detected, the financial liability of the Bank would have been substantial. According to the counsel, the charges were all proved at the disciplinary enquiry in which the petitioner also participated. He had admitted to the manipulation of accounts that was resorted to by him. His only explanation was that, it was for the benefit of the Bank. The explanation was not accepted and the punishment of dismissal from service was imposed on him. The petitioner had submitted an appeal. The appellate authority had reappraised the entire matter and

had found that the punishment was justified. The petitioner has not challenged the appellate order in any proceedings thereafter. The review petition dated 10.03.1998 that is stated to have been preferred was not received by the Bank. The subsequent representations were preferred only in the year 2003 and 2004. They were rejected by Exts.P11 and P13. It was thereafter, in the year 2005 that the present writ petition was filed. The same is therefore not liable to be entertained, being vitiated by unconscionable delay. The counsel places reliance on the decision in ***Administrator, Union Territory of Dadra and Nagar Haveli v. Gulabhia M.Lad [2010 (5) SCC 775]*** to contend that, this Court in exercise of the jurisdiction under Article 226 of the Constitution would not normally interfere with such punishment. In this case there are no special circumstances justifying such interference, it is pointed out.

5. Heard. The petitioner, a Branch Manager under the respondents was charged with acts of misconduct that related to manipulation of accounts. Manipulation of accounts of the Bank by a Branch Manager has to be viewed seriously. Therefore, the conduct of the petitioner cannot be treated as trivial, as sought to be made out by the counsel for the petitioner. The conduct was no doubt grave and had it not been detected at the appropriate time, the consequences would have been grave.

6. The petitioner was proceeded with on the basis of a show cause notice, after affording an opportunity of showing cause. He has also no complaint against the disciplinary enquiry that was conducted. The enquiry proceedings ended in the order of dismissal, Ext.P7. Being aggrieved by Ext.P7, the petitioner had challenged the same before the appellate authority. The 2nd respondent has considered the entire matter afresh and has confirmed the order of dismissal as per Ext.P8 order on 24.06.1996. The petitioner did not challenge Ext.P8 in any proceedings thereafter. If there was no provision for a revision or review, the petitioner ought to have challenged Ext.P8 before this Court at that time. Instead, the petitioner sent representations seeking a review of the order imposing punishment. The representations were rejected as per Exts.P11 and P13. It was only thereafter in the year 2005 that the present writ petition was filed.

7. It is clear from the above that, the petitioner is guilty of laches and negligence. By not challenging Ext.P8 at the appropriate time, the said order has become final. I do not find any grounds to interfere with the same, at this length of time. The decision relied upon by the counsel for the petitioner cannot be applied to the facts of the present case, because of the delay.

8. As a last submission, the counsel for the petitioner seeks the issue of a direction to the 1st respondent to at least consider whether

the dismissal of the petitioner could be converted to that of compulsory retirement, considering the fact that, the petitioner had worked in the Bank without giving cause for any complaint for more than 30 years and the further fact that, the manipulation in the accounts made by the petitioner was only for the benefit of the Bank. The counsel for the Bank on the other hand points out that, even according to the petitioner, as stated in Ground 4, he has been sanctioned compassionate allowance considering the fact that he was not entitled to pension. Therefore, the Bank has given him all the benefits that could be granted within the rules applicable. The petitioner is not entitled to any further benefits.

9. Having considered the contentions of the respective counsel, I am not in a position to determine whether the act alleged against the petitioner was for the benefit of the Bank or whether the Bank had benefited from the said act. The question as to whether the said contention is justified or not would have to be considered by the 1st respondent. The 1st respondent may also consider whether the punishment imposed on the petitioner should be converted to compulsory retirement, in the event of it being found that the acts were intended for the benefit of the Bank, without the petitioner's case being treated as a precedent.

For the foregoing reasons, while dismissing this writ petition, the 1st respondent is directed to consider whether the contention of the counsel for the petitioner that the acts of the petitioner were for the benefit of the Bank and if so, whether the punishment imposed on him should be converted to a lesser one.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV