

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2016
(Reserved on: 24.03.2016)

Coram

The Hon'ble Mr. Justice T.RAJA

W.P. No.8407 of 2015

S.Viswanathan

... Petitioner

Vs

1.State Bank of India,
Rep. By its Regional Manager, RBO-I,
(Disciplinary Authority)
Region - 1, Network - 1, Administrative Unit,
No.86, Rajaji Salai,
Chennai - 600 001.

2.K.V.Sivaramanathan,
Chief Manager (Enquiry),
Enquiry Officer.
Vigilance Department,
State Bank of India,
LHO-8th floor, No.16, College Lane,
Chennai - 600 006.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records relating to the order bearing Ref.No.DIS/CON/628, dated 12.03.2015 passed by the first respondent in rejecting the petitioner's request for permission to engage a lawyer's assistance and to quash the same as being illegal, arbitrary and contrary to Clause 12 of the Bipartite settlement dated 10.04.2002 and for a consequential direction to the first respondent to provide him with assistance of the lawyer as provided under the Bipartite settlement dated 10.04.2002.

For petitioner .. Mr.N.G.R.Prasad
for M/s.Row & Reddy

For Respondents.. Mr.S.Ravindran

O R D E R

By way of filing this writ petition, the petitioner seeks to quash the impugned order dated 12.03.2015 passed by

the first respondent / Regional Manager (Disciplinary Authority), State Bank of India, Chennai, in and by which, the Disciplinary Authority rejected the request of the petitioner to engage a lawyer to defend his claim in the disciplinary proceedings initiated by the Bank.

2. The petitioner, while working as Head Cashier in State Bank of India, Sowcarpet Branch, Chennai, was issued with a charge memo dated 16.04.2014 alleging that he indulged in fraudulent acts of accessing core banking system by using his ID and thereby made 1668 enquiries relating to home and non-home accounts of the customers. Thereafter, on 16.05.2014, the petitioner has submitted his explanations denying such allegation. The second respondent was appointed as the Enquiry Officer. On submitting explanation, the petitioner, in terms of Clause 12 of the Bipartite Settlement dated 10.04.2002, which provides for assistance of a lawyer, made a request before the Enquiry Officer to permit him to engage a lawyer to represent his side. Such request of the petitioner was refused by the Enquiry Officer on 13.08.2014 and on appeal, the Disciplinary Authority concurred with the said decision on 18.08.2014.

3. Challenging such orders of the respondents, the petitioner has filed a Writ Petition No.23000 of 2014 pleading that he has got a right to engage a lawyer without the consent of the Bank. This Court, by order dated 18.02.2015, finding that neither the enquiry officer nor the disciplinary authority made genuine efforts to look into the grievance projected by the petitioner with regard to his inability to get the assistance of a representative, set aside the impugned order rejecting the request of the petitioner to engage a lawyer to defend his claim in the departmental proceedings and thereby directed the Disciplinary Authority to consider the matter afresh on merits and take a decision in the light of Clause 12 of the Bipartite Settlement dated 10.04.2002 and pending suit in O.S.No.124 of 2013. Pursuant to the direction of this Court, the order impugned herein has been passed again rejecting the request of the petitioner to engage a lawyer. Thus, the present writ petition with the prayer cited supra.

4. Mr.N.G.R.Prasad, learned counsel appearing for the petitioner, submitted that when the petitioner was facing departmental proceedings with regard to alleged irregularities and misconduct, the Disciplinary Authority has appointed the second respondent as Enquiry Officer. Clause 12 of the Bipartite Settlement provides for seeking the assistance of a lawyer, however, with the permission of the Bank. Therefore, he pleaded, the petitioner requested to defend his case by a lawyer on two grounds; (i) he had already filed a civil suit in O.S.No.124 of 2013 claiming damages against the very same

Union, in which he is a member; (ii) one Mr.Sathiyamurthi was appointed as a Presenting Officer of the Bank in the departmental enquiry, who, as seen from the additional affidavit filed by the respondent Bank, has acted as Presenting Officer in 12 domestic enquiries by defending the Bank, therefore, on this score, he pleaded, since the petitioner was pitted against a trained prosecutor, he will have to engage a lawyer to defend his claim in the departmental enquiry as provided in Clause 12 of the Bipartite Settlement dated 10.04.2002. It is his further contention that the petitioner is not in a position to withstand the enquiry for hours together on account of his poor health condition. It is further submitted that though this Court gave a specific direction to the Disciplinary Authority to consider the matter afresh on merits and take a decision in the light of Clause 12 of the Bipartite Settlement and pending suit in O.S.No.124 of 2013, the Disciplinary Authority once again by passing the present impugned order dated 12.03.2015 has rejected his request to engage a lawyer. Such order passed by the Disciplinary Authority is in total ignorance of the order passed by this Court in W.P.No.23000 of 2014, dated 18.02.2015, hence, he pleaded, the petitioner should be given the assistance of a lawyer, otherwise, it will be mockery of fair play under Articles 14 and 16 of the Constitution of India.

5. In support of his submissions, learned counsel for the petitioner, by relying upon a judgment of this Court in the case of Pushpa Iyenger v. The Indian Airlines Corporation and others (1988 (1) LLJ 385), submitted that if a delinquent employee is unable to get the assistance of a co-employee to defend him/her, there is no use of relying on the Standing Order which allows such representation. If in a given case, the delinquent has no friends in the Corporation, as will happen to a newly recruited person, or is unable to secure a person who would be a match to the Presenting Officer appointed by the Corporation, then the delinquent should be given permission for representation by a lawyer to be defended in the domestic enquiry. While such being the settled legal position, he pleaded, declining to permit the petitioner to engage a lawyer to defend his claim in the enquiry proceedings is arbitrary and malafide.

6. By relying upon another judgment of the Hon'ble Apex Court in the case of Crescent Dyes and Chemicals Limited v. Ram Nresh Tripathi ((1993) 2 SCC 115), learned counsel submitted that the right to be represented by a counsel or agent of one's own choice is not an absolute right and can be controlled, restricted or regulated by law, however, if the charge is of a serious and complex nature, the delinquent's request to be represented through a counsel or agent could be

conceded. On this basis, he pleaded, in the case on hand, since the charges framed against the petitioner are of serious nature, a direction may be given to the Disciplinary Authority to permit the petitioner to engage a lawyer to defend his case in the departmental proceedings.

7. Per contra, Mr.S.Ravindran, learned counsel appearing for the respondent Bank, submitted that the petitioner was issued with a charge sheet dated 10.06.2014 for unauthorisedly accessing core banking system and thereby enquiring into the accounts of 1668 customers of other branches. Such enquiries made by the petitioner were not his day to day work. It is further submitted that though the petitioner has submitted his explanation, the same was not satisfactory, hence, a domestic enquiry was ordered informing the date as 13.08.2014. Immediately, the petitioner gave a letter dated 09.08.2014, raising certain issues on the manner of conducting the enquiry, and one of such issues was that he should be permitted to engage a lawyer in the enquiry in terms of Clause 12 of the Bipartite Settlement dated 10.04.2002, as he was not interested in taking a representative from the State Bank Staff Union in which he was a member, for, he had filed a suit for recovery of Rs.8,200/- from the Union towards the legal expenses incurred by him. However, the Enquiry Officer did not accede his request and sought the views of the disciplinary authority, who, in turn, by letter dated 18.08.2014, concurring with the views of the enquiry officer, declined the request of the petitioner for assistance of a lawyer in the domestic enquiry. Aggrieved by the same, when a Writ Petition No.23000 of 2014 was filed, this Court, by order dated 18.02.2015, set aside the proceedings dated 18.02.2015 of the Bank declining to grant permission for assistance of a lawyer and thereby it directed the first respondent therein to consider the matter afresh and take a decision in the light of Clause 12 of the Bipartite Settlement dated 10.04.2002 and pending suit in O.S.No.124 of 2013. Again, the first respondent, by considering the matter at length and by taking note of the fact that the Presenting Officer was neither a legally trained person nor he was from the Vigilance Department, once again rejected the request of the petitioner for assistance of a lawyer. It is further submitted that the petitioner's loss of confidence with the Union and federation cannot be a ground to seek lawyer's assistance as a matter of course or as a matter of right, moreso, when the respondent Bank is not represented by a law graduate or a person with legal expertise or well trained in the enquiry proceedings. Hence, he pleaded, the petitioner's appeal to the respondent Bank to invoke its discretion in favour of the petitioner to engage a lawyer to assist him in the departmental proceeding is without any merit.

for the respondent Bank that the charges levelled against the petitioner are not in complex in nature calling for legal expertise to defend the petitioner in the enquiry and in fact, he himself can defend his claim better in view of his 34 years of service in the Bank. Moreover, the petitioner has no inherent or absolute right to seek the assistance of a lawyer to defend his claim and it is left to the discretion of the Bank, therefore, the impugned order passed by the respondent in rejecting the request of the petitioner to engage a lawyer in a departmental proceedings, especially where the Enquiry Officer and Presenting Officer are not law graduates or conversant with legal aspects, cannot be interfered, he pleaded.

9. In support of his submissions, learned counsel for the respondent Bank, by relying upon a judgment of the Hon'ble Apex Court in the case of Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union and others ((1999 1 SCC 626), contended that the petitioner as a matter of right cannot seek a representation through a lawyer unless statute or rules provided such right, therefore, in the case on hand, since the Enquiry Officer as well as the Presenting Officer are not law graduates, the petitioner himself can adjudicate his claim in view of his 34 years of vast experience in the Banking sector. With these submissions, he prayed for dismissal of the writ petition.

10. Heard the learned counsel appearing on either side and perused the materials available before this Court.

11. From the above said facts and circumstances of the case, the narrow question that arises for consideration is whether the delinquent employee is entitled to the assistance of a lawyer in a domestic enquiry. The Hon'ble Apex Court in J.K. Aggarwal v. Haryana Seeds Development Corporation Limited 1991 (2) SCC 283 had an occasion to consider the case of dismissal of a company Secretary of Haryana Seeds Development Corporation Limited, a Government Company. That was a case where the disciplinary Authority by virtue of the powers under Rule 7(5) of the Haryana Civil Services (Punishment and Appeal) Rules, 1952, appointed a Government servant / legal practitioner to be known as a Presenting Officer to present a case in support of the charge or charges and such a request for lawyer's assistance was denied to the officer on the ground that the rule did not permit. While considering the said rule, the Hon'ble Apex Court has held as follows:

"8. It would appear that in the inquiry, the respondent-Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that

where the charges are so serious as to entail dismissal from services the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reasons of the appellant being pitted against a Presenting Officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include "whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser". In the last analysis a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justices of the case. It is unnecessary, therefore, to go into the larger question "whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner."

12. In yet another case, the Hon'ble Division Bench of this Court in Indian Airlines Corporation, represented by Regional Director v. N.Sundaram (1992 (2) LLN 811) had an occasion to consider the standing orders of the Indian Airlines Corporation expressly prohibiting outside representation in departmental enquiries. Although there was a prohibition for outsiders to represent in the departmental enquiry, this Court has held as follows:

"It is true that the principles of natural justice may come into play when the statute or statutory rules are silent as to the procedure; and no statutory provision or statutory rule can be struck down where it makes a provision excluding application of principles of natural justice. But this principle cannot be viewed in the abstract and the endeavour must be to find out as to how far and in what manner the statutory provision or statutory rule

cannot be stated to have excluded the application of the principles of natural justice. Despite the absence of any standing order enabling the corporation to avail of the services of a Presenting Officer and that too a legally qualified and trained one, the corporation did avail of such services. In that context there cannot be denial of a facility on par with the facility availed of by the Corporation, to the employee. This Court also has further held that the anxiety and vigil of the Court must be to keep the balance and not to countenance the bringing in and perpetuation of an imbalance in the conduct of disciplinary proceedings. By any act of the employer, the employee should not be put to disadvantage in the conduct of disciplinary proceedings. That is the cardinal rule that must prevail, and guide and there cannot be prosecution of disciplinary proceedings in derogation thereof"

13. With the above decided cases, the case on hand needs to be analysed to find out whether the petitioner deserves to have the assistance of a lawyer to represent his case in the domestic enquiry. It is an admitted fact that the petitioner, while working as a Deputy Head Assistant (Cash) at the respondent Bank, Sowcarpet Branch, Chennai, was issued with a charge sheet for various acts of misconduct committed by him. The Bank appointed the second respondent, who is functioning as Chief Manager (Enquiry), to enquire into the charges. In the enquiry, the petitioner, in terms of Clause 12 of the Bipartite Settlement dated 10.04.2002, requested for assistance of a lawyer. However, the enquiry officer did not accede his request and sought the view of the disciplinary authority in the matter. The Disciplinary Authority, by order dated 18.08.2014, by concurring with the views of the enquiry officer, declined the request of the petitioner for assistance of a lawyer. Aggrieved by the same, when a Writ Petition No.23000 of 2014 was filed by the petitioner, this Court, by order dated 18.02.2015, set aside the proceedings dated 18.08.2014 of the Bank and thereby directed the Bank to consider the matter afresh and take a decision in the light of Clause 12 of the Bipartite Settlement dated 10.04.2002 and pending suit in O.S.No.124 of 2013. Pursuant to the said order of this Court, the Disciplinary Authority, by the present impugned order dated 12.03.2015, has once again rejected the request of the petitioner for assistance of a lawyer.

14. The sum and substance of the contention of the learned counsel for the petitioner is that in terms of Clause 12 of the Bipartite Settlement dated 10.04.2002, the petitioner is entitled to have the assistance of a lawyer to represent his case in a domestic enquiry. Therefore, for better appreciation, Clause 12 of the Bipartite Settlement is extracted below:

"The procedure in such cases shall be as follows:-

(a)He shall also be permitted to be defended-

(i) (x) by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry.

(y) where the employee is not a member of any trade union of bank employees on the aforesaid date, by a representative of a registered trade union of employees of the bank in which he is employed:

or

(ii) at the request of the said Union by a representative of the state federation or all India Organisation to which such union is affiliated.

(iii) with the bank's permission, by a lawyer."

From the above said Bipartite Settlement, it is clear that the charge sheeted employee can engage the services of a representative of a registered trade Union of Bank employees of which he is a member and further it also gives him an option to engage a lawyer with the permission of the Bank.

15. The petitioner filed a suit in O.S.No.124 of 2013 before the Small Causes Court, Chennai, against the Union, of which he is a Member, claiming damages against the very same Union. The respondent Bank was impleaded as second defendant in the said Suit. It was the contention of the petitioner in the Suit that State Bank Staff Union deliberately flouted the bye laws and caused him monetary loss. Therefore, it is averred by the petitioner that since the suit filed by him against the Union claiming damages is pending, he is not in a position to take the assistance of a representative of his Union to appear before the Enquiry Officer, and besides, neither the Union nor Members of the Union would help him, hence, he wanted the enquiry officer to permit him to engage a lawyer to defend his case effectively.

16. It is the specific case of the petitioner that he was pitted against a trained prosecutor viz.,

Mr.Sathiyamurthi, who defended the bank in 12 enquiries by acting as Presenting Officer. Further, the Enquiry Officer is also an Expert in the field of domestic enquiry as he holds the post of Chief Manager (Enquiry). According to the petitioner, inasmuch as both the persons at the contesting end against him being experts in the field of enquiry while he is handicapped of receiving the only assistance available viz., a representative from the Union since he filed a suit against the Union claiming damages, the principles of fair-play require that his plea for engaging a lawyer must be accepted.

17. This Court could see substance in the case of the petitioner, for, it is the duty of the Court to keep the balance to avoid the perpetuation of an imbalance in the conduct of disciplinary proceedings, because by any act of the employer, the employee should not be put to disadvantage in the conduct of disciplinary proceedings, otherwise this would amount to denial of reasonable opportunity. Therefore, this Court is of the view, the Disciplinary Authority ought to have allowed the claim of the petitioner to engage a lawyer to represent his claim in a domestic enquiry, by taking note of the fact that he had already filed a Civil Suit as stated above against the Union and as such he would not be in a position to get the assistance of a representative of the Union.

18. Further, it is pertinent to refer to the observation of Lord Denning M.R. in C.A.PETT v. GREYHOUND RACING ASSOCIATION LTD. (1968 (2) ALL ER 545) that once it is seen that a man has a right to appear by an agent, then I see no reason why that agent should not be a lawyer. It is not every man who has the ability to defend himself on his own. He cannot bring out the points in his own favour or the weaknesses in the other side. He may be tongue-tied or nervous, confused or wanting in intelligence. He cannot examine or cross-examine witnesses. If justice is to be done, he ought to have the help of someone to speak for him; and who better than a lawyer who has been trained for the task? I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth, but he has also a right to speak by counsel.

19. Thus, in view of the above said observations and settled legal proposition, I am of the considered view that the Enquiry Officer as well as the Disciplinary Authority failed to exercise their discretionary power properly. Therefore, this Court, by setting aside the impugned order dated 12.03.2015, directs the first respondent to permit the petitioner to engage a lawyer to represent his claim in the domestic enquiry.

indicated above. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

rkm

To

1. The Regional Manager, RBO-I,
(Disciplinary Authority), SBI,
Region - 1, Network - 1, Administrative Unit,
No.86, Rajaji Salai,
Chennai - 600 001.

2. Chief Manager (Enquiry),
Enquiry Officer.
Vigilance Department,
State Bank of India,
LHO-8th floor, No.16, College Lane,
Chennai - 600 006.

1 cc to M/s.Row & Reddy, Advocate, sr.29912
1 cc to M/s.S.Ravindran, Advocate, sr.29861

W.P. No.8407 of 2015

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