

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2017

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.29049 of 2012

S.Dhandapani ... Petitioner
vs.

1. The Disciplinary Authority /
Asst. General Manager (Admn.)
State Bank of India, NW2 AU
Coimbatore.
2. The Deputy General Manager / Operations
(Appellate Authority)
State Bank of India,
Local Head Office, Chennai.
3. The Chief Manager
State Bank of India,
Chennimalai Road,
Kangayam - 638 701. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified mandamus, calling for the records of the respondents 1 to 3 in connection with the impugned orders passed by them in Ref.No.VIG/CON/124 dated 31.08.2009, VIG/CON/100, dated 01.10.2010 and BR/Misc/46, dated 16.08.2012 respectively and quash the same and further direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For petitioner : Mr.K.Venkataramani
Senior counsel for
Mr.M.Muthappan

For respondents : Mr.P.D.Audikesavalu

O R D E R

This writ petition has been filed under Article 226 of the Constitution of India, seeking to issue a writ of mandamus, calling for the records of the respondents 1 to 3 in connection with the impugned orders passed by them in Ref.No.VIG/CON/124 dated 31.08.2009, VIG/CON/100, dated 01.10.2010 and BR/Misc/46, dated 16.08.2012 respectively and quash the same and further

direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

2. According to the petitioner, the petitioner joined as a Messenger in the respondent bank and subsequently, was promoted as Record Clerk, Assistant and as Senior Assistant. On 12.11.2008, while the petitioner was working as Senior Assistant at Kangeyam Branch of State Bank of India, Tiruppur District, he was incharge at the Central Table of the Cash Department of the Branch. On the said day, one J.Purushothaman, Special Assistant has handed over a sum of Rs. 7.50 lakhs to the petitioner, after counting the amount remitted by a customer. The entry for having handed over the cash to the petitioner also shows Rs.7.50 lakhs. The petitioner after counting the entire amount found Rs.50,000/- in excess and has kept the balance amount of Rs.50,000/- in the cup board, in order to find out the nature of the excess found while counting. On the next day, on 13.11.2008, when the petitioner came to the bank, it was informed to him that there is shortage of Rs.50,000/- given by one of the customer. The petitioner immediately informed the Special Assistant that on the previous day, while counting he found Rs.50,000/- excess and handed over the same. At that time, the petitioner was forced to sign the format for remitting the cash amount. In view of the above, the respondent bank immediately filed a criminal case in Crime No.991 of 2008 before the Kangeyam Police Station for an offence under Section 403 IPC.

3. The respondent bank also issued a charge memo containing as many as five charges alleging that the petitioner had stealthily removed Rs.50,000/- from the central table, kept in the cup board and subsequently removed and pocketed it. The said incident was visible through the CCTV. The petitioner denied the said charges. Further, one Mr.N.Prabakaran, Chief Manager, Dharapuram Branch was appointed as Enquiry Officer to conduct the oral enquiry. During the enquiry, on the side of the respondents, five witnesses were examined and six documents were marked. The chalan through which the sum of Rs.50,000/- was deposited by the petitioner on 18.11.2008 was not accepted as part of the documents in view of the fact that the chalan was not in proper format. But the Enquiry Officer has held that the charges against the petitioner has been proved and the petitioner was also served with the copy of the Enquiry Officer's Report on 02.07.2007. Pursuant to the same, the petitioner submitted his detailed explanation in response to the copy of the enquiry report. On 28.08.2009, the petitioner was heard in person with regard to the nature of the penalty proposed by the respondents on the petitioner based on the proceedings, dated 19.08.2009. Thereafter, the respondent bank has imposed the petitioner with a punishment of discharge from the bank service with superannuation benefits and without

disqualification for future employment.

4. Aggrieved by the aforesaid order, the petitioner has preferred an Appeal before the Appellate Authority. The said Appeal was dismissed on 29.09.2010. Thereafter, the Judicial Magistrate, Kangeyam has acquitted the petitioner in C.C.No.220 of 2009 on 27.03.2012. According to the petitioner, the aforesaid charges framed by the respondent bank in the Departmental proceedings as well as in the criminal case are the one and the same, the witnesses, evidence and charges are also one and the same, in the light of the decision of the Hon'ble Supreme Court in G.M.Tank v. State of Gujarat reported in (2006) 5 SCC 446, wherein paragraph 30 of the Judgment is extracted below:

"The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the

charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand."

5. It is also contended that the Department has not produced any evidence against the petitioner to prove the charges framed by the respondent bank. Therefore, in the light of the aforesaid submissions, the learned Senior counsel appearing for the petitioner seeks to set aside the impugned order and to allow the writ petition.

6. On the contrary, the learned Standing counsel appearing for the respondent bank submitted that preliminary objection has been raised by him stating that the writ petition is not maintainable under Article 226 of the Constitution of India. Aggrieved by the order passed by the Appellate Authority, the petitioner has efficacious alternative statutory remedy of raising an Industrial Dispute under the Industrial Disputes Act, 1947. But without exhausting the said alternative remedy, the petitioner cannot approach this Court as held in U.P.State Spinning Co., Ltd., v. R.S.Pandey reported in (2005) 8 SCC 264.

7. For the aforesaid submissions, objection was made by the learned Senior counsel for the petitioner that this Court does not raised the issue of maintainability of the petition as a preliminary objection at the time of admission. However, the learned Senior counsel has not disputed the fact that the petitioner is having efficacious alternative remedy. Therefore, in view of the decision laid down by the Hon'ble Supreme Court reported in (2005) 3 SCC 264 (cited supra), the writ petition filed before this Court is not maintainable and accordingly, the writ petition is liable to be dismissed as not maintainable. However, liberty is given to the petitioner to raise Industrial Dispute under the Industrial Disputes Act, if so advised, within a period of four weeks from the date of receipt of a copy of this order.

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8. With the above observation, this writ petition is dismissed as not maintainable. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Disciplinary Authority /
Asst. General Manager (Admn.)
State Bank of India, NW2 AU, Coimbatore.
2. The Deputy General Manager / Operations
(Appellate Authority)
State Bank of India,
Local Head Office, Chennai.
3. The Chief Manager
State Bank of India, Chennimalai Road,
Kangeyam - 638 701.

+1cc to Mr.P.D. Audikesavalu, Advocate, S.R.No.11740
+1cc to Mr.M. Muthappan, Advocate, S.R.No.12040

rk(CO)
md(03/04/2017)

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