IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 26.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.30157 of 2013

P.Valmeeki ... Petitioner

versus

1.The Chief Manager/Disciplinary Authority,
Central Bank of India, C.C.P.C.
14 and 15, Variety Hall Road,
Coimbatore.

2.The Regional Manager,
Central Bank of India,
P.B.No.13, Narasingpur Road,
Chitnavis Ganj
Chinduwara 480 002
Madhya Pradesh ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in connection with the impugned order passed by him in CCPC/DAD/2012-13/13 dated 23.5.2012 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For petitioner Mr.K.Venkataramani, Senior counsel, for Mr.T.Ayngaraprabhu

For respondents Mr.V.Karthic, for M/s.T.S.Gopalan and Co.

O R D E R

The petitioner challenges the order dated 23 May 2012 on the file of the first respondent on the ground that the subsequent proceedings and related punishment would amount to double jeopardy.
Facts in a nutshell :-

2. The petitioner was initially recruited as a Clerk in Central Bank of India. The petitioner was later promoted to the post of Assistant Manager. While he was functioning as Assistant Manager, attached to Pandhurna Branch, Madhya Pradesh, a criminal case was registered by the Central Bureau of Investigation on 25 May 2009, against him and the Branch Manager, alleging that they have demanded

illegal gratification from a customer. The second respondent initiated disciplinary proceedings by issuing charge memo dated 21 December 2009. The first charge relates to demanding bribe. The second charge relates to the arrest of the petitioner by CBI. The Enquiry Officer exonerated the petitioner from the charges. However, the Disciplinary Authority disagreed with the said finding and imposed punishment on the petitioner by order dated 7 January 2011. The Disciplinary Authority reduced his pay for a period of three years with cumulative effect. The said order has become final.

3. The petitioner was convicted by the II Additional Sessions Judge, Jabalpur vide judgment in Special Case No.13/2010, dated 30 April 2010. The second respondent taking into account the said judgment, issued a notice dated 12 May 2012, to show cause as to why he should not be dismissed from service on account of his conviction by a criminal court. The petitioner in his explanation to the show cause notice contended that the conviction has already been stayed by the High Court. It was his further contention that he has already been punished by the Disciplinary Authority earlier for the very same charge. The Disciplinary Authority ultimately passed the order dated 23 May 2012, dismissing the petitioner from service. The legality and correctness of the said order is challenged in this Writ Petition.

4. The first respondent filed a counter affidavit wherein it was contended that the earlier disciplinary proceedings has nothing to do with the subsequent proceedings. According to the first respondent, the petitioner was convicted by a criminal court. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, mandates that a convicted person shall not be engaged as employee by the Bank. The first respondent contended that proceedings were rightly initiated against the petitioner, resulting in the impugned order of dismissal from service.

Submissions :-

5. The learned Senior Counsel for the petitioner by placing reliance on the judgment of a Division Bench of this Court in D.Narayanan vs. District Revenue Officer, Virudhunagar District and others, 2009(4) MLJ 708, contended that the subsequent proceedings would amount to double jeopardy. According to the learned Senior counsel, the second respondent earlier issued a charge memo dated 21 December 2009. The second charge relates to the involvement of the petitioner in a criminal case. The petitioner was ultimately punished by the second respondent. Even after the conclusion of the departmental proceedings, resulting in imposing punishment, the first respondent initiated fresh proceedings on the basis of the very same cause of action. According to the learned Senior counsel, subsequent proceedings is clearly an abuse of process of law and it would amount to double jeopardy.

6. The learned counsel for the Bank justified the impugned proceedings. According to the learned counsel, conviction by criminal court has nothing to do with the earlier proceedings initiated on the

basis of the involvement of the petitioner in criminal proceedings and his arrest. The learned counsel contended that Section 10 (1)(b)(i) of the Banking Regulation Act, 1949, provides that banks shall not employ persons who are convicted by criminal court for an offence involving moral turpitude. Since the petitioner was convicted by criminal court on account of his involvement in a corruption case, he was rightly dismissed from service by the first respondent.

Discussion :-

7. The second respondent initiated disciplinary proceedings against the petitioner by issuing charge memo dated 21 December 2009. The charge memo contain the following two charges.

> Charge No.1 :- Sri V.Valmiki along with the then branch manager of B/O Pandhurna Sri S.D.Baji Rao had demanded a bribe of Rs.10000/- from Sri Ramdas Waghale S/0 late Mitthujee R/O Jawahar Ward/11 kholi Pandhurna District. Chhindwara (M.P.) showing an official favour in the matter of disbursement of second installment of housing loan a/c no.HLOTH390008 of Rs.300000/- sanctioned in the name of Smt.Ansuiya Waghale who is w/o Sri Ramdas Waghale, which maligned the image of the Bank.
>
> Charge No.2 :- Sri V.Valmiki along with the then branch manager of B/O Pandhurna Sri S.D.Baji Rao and Praveen Junnenkar was arrested in a raid made by the team of CBI, ACB, Jabalpur on 26.2.2009 and a case no.RC0092009A0004 under Section 120-B r/w Section 7 of prevention of corruption act 1986 has been registered against him. The news regarding arrest of Sri Valmiki published in several newspapers including the leading Hindi Newspaper Dnik Bhaskar on the next day i..e. On 27.2.2009, which tarnished the image of the Bank in the area."

8. The Enquiry Officer appointed by the second respondent after assessing the materials placed before him, concluded that there were no materials to connect the petitioner with the misconduct. The second respondent disagreed with the findings recorded by the Enquiry Officer. The Disciplinary Authority passed an order reducing his pay to the initial pay for a period of three years with cumulative effect. The petitioner accepted the said punishment.

9. The petitioner was convicted by the II Additional Sessions Judge, Jabalpur, in Special Case No.13 of 2010. The first respondent passed an order dated 10 May 2012, initiating disciplinary proceedings against the petitioner on account of his conviction by criminal court. It was followed by a show cause notice dated 12 May 2012. The Disciplinary Authority ultimately passed the order of dismissal.

10. The core question is whether subsequent disciplinary proceedings and the ultimate punishment of dismissal would attract the principle of double jeopardy.

11. The petitioner, in support of his contention that subsequent proceedings is barred in law, relied on the second charge, as found in charge memo dated 21 December 2009. The second charge has nothing to do with the conviction by the criminal court. The petitioner was arrested by the police. The news regarding his arrest was published in newspapers. According to the second respondent, the news regarding his arrest tarnished the image of the Bank. Subsequent proceedings relate to his conviction by criminal court. Therefore both the charges operate in different sphere.

12. Section 10 of Banking Regulation Act, 1949, prohibits the Banks from employing persons who are adjudicated insolvent or convicted by a criminal court for an offence involving moral turpitude. There is no dispute that conviction for an offence under the Prevention of Corruption Act would constitute a punishment for moral turpitude. The fact that the earlier charge memo refers to the criminal case and that he was punished by Disciplinary Authority would not amount to a punishment within the meaning of Section 10(1)(b)(i) of Banking Regulation Act.

13. The learned Senior counsel for the petitioner placed heavy reliance on the judgment of the Division Bench in D.Narayanan vs. District Revenue Officer, Virudhunagar District and others, 2009(4) MLJ 708.

14. In D.Narayanan, the delinquent was subjected to punishment of stoppage of increment on an allegation that there was temporary misappropriation of Government funds. Subsequently, the Disciplinary Authority imposed the second punishment of dismissal from service on the basis of the very same allegation of temporary misappropriation. The Division Bench held that imposition of such punishment would amount to double jeopardy. The facts of the present case is entirely different. The petitioner was not punished earlier on account of his involvement either in a criminal case or conviction by criminal court. The second charge framed by the second respondent earlier relates to the arrest of the petitioner and publication of the said event in a newspaper. The second respondent proceeded on the footing that the petitioner tarnished the image of the Bank. Subsequent proceedings was initiated solely on account of the conviction of the petitioner by criminal Court.

15. The subsequent disciplinary proceedings has nothing to do with the earlier proceedings initiated by charge memo dated 21 December 2009. It was an independent charge consequent to the conviction of the petitioner by criminal court. Since the second proceedings was initiated only on account of the conviction of the petitioner by a criminal court, subsequent acquittal by the appellate court would come to the rescue of the petitioner. The High Court of

Madhya Pradesh is yet to consider the appeal on merits. It is always open to the respondents to recall the order imposing the punishment of dismissal, in case he is acquitted by the High Court. In any case, it cannot be said that the first respondent erred in initiating disciplinary proceedings against the petitioner and imposing the punishment of dismissal from service.

16. In the result, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Manager/Disciplinary Authority,
Central Bank of India, C.C.P.C.
14 and 15, Variety Hall Road, Coimbatore.

2.The Regional Manager,
Central Bank of India,
P.B.No.13, Narasingpur Road,
Chitnavis Ganj
Chinduwara 480 002,
Madhya Pradesh

+ 1 cc to M/s. T.S.Gopalan, & Co., Advocate Sr.16952
+ 1 cc to Mr. Mr. Muthappan, Advocate SR.17142

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MSM(CO)
Eu 11.04.15