

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:18.02.2016

DATE OF DECISION: 26.02.2016

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

W.A.No.1144 of 2011 and W.P.No.1178 of 2012

W.A.No.1144 of 2011

P.Arumugam,
Manager, State Bank of Mysore,
Service- Branch, III Floor, Sakthi Towers,
No.766, Anna Salai, Chennai-600 002.
Residing at "Nivedha Illam",
28F, Ramalinga Nagar,
Lakshmipuram Post, Vinayagapuram,
Kolathur, Chennai-600 099.

... Appellant

Vs.

- 1.The Chief General Manager,
State Bank of Mysore, Head Office,
K.G. Road, Bangalore-560 009.
- 2.The General Manager(Operations),
State Bank of Mysore, Head Office,
K.G. Road, Bangalore-560 009.
- 3.The Enquiry Officer/The Chief Manager(Enquiries),
GM(O) Secretariat, State Bank of Mysore,
Head Office, K.G.Road, Bangalore-560 009.
- 4.The Assistant General Manager,
State Bank of Mysore, Regional Office,
Chennai Region, NSC Bose Road,
Chennai-600 001.
- 5.The Chief Manager,
State Bank of Mysore, Service-Branch,
III Floor, Sakthi Towers, No.766, Anna Salai,
Chennai-600 002.

6. Shri Dilip Mavin Kurve,
The Chief General Manager,
State Bank of Mysore, Head Office,
K.G. Road, Bangalore-560 009.
7. Shri Ramkumar,
The General Manager (Operations),
State Bank of Mysore, Head Office,
K.G. Road, Bangalore-560 009.
8. Shri R.D. Naidu,
The General Manager (Vigilance & Inspection),
State Bank of Mysore, Head Office,
K.G. Road, Bangalore-560 009.
9. Shri B.N. Ramaiah (Retired),
The General Manager (Planning & Development),
State Bank of Mysore, Head Office,
K.G. Road, Bangalore-560 009.
10. Mr. Sathyamurthy, The Chief Manager,
GM(O) Secretariat, State Bank of Mysore, Head Office,
K.G. Road, Bangalore-560 009.
11. Mr. Karigirivasan,
The Enquiry Officer/The Chief Manager,
(Enquiries) (DPD), GM(O) Secretariat,
State Bank of Mysore, Head Office,
K.G. Road, Bangalore-560 009.
12. Mr. B. Shivakumar, Manager,
Siragata Branch of State Bank of Mysore,
Siragata, Tumkur-Sira Road,
Tumkur District, Karnataka.
- .. Respondents

W.P.No.1178 of 2012

P. Arumugam
28F, "Nivedhitha Illam", Ramalinga Nagar,
Puthagaram,
Kolathur, Chennai-600 099.

Vs.

1. The Chief General Manager,
State Bank of Mysore, Head Office,
K.G. Road, Bangalore-560 009.

2. The General Manager (Operations),
State Bank of Mysore, Head Office,
K.G. Road, Bangalore-560 009.

.. Petitioner

3.The Deputy General Manager,
Central Zone, State Bank of Mysore,
231, NSC Bose Road, Parrys Corner,
Chennai-600 001.

.. Respondents

Writ Appeal is filed under Clause 15 of Letters Patent Act against the order dated 06.06.2011 made in W.P.No.35204 of 2007 by the learned single Judge Writ Petition filed under Article 226 of constitution of India, praying to issue a Writ of certiorarified Mandamus, calling for the records of the 1st respondent vide DDD/C.1556/1100, dated 22.10.2007 confirming the order of compulsory retirement made by the 2nd respondent vide the impugned order DPD/P1534/C.1556/351 dated 17.07.2007 to quash the same and to consequently forbear the respondents and their Subordinates from taking any action whatsoever detrimental to the interest of the petitioner and to consequently direct the respondents to extend to the petitioner all attendant and consequential benefits.

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the impugned proceedings vide letter dated 07.12.2011 of the third respondent herein, quash the same and consequently, direct the respondents to forthwith pay and settle all the claims of the petitioner including the provisional pension as detailed in the representations dated 17.08.2011, 25.08.2011 and 29.12.2011 payable to the petitioner from 31.07.2007 to 31.12.2011 of Rs.18,71,484.75 and to pay the balance of Rs.2,40,881.75 with the prevailing commercial rate of interest as on date together with a provisional monthly pension of Rs.18,964/- from 1st January, 2012 onwards after deducting the dues to the Bank and consequently, forbear the respondents herein, their subordinates or any other officer, person or agent under them from taking any action in detrimental to the interest of the petitioner in respect of the staff housing loan No.54051464213 or under any pretext whatsoever.

For appellant in :: Mr.K.R.Vijayakumar
W.A.No.1144/2011 &
W.P.No.1178/2012

For Respondents :: Mr.S.Sethuraman for
R1 & R2 in W.A.1144/2011
& for R1 & R2 in
W.P.No.1178/2012

Mr.J.Radhakrishnan for R4,
10 & 11 in W.A.1144/2011

COMMON JUDGMENT

The Hon'ble Chief Justice and M.M.Sundresh,J.

The appellant joined the services of the respondent-State Bank of Mysore as a Probationary Officer in the year 1983. After due confirmation, he was posted as an Assistant Accountant on 25.07.1985. He was authorised to inspect and audit the Branches, Offices and other establishments of the Bank against unauthorised lumpsum payments made en-masse to all the Award Staff, inclusive of those on leave and absentees, contrary to the guidelines and directions of the Ministry of Finance, Government of India, Reserve Bank of India and the respondent-Bank.

2. The appellant undertook inspection at Sullia Branch from 29.10.2005 to 19.11.2005 by staying there for a period of 22 days. The appellant has claimed Rs.699/- per day for staying at Hotel Southern Residency, Sullia. The appellant reported to the Syndicate large scale irregularities leading to huge loss to the respondent-Bank.

3. Though after scrutiny, the travel allowance bills were recommended for passing, a note was put up on the discrepancies in the claim of the appellant. After clarification, the bills were accepted and credited to his account.

4. A charge sheet was issued on 28.04.2006 against the appellant raising two charges on the T.A. Bills submitted by him. For better appreciation, they are re-produced hereunder.

"CHARGE:-

You have made false claim as follows in your T.A.Bills dated 25.11.2005 for your stay at Hotel Southern Residency (Room No.107), Sullia.

a) Claimed lodging expenses for 22 days (from 28.10.2005 to 19.11.2005) against your actual stay of 13 days (from 07.11.2005 to 19.11.2005) as per Hotel records furnished to us by the Hotel.

b) Room Tariff of Rs.15378.00 for 22 days at Rs.699/- as against actual rent of Rs.450/- per day (as per Hotel records furnished to us by the Hotel).

Thus you have acted in a manner which is unbecoming of an officer.

The above charge, if established, amounts to

violation of Regulation 50(1) and 50(4) of State Bank of Mysore Officers' Service Regulations 1979 and deemed as misconduct in terms of Regulation 66 and will be dealt under Regulation 68(2) *ibid.*"

5. Thereafter, an Enquiry Officer was appointed to proceed with the charges presented by the Presenting Officer. The appellant contended that when there was no dispute on the number of days of inspection and the bills presented by him were also honoured, the charges levelled against him must be thrown out. It was also submitted that no inspection was made to peruse the hotel records and none of the staff of the hotel was examined during the course of enquiry. The Enquiry Officer, though found that the documents must have been manipulated by the officials of the hotel authorities, the actual bills having been filed, the charges are duly proved.

6. By the order dated 17.07.2007, the second respondent held that the charges are duly proved by accepting the findings of the Enquiry Officer. The following para of the order passed by the second respondent is apposite:

"I have gone through the Charge Sheet, the findings of the Enquiry Officer, the reply submitted by the Charge Sheeted Official, his track record and other records of the case. Being an official of Inspection Department, he had made a false claim of his halting allowance, stating that he had stayed for 22 days in the hotel at Sullia (from 28.10.2005 to 19.11.2005) during his inspection duty at Sullia Branch instead of his actual stay of 13 days (from 07.11.2005 to 19.11.2005). Further, he had also made a false claim of room tariff at Rs.699/- for 22 days against the actual rent at Rs.450/- per day for 13 days, paid by him. Having gone through all the facts of the case, I find that the enquiry proceedings have conclusively established the dishonest intention of the officer, which creates doubt on his integrity. By his acts of false claim for undue pecuniary gain, he had acted in a manner unbecoming of a bank official. This calls for severe deterrent punishment. However, I am of the view that a punishment of "COMPULSORY RETIREMENT" will meet the ends of justice, and order accordingly."

7. Accordingly, a punishment of compulsory retirement was imposed on the appellant. It is apparent that the reply

given by the appellant was not considered and the order was cryptic.

8. The appellant filed an appeal to the first respondent. By the order dated 22.10.2007, the first respondent rejected the appeal confirming the order of the second respondent. The appeal was rejected on the ground that non examination of the officials of the hotel would not vitiate the order of the second respondent. On the ground of violation of principles of natural justice, it was held that the grounds for agreeing with the findings of the Enquiry Officer are not necessary. Assailing the order of the first respondent confirming the order of the second respondent, the appellant filed W.P.No.35204 of 2007. The learned single Judge, taking note of the scope of judicial review over the decision made by the competent Authority, after exhausting the appeal remedy, held that the scope of interference is very limited when there is no perversity in the impugned order and accordingly, dismissed the writ petition. Aggrieved over the said order passed, the present writ appeal in W.A.No.1144 of 2011 has been filed.

9. Consequent upon the order of compulsory retirement passed, the appellant was asked to pay the dues to the respondents. The request made by the appellant for adjustment based upon his calculation was rejected. Challenging the said order, W.P.No.1178 of 2012 has been filed.

10. The learned counsel appearing for the appellant submitted that there is a gross violation of principles of natural justice. The order of the second respondent is cryptic. The first respondent has merely confirmed the order of the second respondent without assigning adequate reasons. There is a total non-application of mind. Admittedly, the appellant made inspection for 22 days. He has not claimed any excess payment. The non examination of the officials of the Hotel would vitiate the entire proceedings. The onus was totally on the Presenting Officer to prove the charges. The Enquiry Officer himself has taken the role played by the employees of the Hotel. Therefore, the order of compulsory retirement cannot be sustainable in the eye of law.

11. Insofar as W.P.No.1178 of 2012 is concerned, it is submitted by the learned counsel for the appellant that if the order impugned in W.P. No. 35204 of 2007 is set aside then the same will have a bearing on the order which is impugned in W.P. No. 1178 of 2012.

12. The learned counsel appearing for the appellant made

further submission that the relief prayed for in W.P No. 1178 of 2012 can be appropriately modified in the event of this Court coming to the conclusion that proper procedure has not been followed by the respondents, more so, when the appellant has already reached the age of superannuation. He further submitted that the appellant was proceeded with only after he filed the report pointing out the irregularities committed by various officials. Therefore, the initiation of proceedings is tainted with mala fides.

13. The learned counsel appearing for the respondents submitted that the extent of judicial review in a departmental proceedings is well known. This Court cannot act like an appellate authority by substituting the findings rendered, which are based upon evidence. There is no perversity in the orders passed. The appellant has not disproved the validity of the original bills marked before the Enquiry Officer. The question is one of production of bogus bills resulting in monetary loss to the respondents to the benefit of the appellant. Therefore, the fact that the appellant made inspection and stayed for 22 days is immaterial. The respondents have taken action based upon the records. The report of the appellant has been acted upon. There is no mala fides involved in the action taken.

14. Coming to the writ petition filed, it is submitted that the issue involved therein is totally different from the one raised in the writ appeal. The petitioner/appellant does not come under the pension scheme, not being a pension optee and the benefits otherwise entitled to those who retired normally on attaining the age of superannuation or taken voluntary retirement under the scheme cannot be made applicable to the appellant.

15. The role of this Court over a decision made by the disciplinary authority is well known. Thus, this Court is concerned with the decision making process involving violation of principles of natural justice, non application of mind and perversity. These are few

of the factors required for exercising the power of judicial review. Similarly in a departmental proceedings, the charge has to be proved against the delinquent officer on preponderance of probabilities. It is not for the delinquent officer to disprove the charges levelled.

16. Coming to the case on hand, the fact that the appellant was staying at Sullia Branch for a period of 22 days to carry out the inspection is not disputed. It is not as if

the appellant has claimed two payments for his stay. The first charge is to the effect that the appellant has stayed only for 13 days. If that is the case, where did he stay for remaining days, a question remains unanswered. The respondents have put the entire onus on the appellant to disprove the charges. Merely marking certain documents received from the hotel would not suffice. Admittedly, none of the employees of the hotel was called to depose. Even the Enquiry Officer found that the mischief was done by the employees of the hotel. There is no explanation as to how and why the bills presented by the appellant were cleared. The first respondent has committed an error in upholding the order of the second respondent with a finding that there is no necessity to give reasons while accepting the report of the Enquiry Officer. Reasoning in an order having civil consequences is the heart beat and soul, otherwise the order stands vitiated.

17. The report of the Enquiry Officer can at best be a piece of evidence to be appreciated by the disciplinary authority. He is not bound by the Enquiry Officer's report. The second respondent has not even considered the response of the appellant to the Enquiry Officer's report. Thus, such a cryptic order can never be sustained in the eye of law.

18. Though the appellant alleged certain mala fides for the first time, in the absence of any material, we do not find any malice either in fact or law. Accordingly, the said contention is rejected.

19. Having found that the orders impugned would not sustain the judicial scrutiny, we do not propose to ask the second respondent to redo the exercise once again. The charges pertain to the year 2005. The appellant has reached the age of superannuation. It appears that there is a reluctance on the part of the hotel concerned in lending its assistance. It is pertinent to note that even the appellant made an attempt to call the employees of the hotel for enquiry, but it did not fructify. It is too late in the day to ask the Enquiry Officer to conduct a re-enquiry in such a scenario. The Enquiry Officer himself made a remark on the alleged role of the employees of the hotel in tampering the bills. The appellant has suffered sufficiently. Therefore, at this length of time, it would be unfair to the appellant, apart from being impractical to direct the respondents to redo the exercise all over again. Hence, considering the facts and circumstances of the case, we are of the view that it would be just and appropriate to mould the relief.

20. For the fore-going reasons, while setting aside the

orders impugned, we hold that the appellant is not entitled for any salary as agreed to it by the appellant from the date of suspension till superannuation. However, the appellant is entitled for all other benefits including continuity of service. The writ appeal is allowed to this extent and consequently, the order passed by the learned single Judge is set aside. Insofar as W.P.No.1178 of 2012 is concerned, the order passed in the W.A.No.1144 of 2011 will have its own effect on the impugned order. As we have set aside the order of compulsory retirement passed, the appellant will have to be treated as one who retired in the normal circumstance on attaining the age of superannuation. Therefore, while he is entitled for the consequential benefits, it is well open to the respondents to adjust them towards the dues payable. Accordingly, the order impugned dated 07.12.2011 is hereby set aside with liberty to the respondents to adjust the amount payable by the appellant out of the benefits due to him in pursuant to the order passed in the writ appeal. Appropriate orders will have to be passed by the respondents within a period of eight weeks from the date of receipt of a copy of this order. The writ petition stands ordered accordingly. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

raa

To:

- 1.The Chief General Manager,
State Bank of Mysore, Head Office,
K.G. Road, Bangalore-560 009.
- 2.The General Manager(Operations),
State Bank of Mysore, Head Office,
K.G. Road, Bangalore-560 009.
- 3.The Enquiry Officer/The Chief Manager(Enquiries),
GM(O) Secretariat, State Bank of Mysore,
Head Office, K.G.Road, Bangalore-560 009.
- 4.The Assistant General Manager,
State Bank of Mysore, Regional Office,
Chennai Region, NSC Bose Road,
Chennai-600 001.

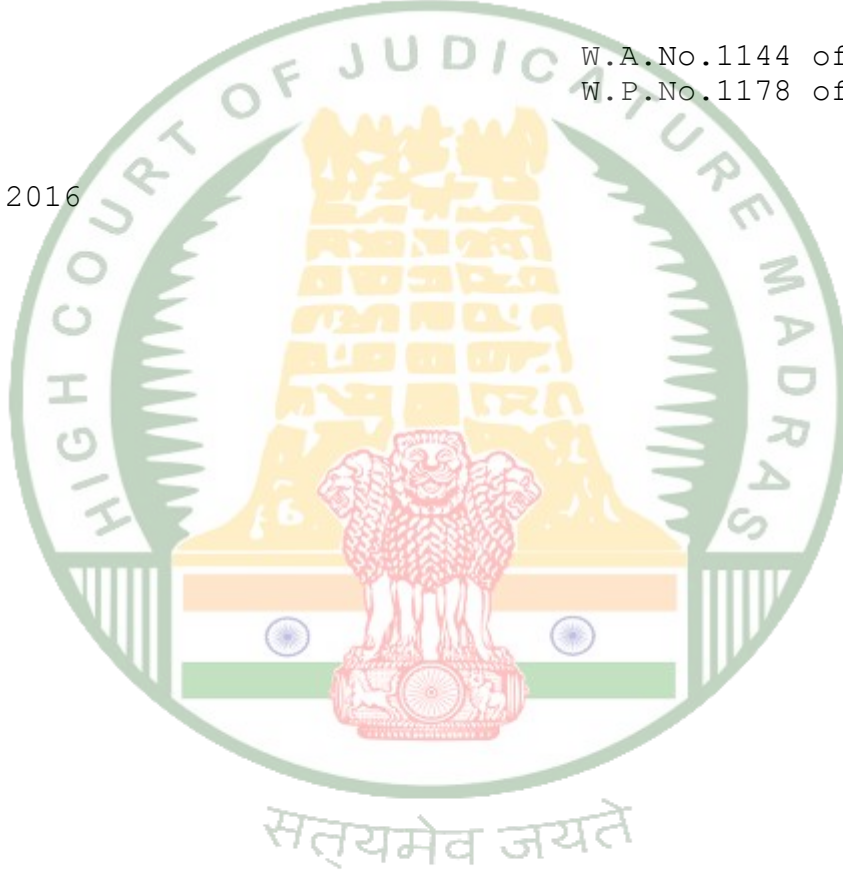
5.The Chief Manager,
State Bank of Mysore, Service-Branch,
III Floor, Sakthi Towers, No.766, Anna Salai,
Chennai-600 002.

6.The Deputy General Manager,
Central Zone, State Bank of Mysore,
231, NSC Bose Road, Parrys Corner,
Chennai-600 001.

+4 ccs to Mr.K.R.Vijayakumar, Advocate, sr.12633, 12635 & 12634
+1 cc to Mr.S.Sethuraman, Advocate, sr.12759

W.A.No.1144 of 2011 &
W.P.No.1178 of 2012

ksj co
kra 09.03.2016



WEB COPY