THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION No.21152 of 2009

ORDER:

This writ petition is filed challenging the award of the Industrial Tribunal-II, Hyderabad dated 12.02.2009 passed in I.D.No.12/2008 (old I.D.No.132/2006, Labour Court-I).

2. The case of the petitioner is that he joined the respondent-Bank on 27.10.1976 as Assistant. On 24.07.2002, while he was working as Assistant at Sanath Nagar Branch, Hyderabad, he noticed the Branch Manager Sri Anantha Reddy fraudulently drawing closed accounts' cheques with the help of Head Attendant and Cashier. Accordingly he reported the same to the General Manager. Since the General Manager is just to retire, he deputed Deputy General Manager to enquire into the matter. At the time of disclosing this fact, the petitioner requested the General Manager not to disclose his name because he would have a life threat. One A.V.S.Raju, Assistant Manager, was deputed to investigate into the matter. Accordingly, said Manager visited the branch and reported that no such fraud took place. On 18.09.2002, it came to the notice of the Head Office that some misappropriation of the money was going on. Accordingly, a police complaint was registered vide Crime No.209/2002 of Sanath Nagar Police Station against said Anantha Reddy. While so, the respondent Bank placed the petitioner under suspension by its order dated 07.10.2002 on the ground that the petitioner failed to bring to the notice of the respondent about the fraud committed by Sri Anantha Reddy. Subsequently, on 12.03.2003 a charge memorandum was issued to the petitioner with certain allegations, for which, the petitioner submitted his explanation. Thereafter, on 26.06.2004 petitioner was dismissed from service. Challenging the same, the petitioner filed I.D.No.132 of 2006 before the Labour Court-I, Hyderabad. Later, said ID was transferred to the Industrial Tribunal-II, Hyderabad vide G.O.Ms.No.50, L.E.T and F (Lab-IV) Department dated 26.06.2008 and it was renumbered as I.D.No.12 of 2008. The Industrial Tribunal-II, Hyderabad dismissed the said ID by its award dated 12.02.2009.

3. The learned counsel appearing on behalf of the petitioner submits that there was no iota of allegations against the petitioner either in the FIR or in the charge sheet and he was not summoned by any criminal Court. However, the petitioner received a memo dated 23.09.2002 alleging as follows:

> " It has been reported by the Branch Manager that Sri R.Sudarshan, Section Assistant of fixed deposit has closed two FDs and two DLD Accounts on 19.09.2002 and transferred to the SB A/c of Sri P.Ananth Reddy bearing No.11452. The details are as follows:
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> 1. Dhana Laxmi deposit A/c.No.3344 Rpt.No.006950 dated 24.7.02. Due date 24.7.2003 on 19.9.2002 for Rs.49000/-.
> 2. Dhana Laxmi deposit A/c.No.3315 Rpt.No.006921 dated 18.6.02. Due date 18.6.03 on 19.9.2002 for Rs.49000/-
> 3. Fixed deposit A/c.No.8356 Rpt No.093307 dated 23.7.2002. Due date 23.7.2003 on 19.9.2002 for Rs.49000/-
> 4. Fixed deposit A/c.No.8324 Rpt No.093275 dated 19.6.2002. Due date 19.6.2003 on 19.9.2002 for Rs.49000/-
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> The above four deposits paid by prematured closed. Total amount of Rs.1,98,990/-.
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> Sri R.Sudharshan, Asst., is having the knowledge of the fraud committed by the then I/C Branch Manager Sri P.Ananth Reddy well before the payment of FDs. Despite that he has allowed Sri P.Ananth Reddy and his family to withdrew their above said deposits, it clearly indicate that he has caused loss to the Bank to the tune of Rs.198990/- in connivance with Sri P.Ananth Reddy. His act is detrimental to the interest of the Bank.
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> He is therefore called upon to explain why disciplinary action should not be taken against him for the above lapses within 3 days from the receipt of this memo, failing which it is deemed that he has no reasonable explanation and the case will be decided on its merits."

4. On 30.09.2002, petitioner submitted his reply rebutting the allegations made against him in the following manner:

> " On production of the deposit receipts by the family members of Sri P.Anantha Reddy, I informed the same to the in-charge Branch manager on 19.9.2002 and received instructions to allow withdrawal of deposit amounts. Instead of permitting the family members of Sri P.Anantha Reddy to draw the amount in cash, I have transferred the deposit amount to the SB A/c.No.11452 of Sri P.Anantha Reddy, the transfer vouchers of which were passed by the in-charge Branch Manager. Thus the withdrawal of deposit amounts of Sri P.Anantha Reddy and his family members on 19.9.2002 were done with the knowledge of the in-charge Branch Manager but not by myself independently. Hence I have not connived with Sri P.Anantha Reddy

in withdrawing the said amount of Rs.1,98,990-00 as it was not paid in cash, but by transfer to SB A/C No.11452, in normal course and that the transfer vouchers were passed by the in-charge Branch Manager himself. Further, I have no knowledge of the action being taken by office against Sri P.Anantha Reddy for the fraud in Sanath Nagar Branch and the suspension orders dt.19.9.2002."

5 (1) The learned counsel for the petitioner further submits that on 18.09.2002 one of the family members of Anantha Reddy applied for pre-mature withdrawal of fixed deposits. As the Branch Manager was on leave on the said date, the petitioner cleared their application on 19.09.2002 duly taking the approval of the then

in-charge Manager Sri Rangaiah and credited the amount in the savings bank account of Anantha Reddy and his family members and thereafter they withdrew the amount. The petitioner, being the FDR clerk, processed their request and that had to be cleared by the Branch Manager and thereafter, the Cashier had to release the amount. After allowing the pre-mature withdrawal of FDR, the party had to issue the cheque and it has to be approved by the Manager and thereafter the said cheque will be deposited in the savings bank account. The learned counsel further submits that in that process, it was the duty of all the staff in the chain to check whether the pre-matured FDRs have been properly withdrawn or not. So far as the petitioner is concerned, he being the FDR clerk, performed his duty. No action has been taken against any one except the petitioner in the complete chain. Had the petitioner not processed the request for withdrawal of the FDR, he would have been charged for dereliction of duty. Therefore, the petitioner has done his job and that too in proper manner and he cannot be held guilty of any of the offences.

5(2) The learned counsel for the petitioner has drawn attention of this Court to Panchanama dated 20.10.2002 wherein said Anantha Reddy had accepted the fraud and without naming the petitioner. Moreover, the following panchas were part of the proceedings and they stated as follows:

" Details of Panchas

1. B.Rangaiah, S/o. Balaiah, Age: 55 years, Occ: Asst., Sanath Nagar Co-operative Bank, R/o. 4-1-331, Shivajinagar, Vikarabad.
2. Moha Ashaamubbin, S/o. Kamruddin, Age: 51 years, Occ: Asst., Sanath Nagar Co-operative Bank, R/o.10-2-300/90, Manapally,

Hyderabad.

We both called by Inspector, Sanath Nagar through Manager Pharachary came today i.e., 20-10-2002 at 12.00 hrs. At that time before Inspector P.Ananth Reddy is present. Inspector show both your Ananth Reddy and enquired why he is in the police custody we question same way to the Ananth Reddy then Ananth Reddy replied as follows

> My name is Pirangi Ananth Reddy, S/o. Galaya Reddy, Age: 57 years, Occ: Assistant Manager, Sanath Nagar Branch, R/o. Plot 68, Shivanagar, Ragandhra Nagar, R.R.District, native of Sanathapur Village, Parigi Mandal, R.R. District. I had one elder brother who died. My younger brother Narashima Reddy staying at Bharath Nagar. We are not in talking terms. I have elder sister P.Sughana, W/o. Balvatha Reddy, she stay Madepally Village. My family along with me staying in a rented house. We have four daughters, elder one Archana, W/o. Jaganmohan Reddy, second one Latha, W/o. Jagana, R/o. Mankal Reddy, third one Swapana, W/o. Srinivas Reddy, fourth one Surithi, age 21 years. I joined co-operative bank in 1969 as Supervisor at Kaundal Branch and worked till 1992."

5(3) In the said enquiry, the petitioner was directed to pay an amount of Rs.1,98,990/-. Being aggrieved, the petitioner challenged the same before the District Cooperative Officer, Ranga Reddy District, who dismissed the same, by his order dated 12.03.2013. Challenging the same, petitioner approached the Cooperative Tribunal at Hyderabad and the Tribunal, by its Award dated 30.07.2015, recorded as under:

> "9. A perusal of the surcharge order dated 12.3.2013 shows that on 18.09.2002 Mr.P.Ananth Reddy and his wife came to the branch and requested for withdrawal of the deposits and since the appellant herein, who was dealing with deposits was on leave that day, the deposits were not encahsed and on 19.9.2002 the appellant herein has allowed pre-matured closure of the same duly taking the approval of the then In-charge Manager Sri Rangaiah and credited the same to the S.B. A/c of the individuals. It is clear from the surcharge order dated 12.3.2013 that the In-charge Manager Sri Rangaiah was not aware of the procedure for closure of FDRs and the appellant herein had to process the entire thing duly taking approval of the In-charge Manager.
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> 10. It is pertinent to note that though, Mr.P.Ananth Reddy was involved in fraudulent withdrawal of amounts from various accounts to a tune of more than Rs.50.00 lakhs, the higher authorities in the bank took their own time to react and finally when they reacted on 18.9.2002 by suspending Mr.P.Ananth Reddy it was too late. On 18.9.2002 itself Mr.P.Ananth Reddy appeared to have approached the Sanath Nagar Branch to encash his FDRs. It is noted that nowhere in the surcharge order nor in the criminal

> case filed before the IX Metropolitan Magistrate Court, Nampally the deposits in question are mentioned as fraudulent nor are they proved to be fraudulent. When a particular FDR is not alleged to be fraudulent and not created by the Appellant herein, it is not appropriate to find fault and surcharge him for the same who in his normal course has allowed it to be encashed by crediting the amount to the S.B. A/cs of individuals. He has neither fraudulently drawn any amount nor misappropriated anything. Moreover, there were no instructions from anybody to the Sanath Nagar Branch to stop payments of those deposits. It is not known as to why stop payments orders were not issued to the bank by the higher authorities on the day the fraudulent activities of Mr.P.Ananth Reddy were brought to their notice, by the appellant. If at all anybody has to be found fault and surcharged for it, it is the higher authorities in the bank only and not the Appellant herein. In view of the above, the Tribunal feels that the surcharge orders passed against the Appellant herein in Rc.No.997/2011-C, dated 12.3.2013 deserves to be quashed."

5(4) While concluding the arguments, the learned counsel for the petitioner submits that the petitioner was intentionally and deliberately implicated in the case and at no point of time, the witnesses have pointed out the petitioner or even the police found any suspicion against him. Thus, the learned Tribunal has ignored all the facts and passed the Award against the petitioner.

6. Learned counsel appearing on behalf of the respondent-Bank submits that as per Manual of '*Instructions on Banking Systems and Procedures with respect to various deposit accounts*' of the respondent-Bank, the Branch Manager is empowered to pay the fixed deposit amount before its maturity if such foreclosure is sought by the depositor. In the present case, the party approached the FDR clerk, who is the petitioner herein, who calculated the amount and sent the papers to Savings Bank account clerk, who in turn allowed the premature of FDR and released the amount to the account of the party. Thereafter, the money was withdrawn by the party. Thus, in this fraud, the enquiry was conducted against ten employees of the bank including the attendants and all of them were dismissed including the petitioner by the disciplinary authority.

7. As per the observations made by the enquiry officer, it is stated as under :

> "He is found as a mischievous employee, he has the

knowledge of the fraud from the very beginning of its commencement, which was being committed by Sri P.Anantha Reddy in the branch, but he did not chose to report it to the Head Office immediately. After a long time, when the fear of guilty conscious gripped him, he revealed about a single incident; that too orally in an undesirable manner, when he has knowledge of five incidents, he should have reported to Head Office in writing immediately and authoritatively. His this dishonest attitude has allowed Sri P.Anantha Reddy to continue the fraud uninterruptedly. Thus, he has suppressed the fraud. Besides that, he has allowed premature closure of (2) fixed deposit accounts and (2) Dhana Lakshmi deposit accounts amounting to Rs.49,000/- each (total Rs.Rs.1,98,990/- with interest) which were in the name of P.Anantha Reddy and his wife Smt.P.Sarojini without the permission of the branch manager. The amounts were not supposed to be closed and paid as Sri P.Anantha Reddy was committed fraud at the branch which effects Sri P.Sudarshan as well. Thus, he has reduced the security by Rs.1,98,990/- against the fraud amount of Rs.50.47 lakhs committed by P.Anantha Reddy. His actions are termed as detrimental to the interest of the bank".

8. In addition to above, as per charge memorandum dated 12.03.2003, following charges were levelled against the petitioner:

(1) That contrary to the Banking systems, he has arranged for Premature payment of (4) Time Deposit Receipts pertaining to Sri P.Ananth Reddy who was placed under suspension against the allegation of fraud committed by him while working as Asst. Manager/Incharge Branch Manager of Sanathnagar Branch.

(2) That he was knowing about the ongoing fraud from 8.4.2002 onwards in the Sanathnagar Branch but has failed to report the same to the Head office in writing and has suppressed.

(3) Sri R.Sudershan, the then Assistant, Sanathnagar Branch has acted detrimental to the interest of the Bank by involved in the fraud & caused loss to the Bank.

(4) He has caused the damage to the reputation/image of the Bank by involved in the fraud.

9. Petitioner replied to all the charges. In this context, it is pertinent to extract the explanation submitted by the petitioner as against charge No.1, which reads as follows:

"It is submitted that my duty for premature release of FDR/DLD, very limited, as per the Banking rules, I am not at all involved in payment of cash to the depositors after the closing the FDR's, my duty is to see that while transferring

FDR's into the SB A/c's, to stop that, whether there is any special instructions from the customer's or from the Head Office of the Bank, for stop payment of FDR's, as there were no written instructions for stopping the payment FDR's from the Head Office to Sri P.Anantha Reddy, I have completed all the Formalities before releasing the FDR/DLD's, after my paper action then the same will be going the branch manager, who will approve or disapprove for release of the amount to the customer, after verification of signature.

If I refuse to release the said FDR's/DLD's the customer of the DLD's or FD's will ask the written instructions from Branch Manager or Head Office for not releasing the FD's. In this case the customer is non other than employee/assistant Bank Manager of the Bank Sri P.Anantha Reddy and his wife Smt.P.Sarojini. I can not use my discretionary power for not releasing the said FDR's/DLD's. It is pertinent to mention here that were Assistant Manager Sri B.Rangaiah who ultimately released the said FDR/DLD's. There are several occasions where customer's applied for premature release of FDR and taken amounts. In this case also Sri P.Anantha Reddy got the release of FDR's by invoking the same procedure. Hence, there is no fraud or fraudulent transaction taken place. Therefore I request you to consider this explanation for dismissal of charge and reinstatement as there is no my involvement for committing the alleged fraud."

10. Learned counsel for the petitioner argued, as noted above, that the petitioner cleared their applications on 19.09.2002 duly taking the approval of the then in-charge Manager Sri Rangaiah and credited the amount in the Savings bank account of Anantha Reddy and his family members and thereafter, they withdrew the amount and in this process, petitioner had not committed any misdemeanour, as such, commission of fraud by the petitioner does not arise.

11. As argued by the counsel for the respondent-Bank the petitioner with signs of other bank employees cleared the FDRs at premature stage without taking approval. From his reply also nowhere he stated that the Manager concerned had given approval and only thereafter the amount was released. The argument of the learned counsel for the petitioner is out of context having not supported with any documentary proof. Moreover, learned counsel for the petitioner argued that since the petitioner made complaint against the bank officer, who played fraud

earlier, he was made scapegoat of the incident. But, the fact remains that all the employees of the bank were charged and removed from service. Therefore, the question of targeting the petitioner alone does not arise.

12. In view of the above discussion, finding no merit in the instant writ petition, the same is accordingly dismissed. No order as to costs.

13. Miscellaneous petitions pending in the writ petition, if any, also stand closed.

SURESH KUMAR KAIT, J

4th July, 2016.
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