

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2016

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.26780 of 2016

and

WMP.No.23030 of 2016

S.Gunasekar

..Petitioner

vs.

1.State Bank of India
Rep. By its Regional Manager-RBO-I
No.86, Rajaji Salai,
Chennai – 600 001.

2.Chief Manager,
State Bank of India,
Chennai Branch,
No.115, Prakasam Road,
Oriental Insurance Building,
Chennai 600 108.

3.Medical Officer,
State Bank of India,
Zonal Office/Dispensary
No.86, Rajaji Salai,
Chennai 600 001.

4. M.Asokan
..Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, the action of the 1st respondent bank in declining the sick leave by its order dated 07.06.2016 bearing HR/64 and referring the petitioner to the Medical Officer of the Bank through his letter dated 15.06.2016

bearing HR/72 and in turn the action of the 3rd respondent in referring dated 20.06.2016 coupled with the letter of the 2nd respondent dated 22.06.2016 bearing HR/79 directing the petitioner to appear before the Medical Board as illegal, arbitrary, contrary to law and consequently direct the respondent Nos.1 to 3 to constitute the Medical Board in terms of the Human Resources Handbook issued by the Corporate Centre, Mumbai or refer the petitioner to the Medical Board available in the Government General Hospital, Chennai (Rajiv Gandhi General Hospital or Stanley Medical College General Hospital or Kilpauk Medical College General Hospital or Royapettah Government Hospital) or Central Government General Hospital, Chennai to ascertain the medical fitness of the petitioner to resume work and thereafter proceed with the Disciplinary Proceedings pursuant to the Charge Memo dated 13.05.2016 bearing AGM/1/293 by providing sufficient opportunity to the petitioner in terms of Clause 12 of the Settlement dated 10.04.2002 entered under Section 18(1) of the Industrial Disputes Act, 1947.

For Petitioner :Mr.Balan Haridas

For Respondents :Mr.T.R.Rajagopalan, Senior Counsel
for Mr.S.Ravindran

ORDER

The petitioner is working in the respondent/Bank as

Special Associate. He is also the General Secretary of the State Bank of India, Ambedkar Trade Union and State Bank of India SC/ST Welfare Association and has been fighting for his efficient administration of the Bank.

2. Quite often, huge chunk of money was missing from various branches of the respondent/Bank in Tamilnadu. The Union Representative of the respondent/Bank is to take effective measures to stop the cash missing from the cash chest. Since no action was taken, the Union issued circulated Posters and called upon the Chief Manager to resign taking moral responsibility. Therefore, the petitioner was charge sheeted earlier on 10.03.2007 regarding printing and pasting and regarding the functioning of the Bank. The petitioner challenged the said charge sheet and finally the charge sheet was quashed by the Hon'ble Division Bench of this Court in W.A.No.356 of 2006. Consequently, the petitioner was reinstated on 24.08.2015.

3. The respondent/Bank, in order to wreck vengeance, issued a charge memo on 13.05.2016 stating that in March 2016, he circulated defamatory pamphlets against the higher officials. Due to his deteriorating health conditions, the petitioner applied for sick leave on 04.06.2016 and the same was declined. Through

letter dated 15.06.2016, the second respondent called upon the petitioner to appear before the third respondent / Medical Officer and the said Medical Officer referred the petitioner to the Billroth Hospital, Chennai on 20.06.2016. Thereafter, the 2nd respondent issued a communication on 22.06.2016 stating that the third respondent constituted a Medical Board and called upon the petitioner to appear before the Medical Board on 27.06.2016 at Billroth Hospital, Chennai. The petitioner, by communication dated 24.06.2016, tested against the Constitution of the Medical Board in Billroth Hospital, Chennai. However, he submitted himself before the said Board on 27.06.2016. On 30.06.2016, the petitioner gave a representation to constitute a proper Medical Board in State Government Hospital or Central Government Hospital.

4. Thereafter the petitioner gave an interim explanation to the charge memo on 06.07.2016. On 12.07.2016, the first respondent appointed the fourth respondent as an Enquiry Officer. Meanwhile, the petitioner has become more sick and therefore, he has been admitted as in- patient in Tamil Nadu Government Multi Super Speciality Hospital. The second respondent, through letter dated 15.07.2016, enclosing the medical board report given by the Billroth Hospital, Chennai, informed that the petitioner

does not require rest and called upon to report to work. Though the petitioner was discharged on 21.07.2016, subsequently on admission, the petitioner is taking treatment as in-patient for various health problems.

5. In those circumstances, the petitioner is before this court seeking a declaration that the action of the first respondent / Bank declining sick leave by order dated 07.06.2016 and referring the petitioner to the private hospital for medical examination and consequently, seeks a direction to the respondents 1 to 3 to constitute a Medical Board in Government Hospital in State Government Hospital or in Central Government Hospital to ascertain the health condition of the petitioner and other reliefs.

6. A counter affidavit has been filed by the respondents 1 and 2 contending that during March, 2016, the petitioner published and distributed pamphlets at various places including Administrative Offices at Madurai and Chennai and local offices, Chennai containing unfounded allegations of abetment of corruption against Chairman of the Bank and other officials regarding recovery of loan from Kingfisher Airlines Limited. Since the allegations against the Chairman was made with malafide

intention, the petitioner was given a show cause notice on 25.04.2016. As no reply was received, a charge sheet was issued on 13.05.2016 for gross misconduct as per memorandum of settlement. After giving the reply, the petitioner, to evade the disciplinary proceedings, started availing sick leave from 20.04.2016 onwards. The sick leave application was rejected on 07.06.2016 and was asked to report duty. He appeared before the Medical Board, which was constituted as per law and it was found that there is no necessity to take rest. Hence the notice of enquiry dated 25.06.2016 was issued to the petitioner to appear before the Enquiry Officer on 29.07.2016.

7. It is further contended that the petitioner, only to evade the enquiry, is filing sick leave application after application and questioning the Medical Board Constitution; The Medical Board already found that the petitioner does not require any rest. Therefore, there is no impediment for the petitioner to report to duty and to face enquiry. Having made defamatory allegations against the higher officials without any substance, the petitioner is trying to evade the enquiry on false plea and approached this Court.

8. Heard Mr.Balan Haridas, learned counsel appearing for

the petitioner and Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the respondents 1 and 2.

9. This Court heard the arguments and perused the records carefully. The petitioner is a Special Associate and he is also an office bearer and General Secretary of State Bank of India Ambedkar Trade Union and State Bank of India SC/ST Welfare Association. The allegation against the petitioner is that he circulated pamphlets in various places containing unfounded allegations against the Chairman and other officials of the Bank regarding the recovery of loan to Kingfisher Airlines Limited. It is stated in the counter affidavit that the Chairman of the Bank was in no way connected with the sanctioning of loan to the Kingfisher Airlines Limited, which was made in 2004 and 2008 whereas the Chairman assumed office on 07.10.2013. Further, recovery proceedings have already been initiated against the Kingfisher Airlines Limited. In view of the position, only a show cause notice was issued on 25.04.2016 and a charge sheet was issued on 13.05.2016 as per the memo of settlement.

10. The issue raised is regarding the declining of sick leave to the petitioner from 20.04.2016 onwards. Since the respondent doubted the alleged health condition of the petitioner,

Medical Board was constituted and tests were done at Billroth Hospital, Chennai. The Medical Board report dated 30.06.2016 would reveal that the petitioner is suffering from migraine with Iavra and there is no necessity to take absolute rest. The petitioner would submit that as the Medical Board consisted of an Neuro Physician from Billroth Hospital, Chennai and tests were done at a private Hospital, the said report would not show the correct health position and therefore, sought for constitution of Medical Board either in State Government Hospital or in Central Government Hospital. The petitioner would submit that he is suffering from other ailments and he has been admitted in the Tamilnadu Multi Super Speciality Hospital, Chennai, as in-patient from 13.07.2016 onwards. Medical records given by the said hospital would also prove his treatment. The Government Hospital would not have admitted the petitioner as in-patient from 13.07.2016 onwards unless it is a necessary one. The petitioner's medical records would reveal that he is suffering from PHEUCHARMACYTOMA. Further the certificate issued by the Medical Officer of the Bank on 20.06.2016 would reflect the following diseases.

- “ i) Bilateral renal calculi,
- ii) Spinal Cord compression and infarcts brain

with extreme swinging of blood pressure levels.” Therefore, it is clear that the petitioner is suffering from illness only. It is true that the Medical Board report does not show any ailment. On the other hand, the medical reports produced from the Government Hospital would establish ill-health of the petitioner.

11. With regard to petitioner's contention to constitute a Medical Board at Government Hospital, it is found from the report submitted by the Bank that there are earlier instances of constitution of medical board including doctors from private hospital. Hence, the contention for constitution of medical board in Government Hospital is rejected.

12. It is argued that the rejection of sick leave of the petitioner by the second respondent is pre-determined and contrary to Rule 12.2 (e) of leave Rules and no reason has been given for not sanctioning the leave as per the communication dated 07.06.2016. However, the Bank would contend that as per law only, the petitioner's request was rejected and there is no question of any pre-determination. It is evident that there is no reason given in the communication dated 07.06.2016 and it only called upon the petitioner to report to duty. The said letter gives an

impression that a decision had been taken already to reject the petitioner's sick leave.

13. It is contended that the petitioner is sought to be proceeded hurriedly taking special interest without disclosing the reason for rejecting the petitioner's sick leave. It is also pointed out earlier that the petitioner was dismissed from service on 27.09.2007 for issuing pamphlet regarding missing of currency notes from the respondent/Bank in the year 2006.

14. The petitioner challenged those proceedings and the charge sheet was quashed by order dated 01.07.2015 in W.A.Nos.336, 356, 357 of 2008, Consequently reinstated the petitioner on 24.08.2015. Hence, he would submit that to wreck vengeance against the petitioner, the disciplinary proceedings are taken. By that alone, this court cannot assume that the proceedings have been initiated with malice. The reason for disciplinary proceedings is circulation of pamphlets making allegations against the bank higher officials. Therefore, the contention of the malice made by the learned counsel for the petitioner relying upon the judgment of the Supreme Court ***Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others*** reported in **(2010) 9 SCC 437** is rejected.

15. The main issue, which is the cause for disciplinary proceedings is the circulation of the pamphlets containing defamatory allegations against the Chairman and other higher officials in March, 2016 with regard to recovery of loan to the Kingfisher Airlines Limited. The respondents stated that the Chairman assumed office only on 17.10.2013 and hence she was not connected with the granting of loan to the aforesaid Company during 2004 and 2008. Further it is submitted that the Bank initiated recovery proceedings before Debts Recovery Tribunal, Bangalore and therefore, the allegations against the officials are with malafide intention. For proper appreciation, it is useful to extract the headlines of the Pamphlet.

**kj;jpa munr! gp/n\$/gp/ munr! t';fp CHy; ngh;tHp -
rh;tnjr rhuha tpahghhp jpU/tp\$a;ky;iyah ,e;jpa
t';fpfis R{iwahl cle;ijahf ,Ue;j jpUkjp/ mUe;jjp
gl;lhr;rh;ah (Chairman, State Bank of India)
mth;fis cldoahf gjtp ePf;fk; (Dismiss) bra;! ifJ
bra;!! rpiwapy; g{l;L!!!**

(CHy; mjpgfhpf; - eph;thpf; gw;wpa

VHhk; gl;oay;)

From the above, it is clear that the petitioner made an allegation that the Chairman assisted Mr.Vijay Mallayaa to loot the Bank money and therefore, she has to be dismissed and arrested. Eventhough the petitioner contended that the allegation made by the petitioner is with regard to the recovery of loan amount from Mr.Vijay Mallayaa, the four page pamphlet would disclose many serious allegations against the Chairman and other higher officials. As rightly pointed out by the bank, the present Chairman assumed office only on 17.10.2013 and the recovery proceedings have already been initiated and are pending before DRT, Bangalore. Allegations of corruption and demand for dismissal and arrest of the Chairman are very grave in nature. Nobody could throw mud against higher officials and could not claim the allegations are fact without any proof. Malicious, defamatory reckless and allegations cannot be made and circulated to the General Public without proof. Therefore, the act of the petitioner making allegation against the higher officials needs to be condemned and deprecated.

16. However, it is a known fact that Mr.Vijay Mallayaa borrowed loan from consoritium of Banks to the tune of thousands of Crores and failed to repay the said loan amounts to the banks and slipped away from the country. It is seen that the respondent

Bank is the lead Bank which gave loan to Mr.Vijay Mallayaa and the amount due to the respondent Bank itself is Rs.1,600 Crores. Non-recovery of loans has been highlighted by the petitioner, however, with certain defamatory allegations against the Chairman and others. The intention highlighting non-recovery of money by the Bank cannot be found fault with. At the same time, the petitioner cannot be allowed to make reckless allegations against his higher officials by circulation of pamphlets.

17. If really, the Banks money has not been recovered by taking suitable steps by the higher officials, the proper course should be to Write to the Government pointing out lapses and thereafter approach the court. Without doing that, it is not open to the petitioner to issue pamphlets making defamatory allegations against the higher officials and in that event, nobody's reputation or image would be safe. Even if the petitioner decided to highlight the non-recovery, he should have verified facts dealt with the issue carefully. The petitioner cannot be allowed to defame the official causing debt in the image of the Bank.

18. Be that as it may, the past conduct of the petitioner as admitted by the respondent bank is clean except the dismissal of the petitioner from service on 27.09.2007. Even the said disciplinary proceedings were quashed by this court in

WA.Nos.336,356,357 of 2008 by order dated 01.07.2015 observing that the petitioner only exposed missing of currency notes from and inaction of the Bank. In the light of the series of cash shortages in the public interest, this court in the above proceedings held that publishing or exposing cash shortages in the Bank and inaction of the top officials cannot amount damage to the property of the Bank. It is useful to extract relevant portions of the judgment passed on 01.07.2015 by the Hon'ble Division Bench of this Court in W.A.Nos.336, 356 and 357 of 2008. Paras- 39,41,44 and 45 read as follows:

39. Exposing the inaction of the bank in the light of series of cash shortages can only be in public interest and making such statements cannot be detrimental to the interest of the bank. As pointed out earlier, the bank itself expects its officers to take all possible steps to ensure and protect interest of the bank. Publishing or exposing the cash shortages in the bank and the inaction of the top officers cannot amount to willful damage to the property of the bank. It cannot even be said to be prejudicial to the interest of the bank.

41. After having taken the above positing with regard to the missing money, the Bank went on to question the entitlement of the trade union to be bothered about these irregularities. A perusal of the counter affidavit filed by the bank in the writ petitions will clearly show that the bank questioned

the role of the trade union more than the veracity of the allegations made by the Union. It is necessary to extract some passages from the affidavit to show the mindset of the bank in this regard:

"In any event, these are all matters which are in the exclusive administrative domain of the Bank. Neither the petitioner nor his Trade Union has got any Laws to question the same."

"Para 14: Merely because few incidents have taken place in the Bank, that does not give any right to the petitioner to paste posters demanding the resignation of Chief General Manager."

44. Even while dealing with a case of prolonged absence of a Government servant, the Courts were forewarned by the Supreme Court from showing any indulgence when such cases are brought to court and the need to apply the fundamental duty enshrined in Article 51A(j) of the Constitution by the Supreme Court vide its decision in Govt. of India v. George Philip [(2006) 13 SCC 1]. It is necessary to refer to the following passage found in paragraph 18 of the said judgment, which is as follows:

"18..... Article 51-A(j) of the Constitution lays down that it shall be the duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. This cannot be achieved unless the employees maintain discipline and devotion to duty. Courts should not pass such

orders which instead of achieving the underlying spirit and objects of Part IV-A of the Constitution have the tendency to negate or destroy the same."

45. Therefore we do not think that the Respondent SBI was right in initiating a disciplinary action against the three appellants in respect of the poster in question either on the ground it had interfered with the commercial interest of the bank or it had defamed the bank. We do not find anything defamatory in the contents of the poster which gave rise to the impugned charge memos against appellants. Merely pointing out the lapses of the bank and also seeking for the resignation of the Officer in charge of the affairs can never be considered either as defamatory or against the interest of the institution. On the other hand, the appellants and their union have given petitions to the appropriate corrective machinery and thereafter had also taken the issue to public only with the bonafide view of finding solutions. We are of the view that neither 5(d) nor 5(j) of the Memorandum of Settlement describing misconducts will apply to the fact situation. So is the case of Regulation 50(4) of the Service Rules.

19. Moreover, it is pointed out that so far the petitioner's Association has not indulged in any illegal strike which also weighs with the mind of the Court especially most of the Associations are, one pretext or other, are resorting to strike

regularly in this country. To a query, the Bank counsel would submit all the records have been destroyed in the fire accident occurred in the bank and therefore, he was not in a position to give the correct details. However, it is submitted that as per records, there is no bad antecedent except a censure. In view of absence of any bad antecedents and not indulging in any strike so far, this court takes lenient view in this matter. However, it is made clear that merely because lenient view is taken, it does not mean that the petitioner is given a clean chit for circulating pamphlets with defamatory allegations.

20. Therefore, an employee with a clean past history should not be subjected to disciplinary proceedings at the fag end of his service, especially this court in the earlier order dated 01.07.2015 in W.A.Nos.336,356 & 357 of 2008 gave clean chit observing that the petitioner only exposed the public cause. Further, the petitioner is to retire on 30.09.2016. That apart, the petitioner also tendered his apology for his misconduct by filing an affidavit before this Court on 29.08.2016 and para 2 of the affidavit is extracted as follows:

"2. I tender my apology with regard to the contents of the pamphlets which is subject matter of the charges levelled against me in the charge sheet.

dated 13.05.2016 and I regret for the same. "

The above affidavit is also one of the reasons for taking lenient view by this court. Therefore, the respondent is required to be magnanimous and view the present misconduct leniently.

21. Though the petitioner sought for a declaration that declining his request for sick leave is illegal and seeking constitution of Medical Board in Government Hospital for his reference, considering the facts in toto, this court moulds the prayer and holds as follows:

i) The petitioner intended to highlight the grant of loan and non-recovery of loan amount by the Bank from Mr.Vijay Mallayaa, who left the country without repaying the loan.

(ii) The petitioner made defamatory and uncharitable allegations against the higher officials including the Chairman.

(iii) since the intention is to protect the interests of the Banks, the issue has to be considered in toto and lenient view has to be taken in view of the reason that the petitioner is to retire on 30.09.2016 without any bad antecedents.

(iv) The rejection of petitioner's request for sick leave without giving any reason through letter dated 07.06.2016 is erroneous.

(v) Referring the petitioner to Medical Board consisting of a doctor from Billroth Hospital, Chennai, is valid.

(vi) The petitioner's ill health is proved by the Bank's Doctor certificate dated 20.06.2016 and further fortified by Medical records issued by the Tamil Nadu Government Multi Super Speciality Hospital, Chennai.

(vii) There is no malice exhibited by the respondents while taking the departmental proceedings, as it is based on pamphlets circulated by the petitioner in the name of association.

(viii) Admittedly, there is no bad antecedents on the part of the petitioner throughout his service. Even the disciplinary proceedings initiated earlier against the petitioner were quashed by the Hon'ble Division Bench of this Court in W.A.Nos.336,356 and 357 of 2008 by order dated 01.07.2015 observing that the petitioner only exposed the causes in the public interest and called upon the Bank to take remedial measures.

(ix) By filing an affidavit, the petitioner tendered his apology with regard to the contents of the pamphlets issued by him.

(x) Though lenient view is taken, the petitioner is slapped with a fine of Rs.25,000/- (Rupees Twenty Five Thousand Only) for making defamatory allegations in the pamphlets against the Chairman and other officials and the same shall be paid by him

to the Chairman and other officials of State Bank of India, within a week viz., on or before 28.09.2016.

22. This court passes this order to give a quietus to the issue and to avoid multiplicity of proceedings in future in an attempt to do complete justice to all the parties.

23. For the above reasons, by moulding the prayer, while condemning and deprecating the petitioner for making unfounded allegations against the higher officials, and fining him to the tune of Rs.25,000/-, instead of allowing the respondents to go ahead with the disciplinary proceedings, as he is to retire on 30.09.2016, this Court directs the respondents to be lenient and take a decision to discharge the petitioner from service with all retirement benefits including pensionary benefits on condition that the petitioner deposits a sum of Rs.25,000/-(Rupees Twenty Five Thousand Only) on or before 28.09.2016 to the respondent/Bank, within a period of two weeks after payment of fine amount.

In the result, the writ petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed.

20.09.2016

gv

Index : Yes/No

Internet: Yes/No

Note: Issue order copy on 20.09.2016.

N.KIRUBAKARAN,J.

gv

To

- 1.State Bank of India
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