THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WVMP.No.980 of 2017 in WPMP.No.6980 of 2017 in W.P.No.5725 of 2017
and
WP.No.5725 of 2017

ORDER :

Heard Sri P.V.S.S.S. Rama Rao, learned counsel for petitioner and Sri S. Satyam Reddy, learned Senior Counsel for Sri V.V.S.N. Raju, learned counsel for respondent.

2. The petitioner is presently working as General Manager of the respondent-Bank in its Administration Department, IDBI Bank Limited, IDBI Tower, Mumbai.

3. The parties will be referred to as per their array in the Writ Petition.

4. This Writ Petition was filed challenging the proceedings in Ref.No.HRD/ERS/10815 dt.12.01.2017 of the Executive Director (HR & Administration) and Competent Authority of the respondent-Bank, suspending the petitioner till further instructions.

5. It is not in dispute that the petitioner worked as Deputy General Manager and Cluster Head-(Agri) in Hyderabad from November 20, 2008 till July 20, 2011. Thereafter, he was promoted as General Manager by the respondent-bank in 2011.

6. Admittedly, various charge-memos have been issued to petitioner on 15.09.2016, 19.12.2016 and 10.02.2017 against certain allegations with regard to sanctioning of loans to borrowers and sanctioning of Working Capital limits (i) neglecting certain duties and responsibilities (ii) without proper due diligence and appraisal and (iii) deviating from the respondent-Bank's guidelines and laid down systems and procedures.

7. It is alleged in these charge-sheets that the borrowers' loan accounts turned as Non-Performing Assets and they were not paying their dues to the respondent-Bank and there are substantial dues to the Bank.

8. However, there is no allegation in the charge-memos of any misappropriation though it is contended in the counter-affidavit filed by the respondent that there is considerable financial loss caused to the respondent-Bank. Though the figure of the actual loss allegedly caused to the respondent-Bank is not mentioned in the counter-affidavit by the respondent, the various loan amounts sanctioned at different times by the petitioner are mentioned.

9. The counsel for petitioner primarily contended that the loans had all been sanctioned prior to July 20, 2011, more than 6 years back; subsequently, he had been promoted in the year 2011 also; the loans were sanctioned when he was posted at Hyderabad, while he is presently working in Mumbai; there is absolutely no necessity at this point of time to suspend him; and that it is done only to cause shame and humiliation to him and create a stigma; there is no danger of his tampering with any evidence since the entire evidence is in the custody of the respondent-Bank officials only; and that the order of suspension had been passed by the Executive Director of the respondent-Bank without application of mind to the above facts.

10. On 20.02.2017, this Court granted interim suspension of the impugned suspension order dt.12.01.2017 referring to the above circumstances and opining that *prima facie* there is arbitrary exercise of power.

<u>WVMP.No.960 of 2017</u> :

11. WVMP.No.960 of 2017 is filed to vacate the order dt.20.02.2017 in WPMP.No.6980 of 2017 in WP.No.5725 of 2017.

12. Firstly, it is contended by the Sri S.Satyam Reddy, Senior counsel for respondent that petitioner had preferred an appeal against the suspension under the provisions of the IDBI Officers' (Discipline & Appeal) Rules, 2006 before the Appellate Authority, and that the appeal has not been disposed of by the said authority.

13. In the material papers filed along with the Vacate Stay application, no copy of such appeal referred to above, has been filed. What is filed is a representation made on 17.01.2017 by the petitioner to the Executive Director (HR & Administration) & Competent Authority, who passed the order of suspension pending enquiry on 12.01.2017. This cannot be held to be an appeal because an appeal is always to an authority higher in rank to the authority which passed the order affecting the rights of a person, but not to the same authority.

14. The next contention is that the cause of action for filing the Writ Petition arose within the jurisdiction of the Mumbai High Court and this Court has no jurisdiction to entertain the Writ Petition. According to him, the petitioner is working in the Mumbai Office of the respondent-Bank and the suspension order was also issued on 12.01.2017 by the Competent

Authority of the respondent-Bank in Mumbai and that no cause of action arose within the territorial jurisdiction of this High Court.

15. This contention was met by the Writ Petitioner by stating that the incidents in question in respect of which the order of suspension pending enquiry was passed against him are alleged by the respondent to have been committed by the petitioner during his tenure at Hyderabad while he was working there as Deputy General manager from November, 2008 to July, 2011; and though he is now working at Mumbai as General Manager when the order of suspension dt.12.01.2017 was issued by the respondent-Bank, this Court would have territorial jurisdiction to entertain the Writ Petition.

16. The counsel for petitioner placed reliance on the judgment of the Jaipur Bench of the Rajasthan High Court in WP.No.12909 of 2013. A copy of the Judgment of the Rajasthan High Court has been enclosed by the counsel for petitioner.

17. The facts of the said case indicate that the petitioner in that case was appointed in the Management Grade J-1 as a Team Member at the Jaipur Office of the respondent-Bank on 11.08.2008; that he was promoted to Grade J-3 as 'Territory Sales manager' on 05.01.2009; that he was also confirmed in the said post on 03.03.2009, but his services were suddenly terminated on 30.04.2013 with effect from 29.07.2013 by the immediate office of the respondent-Bank vide an order issued at Mumbai. In the light of the said facts arising in that case, the Rajasthan High Court, took the view that the petitioner therein had established that part of the cause of action arose at Jaipur within the jurisdiction of the Rajasthan High Court, and therefore, the objection as to territorial jurisdiction was liable to be rejected. It held:

> *"30. In the instant case at hand, it is not in dispute that the petitioner was appointed for the position of 'Team Member' in the Management Grade J-1 at Jaipur office and the offer of appointment was addressed and delivered to the petitioner at Jaipur, as would be evident from the offer of appointment. Further, the petitioner was appointed at Jaipur Office of the respondent-employer, therefore, it can safely be inferred that the part of cause of action arose in the instant case at hand, Jaipur. Therefore, the writ application is within the territorial jurisdiction of the Court. The objection pleaded as to the territorial jurisdiction is hereby rejected."*

18. It referred to the decision of the Supreme court in **Nawal Kishore Sharma v. Union of India**[1]. There Supreme Court dealt with the case of an employee of the Shipping Corporation of India whose registration as a seaman was cancelled by it's Mumbai office and who approached the Patna High Court challenging the same. The Court observed that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit and that in appropriate cases, the Court may refuse to exercise its jurisdiction by invoking the doctrine of *forum conveniens*. The Supreme Court held as follows :

> *"16. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a*

---
[1] 2014 (9) SCC 329

legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction."

19. In my considered opinion, since the allegations levelled against the petitioner relate to certain actions performed by him while he was working as a General Manager at Hyderabad Office of the respondent-Bank, I agree with the reasoning of the Rajasthan High Court in this regard and hold that a part of cause of action did arise within the territorial jurisdiction of this Court and that this Court cannot be said to have no territorial jurisdiction to entertain the Writ Petition filed by the petitioner.

20. Though, in the counter-affidavit, details of several loans sanctioned by petitioner are referred to, as already pointed out by me, there is no allegation that the petitioner had misappropriated any money and the allegations essentially levelled against him relate to deviations of norms while sanctioning the loans, which allegations are denied by the petitioner. There is no allegation in the counter-affidavit that the petitioner is likely to tamper the record or *suborn* witnesses or impeded the proposed disciplinary proceedings in any way.

21. A Division Bench of this Court in **Buddana Venkata Murali Krishna v. State of Andhra Pradesh and others**[2] considered the grounds for judicial review of an order of suspension pending enquiry. It observed that suspension pending enquiry is not a punishment and is intended to restrain the employee from discharging duties so that he may not perpetrate the alleged misconduct or avail an opportunity to scuttle the enquiry or investigation or win over the witnesses. It held that when once allegations of misconduct are imputed against a member of a service, normally it would

[2] 2015 (6) ALD 694 (DB)

not be desirable to allow him to continue in the post where he is functioning. It however observed that power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as a vindictive misuse of power and it ought not to be actuated by *mala fides* or arbitrariness or be passed for ulterior purpose. It held that an order of suspension should not be passed in a perfunctory or in a routine and casual manner but with due care and caution after taking all factors into account. It observed that ordinarily an order of suspension is passed after taking into consideration the gravity of misconduct sought to be inquired into or investigated, and the nature of the allegations imputed, on application of mind by the disciplinary authority. It also observed that ordinarily Court should not interfere with orders of suspension unless they are found *mala fide* and without there being even *prima facie* evidence on record connecting the employee with the misconduct in question.

22. Learned counsel for the petitioner also relied on the Division Bench decision of the Kerala High Court in **K.Srendran Vs. Government of Kerala and others**[3]. In that case, a Senior Inspector in the Cooperation department who was working later as Lecturer in Cooperative Training Centre was suspended pending enquiry into acts of misconduct alleged to have committed in 1999 one decade before the order of suspension. This was assailed in the Kerala High Court by him. It was alleged that while working on deputation as the Chief Executive of A.K.G.Memorial Cooperative Hospital, Kannur, he had unauthorizedly given a cheque in the name of a consultancy by name M/s.Surgi Tech India in connection with the service charges of the hospital equipment in 1999. He denied the

---
[3] Order dt.09-07-2008 in W.A.No.1367 of 2008

allegations. He alleged that he was suspended with malafide intention after he had pointed out some irregularities in the working of another cooperative society as Senior Inspector. The Division Bench set aside the order of suspension observing that power to suspend an employee should be exercised with care and caution as an order of suspension pending enquiry may put the employee into shame and humiliation. It held that if continuance of the employee in the same place affects disciplinary proceedings, the employer can suspend an employee or if his continuance is likely to occasion tampering with evidence. It held that they must be material to justify the suspension and the order should be free from the taint of malafides, arbitrariness and extraneous considerations; subjective satisfaction regarding suspension should be based on objective considerations and relevant circumstances; though commission of grave misconduct may be a ground for suspending an employee, the need for suspending him would not necessarily depend upon the gravity of the charges alone and the disciplinary authority should consider whether it is necessary to keep the employee away from the post; and that it is not proper to suspend an employee posted elsewhere for an alleged irregularity committed nine years back. It held that since the appellant was transferred back to the parent department in 1999 and is now working in another district in a totally different department, continuation of his service will not affect the enquiry; that his suspension pending enquiry nine years after the incident, that too when he was posted in a different district, is not warranted and it is an arbitrary exercise of power and one can infer victimization.

23. In the present case, it is true that the charges levelled against the petitioner are somewhat serious having regard to the quantum of loans which he is alleged to have sanctioned while he was working as Deputy General manager at the Hyderabad Office of the respondent-Bank. But, as held above, seriousness of the charge alone, without reference to the other circumstances cannot be a ground to suspend an employee pending enquiry. Having regard to the fact that there is no allegation that he misappropriated any amounts or that there is likelihood of his tampering in any way with the evidence or witnesses, and the fact that the incidents in question are alleged to have occurred not in Mumbai where he is presently working, but in Hyderabad where he was working prior to 2011, and also having regard to the fact that he was promoted to the post of General Manager also in 2011, I am of the considered opinion, that the impugned order of suspension is arbitrary and is intended only to insult and humiliate the petitioner.

24. Therefore, the Writ Petition is allowed, and the order of suspension dt.12.01.2017 issued by the respondent-Bank is set aside as being arbitrary and violative of Article 14 of the Constitution of India. Consequently, WVMP.No.960 of 2017 in WPMP.No.6980 of 2017 in WP.No.5725 of 2017 is dismissed. No order as to costs.

25. As a sequel, miscellaneous applications pending if any, in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28.06.2017

Note : Issue C.C. today.
B/o.
Ndr/*