IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.4530 of 2017

A.Kandasamy .. Petitioner

-vs-

1. Indian Overseas Bank
   rep.by its Chief Executive Officer/
   MD (in-charge)
   Central Office
   763, Anna Salai
   Chennai 600 002

2. The Chief Manager/Disciplinary Authority/
   Enquiry Officer
   CDA Cell, Indian Overseas Bank
   Regional Office, Ideal Garden Complex
   Second Floor, Five Road
   Salem 636 004 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned letter bearing No.RO/DA/8553/AK/VIG/25/2016-17 dated 15.02.2017 issued by the second respondent and to quash the same and consequently direct the respondents to provide legal assistance to the petitioner in the departmental enquiry held against him pursuant to charge sheet dated 11.01.2014.

For Petitioner :: Mr.K.M.Ramesh

For Respondents :: Mr.K.Srinivasamurthy

ORDER

This writ petition is directed against the impugned proceedings dated 15.2.2017, wherein the request of the petitioner for a lawyer as his defence representative has been refused, on the ground that the presenting officer is not a legal practitioner and moreover there is no complicated question of fact and law is involved.

2. Assailing the same, the learned counsel for the petitioner submitted that when the petitioner is serving as Special Assistant at the Srivilliputhur branch belonging to the first respondent-Indian Overseas Bank, he was placed under suspension on 22.8.2013, pending disciplinary proceedings in respect of the charge sheet dated 11.1.2014 issued to him levelling various acts of commission and omission. In respect of the very same issue, a First Information Report was also registered against him by the CBI bearing FIR No.SPE/CBI/ACB/RC/MA1/2014/A/0006 dated 27.2.2014 for an offence under Section 420 IPC read with Sections 7, 13(2) & 13(1)(d) of the Prevention of Corruption Act, 1988. Even the charge sheet issued by the first respondent bank in their letter dated 11.1.2014 charges the petitioner with 19 imputations and 49 sub-imputations, which is running into 37 pages. Since some of the charges faced by the petitioner before the departmental proceedings and the criminal Court are inter-linked, he filed Writ Petition No.15055 of 2014 for issuance of a mandamus directing the respondents not to proceed with the departmental proceedings till the pending criminal case is disposed of. But this Court dismissed the writ petition. Finally, the writ appeal and the SLP filed against the said order were also dismissed, as a result the petitioner is under compulsion to face the departmental proceedings, since the way for conducting the departmental proceeding is clear. In view of the complicated question of fact and law involved in the charges faced by the petitioner before the departmental proceedings, he has also made a request to permit him to avail the services of an Advocate. But this has been refused in the impugned order, citing a reason that the presenting officer is not a legal practitioner and moreover there is no complicated question of fact and law involved. Placing reliance on an order passed by me in W.P.No.14401 of 2017 dated 21.6.2017 (M.Ramasamy v. Indian Overseas Bank represented by its Chief Executive Officer/MD (in-charge), Chennai and another), he submitted that when a similar issue came up before this Court, referring to clause 12(a)(iii) of the bipartite settlement, which states that the bank can grant permission to a delinquent officer to engage a lawyer, this Court allowed the writ petition giving a direction to the disciplinary authority to permit the petitioner therein to engage a lawyer to represent his case in the domestic enquiry. In the instant case also, in view of the aforementioned clause 12(a)(iii) of the bipartite settlement, the respondents should have granted permission to engage a lawyer. As they have refused in the present impugned order, the same is liable to be set aside. The reason is that the respondents should consistently follow one yardstick when a request is made seeking permission to engage a lawyer in the departmental proceedings.

3. A detailed counter affidavit has been filed by the respondents. Distinguishing the order passed in W.P.No.8407 of 2015 dated 6.6.2016 (S.Viswanathan v. State Bank of India and another), it was argued that in the said case, a member of the union filed a suit against the union claiming damages for various reasons, as a result there was a war between the member of the union and the union, therefore, this Court has rightly come to the conclusion that one of the employees having filed a suit against the union, cannot take any assistance from a representative of the union, as there was already a strained relationship between these two. But, in the present case, election was over and some of the elected office bearers are also defending similar cases before the departmental enquiry. Therefore, the order passed by this Court in S.Viswanathan's case referred to in M.Ramasamy's case, cannot be extended.

4. However, giving a reply to the said contention, Mr.K.M.Ramesh submitted that when the petitioner renewed his request to spare an experienced office-bearer to defend his case before the departmental proceeding, the General Secretary of the All India Overseas Bank Employees' Union has replied stating that although the election was concluded, all the newly elected office bearers are unable to handle the voluminous charge sheet given to the petitioner, especially when he is facing a CBI case. Therefore, when the union has refused to depute any responsible hand to handle the petitioner's case as a representative in the departmental proceeding initiated by the first respondent, no prejudice would be caused by directing the respondents to consider the request.

5. Again replying to the same, it was stated by the learned counsel for the respondents that when some of the elected office bearers are also defending similar cases, the letter of request dated 19.2.2017 has been made only to suit the order passed by this Court in M.Ramasamy's case.

6. But this Court is unable to agree with the said contentions. The reason is that when the petitioner has been requesting the union, in which he is also a member, to spare an experienced representative to handle his case before the pending disciplinary proceedings initiated against him, it could be seen that the charge memo issued against the petitioner and the charge sheet filed by the CBI related to 19 imputations and 49 sub-imputations. Moreover, the case has been handled by the CBI. Therefore, the reply letter dated 20.2.2017 addressed by the General Secretary of the All India Overseas Bank Employees' Union informing the petitioner that the office bearers in defence assistance are unable to consider his request, cannot be lightly brushed aside. Therefore, the case of the petitioner, in my considered opinion, squarely falls into clause 12(a)(iii) of

the bipartite settlement, which states that the bank can grant permission to a delinquent officer to engage a lawyer. In similar circumstances, I have also issued a direction in W.P.No.14401 of 2017 dated 21.6.2017 (M.Ramasamy v. Indian Overseas Bank represented by its Chief Executive Officer/MD (in-charge), Chennai and another). Therefore, the impugned order is set aside and the second respondent is hereby directed to permit the petitioner to engage a lawyer to represent his claim in the domestic enquiry. It is also brought to my notice that the enquiry is posted to 14.11.2017. Therefore, the second respondent is directed to hold the enquiry after two weeks. In the meanwhile, the petitioner is permitted to engage a lawyer, without asking for further time.

7. The learned counsel for the petitioner submitted that the petitioner also reached the age of superannuation, therefore, he is entitled to get the benefit of provisional pension. However, the learned counsel for the respondents submitted that if there is any provision permitting the petitioner, after retirement, to get the provisional pension, the same will be looked into, till the final order is passed.

8. With the above observation, the writ petition stands allowed. Consequently, W.M.P.No.4752 of 2017 is closed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

ss

To

1. The Chief Executive Officer/
MD (in-charge)
Indian Overseas Bank
Central Office
763, Anna Salai
Chennai 600 002

2. The Chief Manager/Disciplinary Authority/
Enquiry Officer
CDA Cell, Indian Overseas Bank
Regional Office, Ideal Garden Complex
Second Floor, Five Road
Salem 636 004

+ 1 cc to Mr.K.M.Ramesh Advocate,SR.80370

+ 1 cc to M/s.Row & Reddy Advocate,SR.80443

W.P.No.4530 of 2017

nr 08/12/2017