



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.02.2017

Delivered on : 17.02.2017

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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A. (MD) No.727 of 2014

and

M.P. (MD) No.1 of 2014

- 1.The Executive Director,
Canara Bank Head Office,
Bangalore.
- 2.The General Manager,
Industrial Relations Section
Personal Wing, Head Office,
112, J.C.Road, Bangalore.
- 3.The Deputy General Manager,
Disciplinary Action Cell,
Circle Office,
Madurai.

: Appellants/Respondents 1 to 3
Vs.

1.A.C.Periyaswamy

: 1st Respondent/Petitioner

2.The Manager,
Canara Bank,
Kannivadi Branch,
Erode District.
[R-2 given up]

: 2nd Respondent/4th Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of this Court dated 31.01.2014, made in W.P. (MD) No.13202 of 2011.

Prayer in WP(MD). 13202/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the order of the dismissal of the 2nd respondent dated 01.12.1999 in his proceedings in REF.No.IRS:DP:MDUC:CHF:7713:99 and the order of the



1st respondent dated 07.12.2000 and 12.07.2005 awarding punishment of compulsory retirement and rejecting the review petition respectively and quash the same as illegal and consequently directing the respondents to re-instate the petitioner in service with back wages and other benefits.

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For Appellants : Mr.C.Godwin
 For Respondent No.1 : Mr.S.Chellapandian,
 For Mr.T.Palanisamy

JUDGMENT

The appellants herein are respondents 1 to 3 before the learned Single Judge in the Writ Petition filed by the first respondent herein in W.P.(MD)No.13202 of 2011 seeking to quash the order of dismissal passed by the second appellant herein dated 01.12.1999 in his proceedings in REF.No.IRS:DP:MD UC CHF:7713:99 and the order of the first appellant dated 07.12.2000 and 12.07.2005, awarding punishment of compulsory retirement and rejecting the review petition and consequently, direct the appellants to reinstate the first respondent in service with back wages and other benefits. The learned Single Judge, by order dated 31.01.2014, allowed the said Writ Petition. Aggrieved over the same, the present Writ Appeal has been filed.

2. The facts, which are necessary for disposal of the present Writ Appeal, are as follows:

The first respondent joined the service of the Canara Bank as Probationary Officer on 23.03.1981 and he was promoted as Manager in Middle Management Grade Scale-II with effect from 09.04.1992. While so, by an order dated 22.08.1998, he was kept under suspension pending enquiry. After conducting investigation, he was issued with a charge memo dated 30.10.1998 for certain irregularities found on the part of the first respondent, while he was working as a Manager of Kannivadi Branch, in sanctioning loans without obtaining loan documents to various non-existent parties and for discounting a cheque for Rs.5,500/- at Kannivadi Branch on 08.07.1998 drawn on the joint account maintained in his name and his wife's name and deliberately retaining the same without dispatching for collection till 25.07.1998. On completion of enquiry, the Enquiry Officer submitted a report holding that the first respondent was found guilty of all the three charges framed against him. Thereafter, the first respondent was served with show cause notice for the proposed punishment and the disciplinary authority, agreeing with the findings of the Enquiry Officer, imposed the punishment of dismissal from service, vide proceedings dated 01.12.1999. Aggrieved over the same, the first respondent preferred an appeal and the appellate authority agreed with the



findings of the Enquiry Officer, but, modified the punishment of dismissal into one that of compulsory retirement, vide order dated 07.12.2000, with further order to recover the interest due in respect of the accounts mentioned in the charge sheet from the first respondent. Accordingly, the order was modified as compulsory retirement and the amount mentioned in the charge sheet to the tune of Rs.1.75 lakhs was also recovered from the first respondent herein. As against the same, the first respondent filed a Review Petition, which was also rejected by order dated 12.07.2005. Aggrieved over the nature and quantum of punishment imposed on the first respondent, he has filed the Writ Petition.

3. The said Writ Petition was opposed by the appellants by filing a counter-affidavit. The learned Single Judge, after considering the submissions made on either side, has modified the punishment imposed on the first respondent into one that of reinstatement without backwages, but with continuity of service. Aggrieved over the said order, the appellants are before this Court with the present appeal.

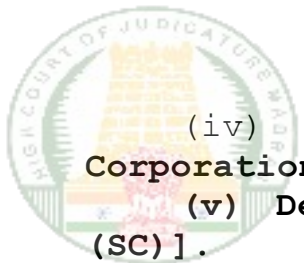
4. The main submission of the learned counsel for the appellants is that initially the first respondent was imposed with the punishment of dismissal from service. Thereafter, the said punishment was modified by the appellate authority from dismissal to compulsory retirement on 07.12.2000 and the review petition preferred by the first respondent was also rejected by way of a speaking order on 12.07.2005. Thereafter, after a delay of more than six years, he has approached this Court by filing the Writ Petition in the year 2011, without assigning any justifiable reason for the delay of six years. The learned counsel for the appellants further submitted that in fact, even in the Writ Petition, the first respondent has not challenged the findings of the disciplinary authority, but has challenged only the proportionality of the punishment alone. However, the first respondent has received the order of the reviewing authority and also the order of the appellate authority modifying the punishment of dismissal to compulsory retirement and also the pension for six years. Thereafter only he has chosen to challenge the order. Therefore, on the ground of laches as well as on the principle of estoppel, the Writ Petition filed by the first respondent is liable to be dismissed. Thus, he prays for allowing of the present Writ Appeal.

5. In support of the contention, the learned counsel for the appellants has relied upon the following judgments:

(i) **Sudhir Vishnu Panvalkar v. Bank of India** [AIR 1997 SC 2249].

(ii) **V.Ramana v. A.P.SRTC** [2005(7) SCC 338].

<https://hcservices.ecourts.gov.in/hcservices/> **State of Meghalaya v. Mecken Singh N.Marak** [2008(7) SCC 580].



(iv) **R.S.I.D.I.Corp. v. Diamond and Gem Development Corporation Ltd. [AIR 2013 SC 1241].**

(v) **Deputy Commissioner, KVS v. J.Hussain [2013(5) LLN 401 (SC)].**

(vi) **Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu [2014(1) LLN 559 (SC)].**

(vii) **State of Punjab v. Dhanjit Singh Sandhu [AIR 2014 SC 3004].**

6. Countering the submissions made by the learned counsel for the appellants, the learned counsel for the first respondent submitted that the punishment imposed on the first respondent is disproportionate. Without considering the nature of misconduct and vagueness of the charges framed, punishment was imposed on the first respondent and hence, the delay of six years in approaching this Court has no significance in this matter, when the first respondent's constitutional right for employment itself gets affected. Further, the learned counsel for the first respondent has submitted that the principle of estoppel cannot be applied in a case of this nature. The learned counsel for the first respondent also submitted that the learned Single Judge has modified the punishment and ordered only reinstatement without backwages. Therefore, absolutely, no interference is called for. In support of his contention, he has also relied upon the following judgments:

(i) **State of U.P. v. Ram Daras Yadav [2010(2) SCC 236]**

(ii) **Transport & Dock Workers Union v. Mumbai Port Trust [2011(2) SCC 575].**

(iii) **High Court of Judicature of Patna v. Madan Mohan Prasad [2011(9) SCC 65].**

(iv) **S.R.Tewari v. Union of India [2013(6) SCC 602].**

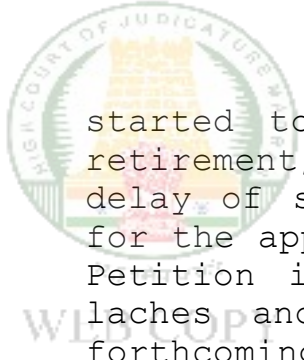
(v) **H.L.Gulati v. Union of India [2015(12) SCC 408]**

7. Keeping in mind the submissions made on either side, we have gone through the entire materials available on record.

8. It is an admitted fact that on completion of enquiry, the first respondent was removed from service, by order dated 01.12.1999. On appeal, the same was modified into one that of compulsory retirement. The first respondent has also accepted the punishment and started to receive the pension. Thereafter, all of a sudden, that too, after a period of six years, he has chosen to challenge the said order by way of Writ Petition. It is pertinent to be pointed out that for the delay of six years in approaching this Court, the first respondent has not assigned any valid reason.

<https://hcservices.ecourts.gov.in/hcservices/>

9. In our considered opinion, when the first respondent



started to get benefits, by accepting the order of compulsory retirement, he cannot challenge the said order, that too, with a delay of six years. As rightly contended by the learned counsel for the appellants, since there was a delay of six years, the Writ Petition is liable to be dismissed on the ground of delay and laches and more particularly, when no proper explanation was forthcoming from the first respondent for the inordinate delay.

10. At this juncture, it would be appropriate to refer to the judgment relied upon by the learned counsel for the appellants in **State of Punjab v. Dhanjit Singh Sandhu [AIR 2014 SC 3004]**, wherein, at paragraph Nos.24 and 25, the Hon'ble Supreme Court has observed thus:

"24. The Supreme Court in **The Rajasthan State Industrial Development and Investment Corporation and Anr. v. Diamond and Gem Development Corporation Ltd., and Anr.**, AIR 2013 SC 1241, made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

25. It is evident that the doctrine of election is based on the rule of estoppel the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."

11. In the case on hand, the first respondent, by accepting the order of compulsory retirement and by receiving the pension for six years, is precluded from questioning the order of punishment. However, without considering the aspect of delay and laches, the Writ Petition was allowed by the learned Single Judge only on the ground that the dismissal from service is disproportionate. As observed earlier, when the first respondent has accepted the compulsory retirement and received the pension, he cannot question the same, that too, after a period of six years. Though several judgments were relied upon by the learned counsel for the first respondent to substantiate his contention, those judgments cannot be made applicable to the facts and circumstances of the present case.

12. Having regard to the reasons stated above, the order of



the learned Single Judge dated 31.01.2014 is set aside and the Writ Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/True copy/

Sub Assistant Registrar

To

1.The Executive Director,
Canara Bank Head Office,
Bangalore.

2.The General Manager,
Industrial Relations Section
Personal Wing, Head Office,
112, J.C.Road, Bangalore.

3.The Deputy General Manager,
Disciplinary Action Cell,
Circle Office,
Madurai.

+1cc to Mr.C.Godwin, Advocate in SR.No:9131

+1cc to Mr.T.Palanisamy, Advocate in SR.No:9298

SML

AE/BS/28.02.2017/6P/6C

Judgment made in
W.A. (MD) No.727 of 2014
Delivered on:
17.02.2017