IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02-08-2017

Coram :

The Honourable Mr.Justice S.M.SUBRAMANIAM

W.P. No.29568 of 2015
and
M.P.Nos. 1 and 2 of 2015

R.Saratha ...Petitioner

Vs

The General Manager,
Disciplinary Authority,
Indian Overseas Bank, Central Office,
763, Anna Salai,
Chennai- 600 002. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the respondent in Memorandum of Allegations and Articles of Charge, DO:DA:GM (KVK):VIG: 8523/ 8532/ 8450/2299, 2015-16 dated 06.07.2015 and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.K.Srinivasamurthy

O R D E R

The charge memo dated 06.07.2015 is under challenge in this writ petition.

2. The writ petitioner joined in the respondent Bank during the year 1982, in the cadre of Cooperative Officer and thereafter, promoted to the post of Chief Manager and to the post of Assistant General Manager. The petitioner voluntarily retired from service on 31.05.2011.

3. The learned counsel for the writ petitioner contended that the charge memo was issued on 06.07.2015, after the writ petitioner was allowed to retire voluntarily from the service. Further, in respect of the same set of allegations, investigation by the Central Bureau of Investigation is in

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progress and parallel proceedings are impermissible in law. This apart, there is a huge delay in initiating disciplinary action against the writ petitioner and on that ground also charge memo impugned in this writ petition is liable to be quashed.

4. The learned counsel appearing for the respondent Bank strenuously opposed the contention stating that the respondent was vigilant in pursuing the allegations against the writ petitioner, since the allegations are very serious involving more than Rs.22 crores of loss to the respondent Bank, on account of the alleged irregularities and illegalities committed by 12 Officers including the writ petitioner. In view of the seriousness, the bank is constantly following the case and parallel proceedings are permissible in accordance with the judgement of the Hon'ble Supreme Court.

5. This apart, the writ petitioner, knowing the fact that actions are going to be initiated under the Discipline and Appeal Rules, had suddenly submitted voluntary retirement application and got an order of retirement. That will not prevent the respondent from initiating action under the Indian Overseas Bank (Employees) Pension Regulations, 1995. Thus, there is no irregularity in initiating disciplinary proceedings against the writ petitioners.

6. Considering the arguments advanced both by the learned counsel for the petitioner as well as the respondent, this Court is of the view that the disciplinary proceedings initiated against the writ petitioner should be allowed to reach its logical conclusion. No doubt, the charges are very serious involving a financial loss to the tune of more than Rs.22 crores. Thus, the enquiry initiated is to be concluded in all respects and it is left open to the writ petitioner to prove her innocence, during the course of enquiry, by utilising the opportunities provided to him under the rules.

7. A charge memo may be challenged on the ground that the authority, who framed the charges, is incompetent or without jurisdiction or if an allegation of mala fides are raised. Even in case of raising the allegation of mala fides, the authority against whom such an allegation is raised to be impleaded as party in the writ proceedings in his personal capacity. Further, if the charge memo was issued contrary to the statutory rules, then also a charge can be challenged. In the absence of any of these legal grounds, no writ can be entertained against the charge memo under Article 226 of the Constitution of India. The writ can be entertained only on exceptional circumstances and in the interest of justice. The merits and the demerits of the allegations stated in the charge

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memo, need not be adjudicated by this Court at this stage in the present writ proceedings and it is for the delinquent to submit his explanations/objections and defend his case in accordance with the discipline and appeal rules.

8. In respect of the point of delay raised by the learned counsel for the writ petitioner, it is relevant to note the contents in the counter filed by the respondents and in paragraph-6 of the counter, the relevant dates are elaborated and the same are extracted hereunder:-

"6. I submit the provisions of the Pension regulations have not been violated as alleged by the Petitioner. The following dates are relevant.

July 2010 to March 2011 - Petitioner granted large credit limits to T.S.Jeyachandran of M/s. Urappa Foundations and group companies.

February 2011 - Petitioner applied for VRS

31.05.2011 - Petitioner Voluntarily Retired.

30.06.2011 - Petitioner was to reach the normal age of superannuation.
(original date of retirement)

January 2013 -	The irregularities alleged to have been committed by the petitioner came to light. She had sanctioned huge credit limit of about Rs. 22 crores to T.S.Jeyachandran of M/s. Urappa Foundations and group companies by over valuing the lands at Tuticorin as Rs.24 Crores which were purchased for just couple of Lakhs around the sametime. She had allowed diversion of funds to its group companies, friends and relatives.
14.06.2013 -	The Inspection Department submitted the investigation report
December 2013-	CBI registered case against the Petitioner and others.
December 2014 -	CBI filed final report and initiated prosecution against the Petitioner and others under Section 120, 420, 471 IPC read with Section 13 (2), 13 (1) (d) of the Prevention of Corruption Act.
18.06.2015 -	Central Vigilance Commission gave clearance for initiating proceedings against the Petitioner and others.
06.07.2015 -	Charge sheet issued to Petitioner
-	No reply submitted by the Petitioner

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January 2013 -	The irregularities alleged to have been committed by the petitioner came to light. She had sanctioned huge credit limit of about Rs. 22 crores to T.S.Jeyachandran of M/s. Urappa Foundations and group companies by over valuing the lands at Tuticorin as Rs.24 Crores which were purchased for just couple of Lakhs around the sametime. She had allowed diversion of funds to its group companies, friends and relatives.
28.09.2015 -	Preliminary enquiry - fixed.
	On that date the Petitioner through her advocate informed the Bank that she filed the above Writ petition and this Hon'ble Court Passed interim order.

The matter was directed to be called on 12.10.2015. Therefore the Bank deferred the hearing till 12.10.2015."

9. The learned counsel appearing for the respondent referred that under Rule 43 and 45, the respondent has got powers to initiate action against the writ petitioner and the same was disputed by the learned counsel appearing for the writ petitioner. However, it is left open to the writ petitioner to urge all these objections and contentions during the course of enquiry and this Court is not inclined to decide this case on merits at this stage in this writ petition. In view of the fact that the allegations of the writ petitioner are serious in nature and further the Central Bureau of Investigation is conducting the investigation on the larger fraudulent activities in the respondent bank and the investigations are still in progress and yet to be completed. Thus, it is not preferable to quash the charge memo at this stage in this writ petition. It may be relevant and it is necessary to receive the complete report from the Central Bureau of Investigation to decide all the issues relating to the allegations, which seems to be very serious. In view of the matter no further adjudication needs to be undertaken at this stage and accordingly the writ petition stands dismissed. However, no order as to Costs. Consequently, connected miscellaneous petitions are also closed.

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To

+1cc to M/s.Row & Reddy,sr.55307

+1cc to Mr.V.Raghavachari,Advocate sr.55362

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