

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.10.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.A.No.788 of 2016

and

C.M.P.No.10343 of 2016

1. The General Manager Network 2
Disciplinary Authority (D.A.)
Local Head Office,
Circle Top House,
16, College Lane, Chennai 600 006.
2. The General Manager Network 2
Appointing Authority,
State Bank of India,
Circle Top House,
16, College Lane, Chennai 600 006.
3. The Chief General Manager and
Appellate Authority,
State Bank of India,
Circle Top House,
16, College Lane, Chennai 600 006. Appellants/Respondents

Versus

S.V.Sankar Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 27.4.2016 passed in W.P.No.4344 of 2013 on the file of this court. Petition filed under Article 226 of the constitution of India praying to issue writ of certiorarified Mandamus to call for the records releasing to the orders dt. 7.11.2012 issued by the first respondent (Exn A) bearing No.VIG/KE/137, and proceedings dt.23.1.2013 (Ex-B) hearing No.VIG/KE/171 issued by the second respondent and to

quash the same as being illegal arbitrary and contrary to the order of two court dt.23.7.2012 in WP.No.6388/2011 and consequently to direct the respondents to not to proceed further in respect of charge sheet dt.6.10.2008.

For appellants : Mr.K.Sankaran
For Respondent : Mr.N.G.R.Prasad

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties.

2. The writ appeal is filed challenged the order of the learned Single Judge allowing the writ petition filed by the employee of the bank.

3. It appears that With regard to certain irregularities that were alleged to have been committed by the writ petitioner, he was subjected to disciplinary proceedings and the disciplinary authority, by issuance of charge memo dated 6.10.2008 and on receipt of enquiry report dated 25.5.2010, ordered for denovo enquiry by his order dated 15.9.2010, on the ground that there were certain infirmities in the departmental enquiry. Challenging the same, the writ petitioner had filed a writ petition in W.P.No.6388 of 2011 wherein this court, by order dated 23.7.2012, while setting aside the order of denovo enquiry, remanded the matter to the first appellant herein to pass fresh orders by giving the details on which the fresh enquiry was ordered. Such being the case, it appears that the disciplinary authority, without complying with the above said order, had proceeded in issuing fresh notice on 7.11.2012 which was challenged in the present writ petition. After going through the material records and analysing the facts and circumstances of the case, the learned Single Judge had set aside the impugned order which is put to challenge in this writ appeal.

4. This is nothing but a second round of litigation at the instance of the Bank. Under the guise of powers conferred upon them under Rule 68(3) of the State Bank of India Officers' Service Rules, the disciplinary authority had proceeded to hold enquiry and sought to impose punishment, without even detailing the infirmities they found in the original enquiry report and the same was already considered by a learned Single Judge of this court in W.P.No.6388 of 2011, referred to above. Though a course was open to the bank in the above said order, to pass fresh order by giving the details on which the fresh enquiry is being ordered, the disciplinary authority has proceeded to issue a fresh notice and sought to impose punishment. Therefore, the

writ petitioner was constrained to file a writ petition once again viz., the present writ petition.

5. Having found that the earlier direction issued by this court has not been complied with, the learned Single Judge has observed in the order as under:-

"Analysing the legal position, this Court, by order dated 23.7.2012, passed in W.P.No.6388 of 2011, clearly held that merely because Rule 68(3) empowers the authority to order Denovo enquiry, the first respondent therein cannot without giving any material particulars just order Denovo enquiry and the absence of the details will vitiate the order. Accordingly, by setting aside the impugned order, remitted the matter back to the first respondent so as to enable him to pass fresh orders by giving the details of infirmities. However, the respondents, without complying such direction of this Court, by relying upon a judgment of the Hon'ble Apex Court in Haridas' case (cited supra) which states that only administrative order can be rectified, cannot wriggle out from complying with the said direction of this Court."

6. The stand taken by the learned counsel appearing for the appellants is that as contemplated under per Rule 68(3) of the State Bank of India Officers' Service Rules, the Disciplinary Authority, has got power to order for Denovo enquiry.

7. When once the appellant-bank was confronted with the situation at the instance of the petitioner, and an order was passed in accordance with law, and the same has not been complied with, but, the Management sought to impose punishment on the alternative ground, we are of the view that it is totally unjust on the part of the Management in not complying with the directions, when there is no challenge to the same, and in presuming for themselves that there is an alternative course of action to conclude the enquiry and to impose punishment that could be challenged by the petitioner. In the circumstances, while dismissing the writ appeal, we permit the bank to comply with the direction issued by the learned Single Judge much earlier and it is for the bank authorities to proceed with fresh enquiry as directed therein, within one month from the date of receipt of copy of this order, to initiate the proceedings and conclude the same within three months thereafter, to do the needful in accordance with law. Both the parties shall co-operate to conclude the proceedings.

8. In the course of discussion, it is proposed that the petitioner/ delinquent is in the verge of retirement and the

amount which is lent by way of sanctioning of loan, also cannot be said to be not a recoverable one, but since there are some irregularities alleged to have been committed by him, the delinquent agrees to seek for condoning of the lapses committed by him, if the management will take a lenient view by imposing a minor punishment and put an end to the litigation. Therefore, it is needless to say that the parties can go for mediation and settle the issue if both the parties are agreeable, instead of going for a fresh enquiry. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

+1cc to Mr. K. Sankaran, Advocate, S.R.No.57532
+1cc to Mr. Row & Reddy, Advocate, S.R.No.57654

skv (CO)
md (8/11/2016)

W.A.No.788 of 2016

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