

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.09.2016

Date of verdict: 16.09.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.38912 of 2002

S.Rangasamy

... Petitioner

vs.

1.The Chief General Manager,
State Bank of India,
21, Rajaji Salai, Chennai-1.

2.General Manager (D & PB),
State Bank of India,
21, Rajaji Salai, Chennai-1.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records pertaining to the order of the first respondent made in memo No.A&R/con/188 dated 13.9.2001, quash the same and consequently direct the second respondent to reinstate the petitioner with continuity of service and with backwages and other attendant benefits.

For Petitioner : Mr.S.T.Varadarajulu

For Respondents : Mr.S.Kanniah

ORDER

The present writ petition has been filed by the petitioner challenging the order of dismissal passed by the first respondent in memo No.A&R/con/188 dated 13.9.2001, and consequently, to direct the second respondent to reinstate him with continuity of service, with backwages and other attendant benefits.

2. The facts which are culled out from the records, in brief, are as follows:-

(a) The petitioner joined in the service of the respondent bank on 21.2.1979 as Clerk. After passing Junior Management Grade-I Examination, he was given promotion as Assistant Manager in the year 1994.

(b) On 22.3.1999, he was on duty at Singhipuram Branch as Assistant Manager (cash). On that day, while he was working inside

his cabin allotted to him, at about 1.00 p.m., one L.K.Palanisamy and M.C.Perumal approached him and enquired him about the deposit of a sum of Rs.2,35,000/- being the retirement benefit. The petitioner advised them to deposit the amount in Term Deposit Account. The said Perumal enquired certain clarifications with regard to the income tax problem that may arise out of the interest amount to be accrued in the deposited amount, but the petitioner asked him to contact the Branch Manager to get details in this regard. Hence, the said Perumal went out of the petitioner's cabin leaving his cash bag in the chair which was in the left hand side of the petitioner's table. The another customer Palanisamy was sitting in front of the petitioner in a chair. At that time, the petitioner asked the said Palanisamy to go and sit outside his cabin. Hence, the said Palanisamy went outside the cabin of the petitioner and sat outside.

(c) The said Perumal, after ascertaining the details from the Branch Manager about the income tax liability for the interest payable towards the amount which was going to be invested by him in the bank, came back and was shocked to see that his friend Palanisamy was sitting outside the cabin of the petitioner, leaving his cash bag inside the cabin. When he enquired the said Palanisamy, he said that he was asked to sit outside the cabin by the petitioner. Immediately, both of them entered into the petitioner's cabin and found that the cash bag was not in a proper condition. After verification, it was found that there was a shortage to the tune of Rs.60,000/- out of the total sum of Rs.2,35,000/-. Hence, both of them started shouting and crying. On hearing their shouting, the Branch Manager came and enquired about the missing amount of Rs.60,000/-. When the said Perumal insisted to conduct search of the petitioner's cabin, initially the petitioner refused to allow them to search his cabin. Later, he allowed the Branch Manager to conduct search of his cabin. Thereafter, a search was made in the cabin of the petitioner and a sum of Rs.40,000/- was found in the hand bag of the petitioner. Initially, though the petitioner claimed that the said amount belonged to him stating that the said amount was nothing but the sale proceeds of an areca nut, given by his nephew, later he had voluntarily given the said amount to the said Perumal and the further amount of Rs.20,000/- was also later given to the said Perumal. Therefore, the said Perumal gave a complaint against the petitioner. Since the allegations against the petitioner were serious, he was placed under suspension on 25.3.1999 followed by a charge sheet dated 22.10.1999 framing four charges as against the petitioner for the misconduct committed by him. The charges framed against the petitioner are as follows:-

(i) On 22.3.1999, when Shri L.K.Palanisamy accompanied by Shri M.C.Perumal came to the Branch to deposit a sum of Rs.2,35,000/-, you had managed to keep them out of your cabin and misappropriated Rs.60,000/- from the customer's cash bag placed in your cabin / room by the depositor. After the search was made in your cabin/ room, it was found

that the missing cash of Rs.60,000/- from the depositor's cash bag was in your possession.

(ii) You had thus returned back the amount of Rs.60,000/- to the depositor, Shri L.K.Palanisamy and therefore, committed fraud by surreptitious removal of cash brought in by the depositor.

(iii) You are engaging yourself in business activities without prior approval from the competent authorities.

(iv) While processing agricultural gold loan of Smt.Manimegalai of Vazhapadi (AGL A/C No.11/336 dated 5.2.99), you were careless and negligent and weighed the gross weight as 220 grams instead of the actual weight of 120 grams and disbursed the loan based on the wrong excess weight. Your above negligent act could have caused loss to the bank which was however, averted by the timely action of your successor.

(d) On 5.11.199, the petitioner gave an explanation to the said show cause. Since the explanation given by the petitioner was not satisfactory, an enquiry was conducted and the Enquiry Officer gave his finding dated 30.9.2000 by holding that all the four charges were proved. Thereafter, on 11.10.2000, a second show cause notice was issued to the petitioner and the petitioner submitted his explanation on 29.2.2000. Thereafter, by order dated 21.2.2000, the petitioner was dismissed from service. Challenging the said dismissal of service, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner submitted that the petitioner had been working in the respondent bank since 1979 and he had put 20 years of unblemished service. However, on the basis of the complaint given by one Perumal, charges were framed against him and after enquiry, he was dismissed from service. In this regard, learned counsel appearing for the petitioner invited the attention of this Court to the letter dated 22.3.1999 given by the customer M.C.Perumal and submitted that the said Perumal, who had originally claimed that a sum of Rs.60,000/- was missing in the cabin of the petitioner, subsequently, gave a letter stating that the amount of Rs.60,000/- was found in a separate bag. However, the said letter was marked only after scoring out the lines viz., "a sum of Rs.60,000/- was found in a separate bag". The said portion was purposely scored out and marked, but the said aspect was not properly looked into by the Enquiry officer. Further, the learned counsel appearing for the petitioner submitted that before the Enquiry Officer, the petitioner made a request to re-call one Sambamurthy, the former Branch Manager to get clarified some gaps which have erupted after the marking of DEX5. But, his request was totally turned down by the Enquiry Officer. Hence, the finding of the Enquiry Officer is totally perverse since sufficient opportunity was

not given to the petitioner. Thus, he sought for quashing the impugned order of dismissal.

4. Per contra, learned counsel appearing for the respondent bank submitted that the petitioner himself had accepted his guilt and returned the amount of Rs.40,000/- and thereafter, he had also returned a sum of Rs.20,000/- to the complainant. Further, when, P.W.2-Perumal, in his evidence had categorically stated that the amount found in the cabin of the petitioner belonged to him, to refute the same, no evidence was adduced on the side of the petitioner. Further more, though it is the submission of the learned counsel appearing for the petitioner that the request of the petitioner to re-call P.W.1-Sambamoorthy, the former Branch Manager was not considered by the Enquiry Officer, the said Sambamoorthy was already cross examined by the petitioner in detail. That is the reason why his subsequent request was turned down by the Enquiry Officer. The petitioner has not made out any case warranting this Court to interfere with the order of dismissal. Further, the learned counsel appearing for the respondent bank submitted that the scope of this Court in interfering with the order of dismissal is very narrow and unless there is a perversity in the order passed by the enquiry officer, this Court cannot re-appreciate the evidence adduced before the enquiry officer for the purpose of quashing the dismissal order. In the instant case, absolutely, there is no perversity in the finding arrived at by the enquiry officer. In support of his contention, learned counsel appearing for the respondent bank has relied upon the following decisions:-

(i) 2007 (4) Supreme Court Cases 669 - Coimbatore District Central Coop. Bank v. Employees Assn.

(ii) (2007) 7 Supreme Court Cases 236 - Bank of India and others v. T.Jogram.

(iii) All India Services Law Journal (Vol.2) - G.M. (Operations) SBI and Anr. v. R.Periyasamy - Civil Appeal No.10942 of 2014 dated 10.12.2014.

(iv) (2000) 9 Supreme Court Cases 521 - U.P.State Road Transport Corporation v. Mohan Lal Gupta.

5. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

6. Though very many contentions have been raised in this writ petition, the main submission of the learned counsel appearing for the petitioner is that the evidence adduced before the Enquiry Officer was not properly appreciated by the Enquiry Officer and on erroneous finding, the Enquiry Officer has come to the conclusion that the petitioner is guilty of the charges levelled against him. Further, his request for recalling P.W.1-Sambamoorthy was turned down

by the Enquiry Officer and therefore, no sufficient opportunity was given to the petitioner to prove his case. But, in my considered opinion, the said submission made by the learned counsel appearing for the petitioner will not serve as a ground to quash the order of dismissal. Even according to the learned counsel appearing for the petitioner, none of the procedures in conducting enquiry was violated by the Enquiry Officer. When that being so, this Court, by re-appreciating the evidence, cannot quash the order of dismissal. Further more, the grounds raised by the learned counsel appearing for the petitioner are very vague and flimsy in nature. This Court does not find any perversity in the finding of the Enquiry Officer. In this regard, it would be appropriate to refer some of the judgments relied upon by the learned counsel appearing for the respondents.

(A) In All India Services Law Journal 2015 (Vol.2) - G.M. (Operations) SBI and Anr. v. R.Periyasamy - Civil Appeal No.10942 of 2014 dated 10.12.2014, the Hon'ble Supreme Court has held as follows:-

"9. It is not really necessary to deal with the judgment of the learned Single Judge since that has merged with the judgment of the Division Bench. However, some observations are necessary. The learned Single Judge committed an error in approaching the issue by asking whether the findings have been arrived on acceptable evidence or not and coming to the conclusion that there was no acceptable evidence, and that in any case the evidence was not sufficient. In doing so, the learned Single Judge lost sight of the fact that permissible enquiry was whether there is no evidence on which the enquiry officer could have arrived at the findings or whether there was any perversity in the findings. Whether the evidence was acceptable or not, was a wrong question, unless it raised a question of admissibility. Also the learned Single Judge was not entitled to go into the question of the adequacy of evidence and come to the conclusion that the evidence was not sufficient to hold the respondent guilty."

(B) In (2007) 7 Supreme Court Cases 236 - Bank of India and others v. T.Jogam, it has been held that when there are no allegations of procedural irregularities or illegalities and when there is no violation of principles of natural justice, the interference by the High Court in the order of dismissal is unwarranted.

7. In the present case, even according to the petitioner, there are no irregularities or illegalities in the procedure adopted by the enquiry officer in conducting the enquiry. Hence, it is clear that there is no violation of principles of nature justice in conducting the enquiry. The only grievance of the petitioner is that his request for recalling P.W.1-Sambamoorthy was not considered and

hence, sufficient opportunity was not given to the petitioner during the course of enquiry. In my considered opinion, the said submission of the learned counsel appearing for the petitioner cannot be a ground for quashing the order of dismissal. Moreover, from the records, it could be seen that P.W.1- Sambamoorthy was cross examined in detail by the petitioner. That is the reason why his request was turned down by the enquiry officer. Further, the materials placed on record would show that the petitioner himself by admitting his guilt, has returned the amount of Rs.60,000/- to the complainant Perumal. In such circumstances, absolutely, I do not find any infirmity in the order of dismissal passed by the first respondent.

8. For all the reasons stated above, I am of the opinion, the present writ petition is devoid of merits and the same is liable to be dismissed. Accordingly, the present writ petition is dismissed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

sbi

To

1.The Chief General Manager,
State Bank of India,
21, Rajaji Salai, Chennai-1.

2.The General Manager (D & PB),
State Bank of India,
21, Rajaji Salai, Chennai-1.

+1cc to M/S.J.KANNIAH, Advocate Sr.52582
+1cc to M/S.S.T.Varadarajulu, Advocate Sr.52721

order in
W.P.No.38912 of 2002

MSM(CO)
RVR 26/10/2016

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