IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.11.2016
CORAM
THE HON'BLE MR. JUSTICE R.SURESH KUMAR
W.P.No.49844 of 2006
and M.P.No.1 of 2006

K.Vijaya ...Petitioner

Vs.

1. The General Manager (Personnel)
   Appellate Authority
   Syndicate Bank, Head Office
   Manipal 576 119.

2. The Deputy General Manager,
   Syndicate Bank,
   Zonal Office, B.R.Complex
   27/28, Woods Road,
   Mount Road, Chennai 600 002.

3. Central Government Industrial Tribunal/
   Labour Court, Rep.by its Presiding Officer,
   26, Haddows Road, Shastri Bhawan,
   Chennai 600 086. .. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India pleased to issue a writ of certiorarified mandamus or any other appropriate Writ, order of direction in the nature of a writ, calling for the records of the respondents pertaining to the award of the 3rd respondent in I.D. No.557 of 2001 dated 22.04.2002 and quash the same and consequently direct the respondents 1 and 2 herein to reinstate the petitioner into service with back wages, continuity of service and all other monetary and attendant benefits.

For Petitioner : Mr.R.Nalliyappan

For Respondents: M/s.T.S.Gopalan & Co. for R2
R3 Tribunal

O R D E R

The prayer in the writ petition is for issuance of writ of certiorarified mandamus or any other appropriate Writ, order of direction in the nature of a writ, calling for the records of the respondents pertaining to the award of the 3rd respondent in I.D. No.557 of 2001 dated 22.04.2002 and quash the same and consequently direct the respondents 1 and 2 to reinstate the petitioner into service with back wages, continuity of service and all other monetary and attendant benefits.

2. By proceedings dated 03.12.1998 the second respondent issued a charge sheet cum suspension order, to the petitioner. The charges framed against the petitioner was that on 30.04.1997 the petitioner had received cash payment of Rs.270/- pursuant to the withdrawal receipt no.362597 dated 29.04.1997 relating to Saving Bank Account 5436 of Mrs.Chellammal. The said Chellammal wife of Mr.Varadharajulu Chettiar, was maintaining the said SB account with the respondent bank since 16.07.1973 and there was no transaction in the said account since 1975. It was reported that the account holder/depositor died on 21.07.1988.

3. Pursuant to the charge memo an enquiry was conducted. The petitioner was given opportunity to give his explanation and also was given a personnel hearing. Ultimately, enquiry report was submitted on 09.07.1999, wherein the enquiry officer found that the charges levelled against the petitioner was proved. Pursuant to the enquiry and the report of the enquiry officer, order of punishment was inflicted on the petitioner, on 14.08.1999 and the petitioner was compulsorily retired from service with bank with immediate effect.

4. As against the order of punishment, the petitioner preferred an appeal dated 17.11.1999, before the Appellate Authority, who in turn confirmed the punishment of compulsory retirement on the petitioner, by rejecting the appeal preferred by the petitioner dated 17.11.1999.

5. Thereafter, an Industrial Dispute was raised by the petitioner before the Central Government Industrial Tribunal Cum Labour Court, Chennai, in ID No.557 of 2001 and the Labour Court/third respondent, by award dated 22.04.2002, confirmed the order of punishment inflicted by the Management of the respondent bank against the petitioner. As against the said award of the third respondent, the present writ petition has been filed, with the aforesaid prayer.

6. Heard both sides.

7. The learned counsel appearing for the petitioner would contend that on several occasions, this kind of transaction had taken place and this has been clearly explained in the petitioner's explanation to the charges. Whenever such transaction is made, only for the purpose of identification of the person, who withdrew the amount through withdrawal slip, the signature of the lower level staff of the bank would be obtained. Only in that context, the petitioner had signed in the withdrawal slip on the said date. The petitioner has not received the sum and only with a connivance or the handy work of superior level staff of the bank, these kinds of transactions taken place and the petitioner being a low grade staff, cannot

do the same. Therefore in order to cover up such mistake the petitioner has been made as scape-goat, otherwise she is innocent and therefore there is absolutely no merit in framing the charges against the petitioner. In that view of the matter, the finding of the enquiry officer, as well as the ultimate impugned award passed by the Central Government Industrial Tribunal Cum Labour Court, Chennai, is liable to be interfered with and the writ petition has to be allowed.

8. The learned counsel for the petitioner would also contend that the punishment awarded to the petitioner by way of compulsory retirement is excessive as she is no way connected with the said withdrawal of money to the extent of only Rs.270/-. Therefore assuming that the petitioner signed the withdrawal slip, that would not enable the disciplinary authority to come to a conclusion that the petitioner would be liable to be punished to such an extent of punishment of compulsory retirement. Therefore the learned counsel pleaded for the interference of this Court in the impugned award.

9. Per contra, the learned counsel for the respondent Bank would submit that the account holder Mrs.Chellammal died as early as on 21.07.1988 and the place where the account holder Mrs.Chellammal belongs is the place the petitioner also belongs. As both the petitioner as well as the deceased account holder Mrs.Chellammal are from same village and she died several years back, the petitioner, certainly would have been in a position to know the fact and inspite of these factors, the petitioner has signed the withdrawal slip bearing no.362597 dated 29.04.1997, where the signature of the dead Chellammal has been forged. The petitioner made a fictitious person as Chellammal before the bank employees and ultimately received the cash of Rs.270/-. The reason being for lesser amount was drawn is because the total balance which was available on the date in the said account was only Rs.330.45

10. The learned counsel for the respondent would further submit that when this definite charges were framed against the petitioner, there is no satisfactory explanation from the petitioner, as firstly the Chellammal that is account holder, who is no more and she belongs to the same place of the petitioner. Hence, the petitioner at any rate would have been in a position or having knowledge about the death of the account holder and therefore absolutely there was no justification on the part of the petitioner to identify a person as Chellammal and whose signature has been forged in the withdrawal slip. In order to identify that person as the account holder Chellamal, the petitioner also has signed in the withdrawal slip and on all these action taken place only with due diligence on the part of the petitioner with an intention to cheat the bank, by withdrawing the amount, even though it was only Rs.270/-, from a

depositor who is no more. Therefore, the very intention of the petitioner is proved beyond doubt.

11. In view of the aforesaid facts and for this action on the part of the petitioner, the maximum punishment of removal from service should have been imposed on the petitioner. However, only taking a lenient view, as the petitioner is a women, the respondent bank, that is Disciplinary Authority has inflicted only lesser punishment of compulsory retirement instead of removal from service. Therefore absolutely there is no justification on the part of the petitioner to seek interference in the impugned award, which, infact confirmed the order of punishment awarded by the respondent against the petitioner.

12. Therefore the learned counsel for the respondent would submit that the writ petition is liable to be dismissed as devoid of merits.

13. This Court considered the rival submissions made by the learned counsel as well as the materials placed before this Court. As rightly pointed out by the learned counsel for the respondent, the charges were definite against the petitioner. There is no satisfactory explanation given by the petitioner except to state that she is innocent and there was no necessity for her to withdraw the amount of Rs.270/- being a meager amount. Further the defence taken by the petitioner is that this kind of transaction has taken place earlier and atleast in two occasions, some amount have been withdrawn from the same account. When this being so, these transactions could not have been taken place, without the connivance of the higher level officer of the bank. In respect of these bank transactions no one has been blamed by the bank. In order to cover up the early transaction, the petitioner has been made as a scape-goat only under such circumstances, unfortunately, the petitioner has been traped by representing her signature in the reverse side of the withdrawal slip for the purpose of identification of the account holder. These aspects have not been considered in proper perspective both by the Disciplinary Authority as well as the Appellate Authority and also by the third respondent.

14. When the petitioner herein is not in a position to give proper explanation, for identification of the person, who is already dead and also belongs to the same place and in whose name the withdrawal slip was submitted to the bank by forging her signature it shows the intention of the petitioner and for the said offence committed by the petitioner certain punishment has to be inflicted on her.

15. Considering the nature of the job and considering the petitioner being a women the Disciplinary Authority instead of

major punishment of removal from service has inflicted only the punishment of compulsory retirement. These aspects have been fully appreciated by the Tribunal also.

16. During the arguments, the learned counsel for the Bank also has brought to the notice of this Court that the petitioner was paid a sum of Rs.46620/- as gratuity on 09.02.2000, EPF (self contribution) Rs.59324.70 on 29.03.2000 , EPF (Management Contribution) was passed on 25.04.2005 for Rs.85459/-. Suppose the respondent bank dismissed or removed the petitioner from service, she could not have been paid the Management's contribution of EPF. However in view of the punishment of compulsory retirement this amount also paid to the employee with interest. In the year 1995, a pension scheme was introduced in all the banks including the respondent bank. The petitioner have been under the EPF scheme and therefore, the petitioner would be getting pension from EPF organisation.

17. In view of the said position as the petitioner is also getting EPF pension and other retirement benefits, from the respondent bank, the arguments advanced by the learned counsel for the petitioner with regard to the proportionality of the punishment can be rejected.

18. In view of the discussions made above this Court is of the view that the impugned award does not require any interference and therefore the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed without any order as to cost. Connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CSIII)
Dated: .06.2014

//True Copy//

Sub Assistant Registrar

dpq

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+1 cc to M/s.T.S.Gopalan & co sr 64185

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svl(co)
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