



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.19400 of 2013
and
M.P(MD)No.1 of 2014

K.Murugaiyan

... Petitioner

vs.

1)The Deputy General Manager,
State Bank of India, The Appellate Authority,
Zonal Office,
Madurai.

2)The Assistant Regional Manager,
Region-IV, State Bank of India,
Zonal Office,
Madurai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in relating to the impugned order Dis.Con/43 dated 06.05.2013 passed by the 1st respondent and quash the same as illegal and consequently directing the respondents to pay all the retirement benefits to the Petitioner.

For Petitioner : Mr.M.Ajmal Khan, Senior Counsel for
Mr.C.Sundaravadivel

For Respondents : Mr.S.Sethuraman

ORDER

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Dis.Con/43 dated 06.05.2013 passed by the 1st respondent and quash the same as illegal and consequently to direct the respondents to pay all the retirement benefits to the petitioner.

2.The petitioner was appointed as Cashier at the respondent bank in the year 1978. Subsequently, on promotion he was working as Senior Special Assistant. While so, a charge memo dated 27.08.2012 was issued against the petitioner, for which, an explanation was sought for from the petitioner.

3.In response to the charges, the petitioner gave explanation on 20.09.2012. Not satisfying with the explanation, the



respondents proceeded with the enquiry by appointing enquiry officer. Enquiry was conducted and ultimately, the enquiry officer gave his findings through the report dated 24.12.2012, wherein, the enquiry officer has found that the charges framed against the petitioner were proved. Thereafter, a second show cause notice also was issued seeking explanation from the petitioner on the enquiry officer's report and the petitioner also has responded the same by giving his explanation. Not satisfying with the said explanation, an order of dismissal was issued by the 2nd respondent by order dated 14.02.2013, by which, a punishment of removal from service was inflicted on the petitioner. As against the said order of punishment, the petitioner filed an Appeal before the 1st respondent, who in turn also, confirming the order of dismissal of service, as given by the 2nd respondent, has rejected the Appeal of the petitioner, by order dated 06.05.2013. Challenging both the orders of the second as well as the first respondents dated 14.02.2013 and 06.05.2013 respectively, the petitioner has come out with the present writ petition with the aforesaid prayer.

4. Heard both sides.

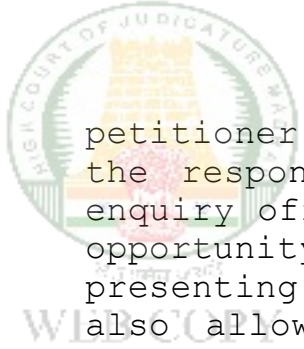
5. Mr. M. Ajmal Khan, learned Senior Counsel appearing for the petitioner would submit that the very charges framed against the petitioner though, are in the nature of alleged misappropriation of the bank money to the tune of Rs.12,000/-, actually, it is not so. In this regard, the learned Senior Counsel for the petitioner would submit that the petitioner during the relevant point of time was in-charge of dealing with jewel loan applications from the clients of the bank and for each and every application being processed by the bank, there must be a processing fee of Rs.500/- and the same has to be credited to the particular Account called, Processing Fee Account. In other words, the said processing fee, meant for the bank, has to be credited in a particular Account meant for it. However, between 18.10.2010 and 25.07.2011 there are about 20 transactions. The processing fee of Rs.500/- had been inadvertently credited in some Account stands in the names of the petitioner or his family members. As against this unjustifiable credit of processing fee in the Account stands in the names of the petitioner or his family members, charges were framed against him as he has misappropriated a sum of Rs.12,000/- in total and credited the same in the said Bank Account. In this regard, the learned Senior Counsel would submit that during the relevant point of time, the petitioner's wife was hospitalised and therefore, the petitioner was working at the bank with severe mental strain and pain. Since a number of applications for getting jewel loan are to be processed every day and from each of such applicants, the processing fee also to be collected or to be taken or debited from the Account through which amount has to be disbursed to the loanee and the same has to be credited in the bank account. Due to inadvertence, the amount had been credited

in the bank account stands in the name of the petitioner or his family members.

6. In this regard, the learned Senior Counsel would give a defensive statement by way of his arguments that the so-called credit made in the Account stands in the names of the petitioner or his family members, is because of the mental strain and heavy mental pressure which the petitioner has undergone during the relevant point of time because of the indisposed state of affairs to his wife.

7. The learned Senior Counsel would also submit that, though before the enquiry officer, a number of bank documents have been marked, none of the copies of such documents that is, copies of 24 vouchers, had been given to the petitioner, nor those documents had been marked not through any witnesses, but the enquiry officer has taken it on his own from the records of the bank. Therefore, absolutely the petitioner had been kept in dark during the said enquiry and if at all the charges had been framed against the petitioner only pertaining to the 24 transactions and if the vouchers alone are the only documents to show the guilt or to prove the guilt on the part of the petitioner, certainly those documents should have been furnished to the petitioner and non furnishing of such documents to the petitioner, according to the learned Senior counsel, vitiated the entire enquiry and therefore based on such enquiry report, the punishment ought not to have been inflicted on the petitioner. The learned Senior Counsel appearing for the petitioner would also submit that, assuming without admitting that the petitioner due to inadvertence has made some credits of Rs.500/- each in the Account stands in the names of the petitioner or his family members due to his mental pressure, the respondents should have also looked into the fact that the petitioner has rendered unblemished service for more than three decades in the respondents bank. Considering such a long unblemished service on the part of the petitioner, some lesser punishment could have been inflicted on the petitioner and this kind of argument, the learned Senior Counsel has advanced as an alternative plea on behalf of the petitioner.

8. Per contra, the learned standing counsel appearing for the respondent bank would submit that as against the charges, explanation was called for from the petitioner. The petitioner also had given his explanation on 19.06.2012 where, he has stated that as soon as the error was pointed out to him, he immediately rectified the same repenting his mistake. In view of his own admission that this mistake had been committed by the petitioner and wrongly credits have been made in the Bank Account stands in the name of the petitioner or his family members, the respondents bank could have inflicted punishment on the petitioner by invoking 'Useless Formality Theory', as no useful purpose would be served, if any full-fledged enquiry is conducted against the petitioner in view of the categorical admission made by the



petitioner through his explanation given to the charges. However, the respondent bank, to do complete justice, has appointed the enquiry officer and chosen to conduct a full-fledged enquiry where opportunity was given to the petitioner to make his defence. A presenting officer was appointed and a defence representative was also allowed to represent the case of the petitioner. After having completed all required formalities to be adopted in a case of domestic enquiry, the enquiry officer has given his conclusions where it was found that the charges framed against the petitioner were proved.

9.The learned standing counsel would submit that since the charges were proved, the petitioner, by thus, was found guilty of gross misconduct, he had to be punished and according to the punishments available, the maximum punishment of dismissal from service was inflicted on the petitioner. In this regard, the learned standing counsel would submit that the petitioner being a responsible employee of the Nationalised Bank, is expected to act in a fair manner to each and every customer who comes to the bank. Here, in the case in hand, since the petitioner has clandestinely made credits more than 20 times in various accounts and all such accounts stand either in the name of the petitioner or in the names of the family members of the petitioner or in some accounts stand in the joint name of the petitioner as well as his family members, all these transactions made by the petitioner continuously and constantly would show that the petitioner has intentionally made such credits in order to unjustly enrich the bank money, which is nothing but misappropriation. Therefore, the learned Senior Counsel would submit that the maximum punishment inflicted on the petitioner is fully justifiable and therefore, the same need not be interfered with.

10.This Court has considered the said rival submissions made by both sides.

11.In so far as the contention raised by the learned Senior Counsel appearing for the petitioner is concerned that whether a fair opportunity was given during the domestic enquiry conducted against the petitioner, this Court finds that initially charges were framed against him and he was called for explanation. He had also given explanation. Not satisfying with the explanation, enquiry officer was appointed and the enquiry officer also gave notices to the petitioner for participating in the enquiry and the enquiry was conducted on two dates that is 19.11.2012 and on 29.11.2012 respectively. During these dates, 24 exhibits have been marked. All these 24 exhibits are nothing but credit vouchers through which only such clandestine credit has been made by the petitioner in the various accounts stands in the name of the petitioner or his family members. The petitioner cannot deny these vouchers nor he can deny that such credit has been made by somebody else other than the petitioner. In fact, as rightly pointed out by the learned standing counsel appearing for the



bank, the petitioner in his initial response dated 19.06.2012 itself has stated that when the error was pointed out to him, he immediately rectified the same. He has never stated that there was no such transaction taken place and he was not responsible for any such alleged transaction. In the absence of direct denial against the charges framed against him, it cannot be construed that the enquiry conducted where these 24 exhibits of credit vouchers marked as documents ought to have been given to the petitioner and in the absence of giving such documents to the petitioner that will vitiate the entire enquiry.

12. Though in this case, as submitted by the learned standing Counsel appearing for the bank, the 'Useless Formality Theory' could have very well been invoked by the respondent bank, but they have not done so. They have conducted a full-fledged domestic enquiry wherein, opportunity of being heard was also given to the petitioner. In fact, the petitioner was represented by a defence representative one R. Barathan, Senior Special Assistant, State Bank of India, Balasamudram Branch. Therefore, the petitioner now cannot turn around and make a complaint that no due opportunity was given to him and therefore, the entire proceedings was vitiated.

13. The learned standing counsel for the respondents during the course of arguments would also make further submission that if at all the petitioner has got any grievance over the manner in which the domestic enquiry was conducted, since the petitioner being a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, can very well raise an industrial dispute before the appropriate Labour Court. If he had approached the Labour Court, he would have been given a fair chance of making such defence and based on which, suitable findings would have been given by the Labour Court. In this regard, the learned Senior Counsel appearing for the petitioner by relying upon the judgment of the Hon'ble Supreme Court in Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others, reported in 1998 (8) SCC 1 would submit that it is not a trite law or constant rule that in each and every case where alternative remedy is available, the remedy under Article 226 of the Constitution can be denied. In this regard, the learned Senior Counsel also would invite the attention of this Court to paragraphs 14, 15, 19 to 21 of the said judgment which reads thus:-

'14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".



15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

19. Another Constitution Bench decision in *Calcutta Discount Co. Ltd. v. ITO, Companies Distt.* AIR 1961 SC 372 = (1961) 41 ITR 191 laid down:

"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act."

20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances



of the case, was not justified in acting as the "Tribunal".

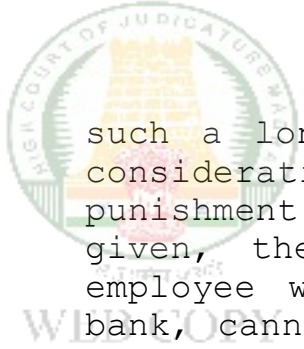
14. By relying upon this judgment, the learned Senior Counsel submitted that since the writ petition was entertained long back at this stage, if the petitioner is driven to approach the Labour Court, it will be injustice to him. Moreover, he would also submit that it is not in each and every case, the theory of alternative remedy has to be invoked. Here in the case on hand, as alleged by the petitioner, there is a violation of principles of natural justice which is one of the circumstances under which the extraordinary jurisdiction of this Court under Article 226 can very well be invoked. Therefore, the learned Senior Counsel would submit that at this juncture, the petitioner's remedy lies only before this Court in the present writ petition and not before any other forum muchless the Labour Court under the Industrial Disputes Act, 1947.

15. This Court has considered the said rival submissions made by both sides.

16. In respect of the charges framed against the petitioner, it has not been specifically denied by him. The only defence according to the petitioner, as borne out from the records available before this Court, is that during the relevant period, he was not in normal mental strength and due to the stress and mental agony because of one of his family members was hospitalised, this kind of mistake had occurred. He also stated that once the mistake was brought to his notice, immediately he has rectified it. Therefore, it can be easily concluded that the petitioner was instrumental in making the credit of the processing fee in respect of the bank account which meant for it, but in the account stands in the name of the petitioner as well as the family members of the petitioner. For this action, certainly, the petitioner has to be punished. Therefore, the enquiry officer has found him guilty and has forwarded the report to the disciplinary authority for appropriate action. The disciplinary authority after having considered the pros and cons of the issue, has come to the conclusion that the maximum punishment of dismissal from service can be inflicted on the petitioner.

17. In this context, this Court wants to make an interference for the following reasons:-

That the petitioner though has joined the service in the year 1978 as Cashier, has been subsequently promoted to the post of Senior Special Assistant. Normally, the Cashier working in a bank would be expected to deal with cash transactions. In those days, even in Nationalised Banks like the respondent, every cash transactions were undertaken mainly by the Cashier concerned. During the long travel from 1978 till this episode, the petitioner has not been brought under any adverse notice by the respondent bank. Such unblemished service rendered by the petitioner for

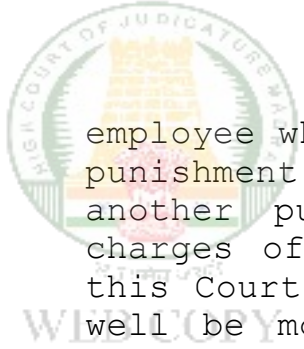


such a long years to the respondent bank has to be taken into consideration while inflicting a punishment on him. If a punishment of dismissal as inflicted against the petitioner, is given, the petitioner has to go home with empty hands. An employee who has put in such a long service to the respondent bank, cannot be shown door like this. However, for the guilt on the part of the petitioner certainly the petitioner has to be punished. In this regard, when this Court have a look at the types of punishment available with the respondent bank, especially in Class 6 of the Award Staff : Provisions for Disciplinary Proceedings Settlement dated 10th April 2002, the following punishments are available:-

''6. An employee found guilty of gross misconduct may:

- (a) Be dismissed without notice; or
- (b) Be removed from service with superannuation benefits [i.e. Pension and/or Provident Fund and Gratuity] as would be due otherwise [under the Rules or Regulations prevailing at the relevant time] and without disqualification from future employment; or
- (c) Be compulsorily retired with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or 15 Regulations prevailing at the relevant time and without disqualification from future employment; or
- (d) Be discharged from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
- (e) Be brought down to lower stage in the scale of pay up to a maximum of two stages; or
- (f) Have his increments stopped with or without cumulative effect; or
- (g) Have his special allowance [pay] withdrawn; or
- (h) Be warned or censured or have an adverse remark entered against him; or
- (i) Be Fined. ''

18. There are 9 types of punishments available for those who had been found guilty for the gross misconduct. Whatever be the mistake committed by the employee of the respondent bank, if he was found guilty of gross misconduct, any one of the 9 punishments can be awarded against him. Among the 9 punishments, the first punishment is dismissal from service. If an employee is dismissed from service, he would not get any benefits including gratuity and pension. Denying the benefit of even gratuity to the



employee who has put in more than 30 years of service itself, is a punishment and that apart, his dismissal from service gives another punishment. Denying such benefit even for a proven charges of the nature of present one would be in the opinion of this Court is on the higher side and therefore, the same can very well be modified to some other alternative punishment equal to that of dismissal from service. The next available punishment according to Class 6 is, Class 6(b) and Class 6(c) which is removal from service with superannuation benefits and compulsory retirement with superannuation benefits. In so far as the petitioner is concerned, since his guilt has been proved beyond the doubt, in the opinion of this Court, he can be punished with removal from service with superannuation benefits as provided under Class 6(b).

19. In the result, the following orders are passed in this writ petition.

That the impugned orders inflicting punishment of dismissal from service on the petitioner is modified to removal from service with superannuation benefits which includes pension and or provident fund and gratuity as would be available as per the service regulations governing the services of the petitioner.

With this modification, this writ petition is ordered to the extent indicated above. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

1) The Deputy General Manager,
State Bank of India, The Appellate Authority,
Zonal Office,
Madurai.

2) The Assistant Regional Manager,
Region-IV, State Bank of India,
Zonal Office,
Madurai.

+1cc to M/S. S.SETHURAMAN, Advocate, SR.No.8803.

+2cc to M/S. C.SUNDARAVADIVEL, Advocate, SR.No.9009.