IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11258-1993 (O&M)
Date of Decision:-04.10.2017.

Mrs. Ramesh Kaur

.....Petitioner

Versus

Punjab National Bank and others

......Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

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Present: Mr. B.S. Jaswal, Advocate for the petitioner.

Mr. Saurav Verma, Advocate for the respondents-Bank.

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P.B. BAJANTHRI, J. (Oral)

Learned counsel for the respondents-Bank submitted that cost imposed by this Court has been complied by making payment of ₹ 30,000/- to the petitioner.

In the instant writ petition, petitioner has challenged the orders of disciplinary authority and appellate authority dated 06.01.1992 and 25.11.1992 vide Annexures P-6 and P-8, respectively and further sought for a direction for payment of full salary for the period from 23.7.1983 to 15.2.1991.

Petitioner while working as a Cashier-cum-Clerk in the respondents-Bank, she had applied for maternity leave from 16.5.1983 to August, 1983. She had handed over the charge of the post held by her during the period from 13.5.1983 to 19.5.1983 to different officials in the respondents Bank branch. Inspection was conducted on 21.7.1983, respondent-Bank noticed that there was a shortage of ₹ 1,00,000/- as on 19.5.1983. Petitioner was placed under suspension on 23.7.1983. In the meanwhile, FIR has been lodged against the petitioner and two others on the allegations that there was a shortage of cash to the tune of ₹ 1,00,000/-. In the criminal proceedings, petitioner was acquitted on 17.8.1990. Thereafter, the respondents-Bank initiated disciplinary proceedings against the petitioner by framing article of charges on 17.12.1991 in respect of not keeping the records in order so also there is a shortage of ₹ 1,00,000/- while handing over the charge to one Sh. B.S. Aggarwal, Manager. Inquiring Officer held that charges levelled against the petitioner could not be proved for the reasons that petitioner was on maternity leave during the period from 16.5.1983 to August, 1983 and she had handed over charge of the post as well as records to officials of the Bank. Therefore, the persons who have taken charge from the petitioner are responsible. Consequently, Inquiring Officer has held that the charges levelled against the petitioner were not proved. After receipt of the Inquiry Officer's report by the disciplinary authority, disciplinary authority without there being a disagreement straightway drawn proceedings with various evidences and proposed to impose the penalty of stoppage of one increment with immediate effect on 31.10.1991 for which the petitioner had submitted her reply. Thereafter, on 6.1.1992 disciplinary authority proceeded to impose the penalty of stoppage of one increment with cumulative effect. Feeling aggrieved by the order of disciplinary authority, petitioner preferred an appeal on 8.2.1992. Her appeal was rejected on 25.11.1992. Hence, the present petition.

Learned counsel for the petitioner submitted that as on the date of inspection i.e. on 21.7.1983, petitioner was on maternity leave from 16.5.1983 to August, 1983 and she had handed over the charge of the post to officials of the branch, namely, Sh. Lakhbir Singh and Sh. B.S. Aggarwal during the period from 13.05.1983 to 19.05.1983 and the inspection was done on 21.07.1983 that is during leave period of the petitioner. Thus, in the criminal proceedings and disciplinary proceedings, the charges levelled against the petitioner were not proved. In the criminal case, petitioner was acquitted and in the disciplinary proceedings charges were not held to be proved. It was further submitted that handing over charge to Sh. Lakhbir Singh and Sh. B.S. Aggarwal were proved and it was not disputed by both of them. It was further submitted that respondents-Bank have not preferred any appeal against the acquittal of the petitioner. The respondents-Bank should have initiated inquiry within the reasonable period from the date of alleged incident which relates back to the year 1983. Respondents-Bank have initiated disciplinary proceedings on 31.10.1991. Therefore, on the ground of delay, the inquiry proceedings are liable to be set aside. It was also submitted that disciplinary authority has not disagreed with the Inquiry Officer's report. Further opportunity has not been given to the petitioner and disciplinary authority had already made up his mind to impose the penalty as is evident from show cause notice dated 31.10.1991. Further the points raised by the petitioner have not been considered by the Disciplinary and Appellate Authority. In view of these facts and circumstances, the disciplinary as well as appellate authorities' orders are liable to be set aside.

Learned counsel for the respondents raised a preliminary issue that the writ is not maintainable. The petitioner-Cashier-cum-Clerk is a workman and she has a remedy before the Labour Court. Therefore, writ petition is not maintainable. Learned counsel for the respondents further submitted that disciplinary authority disagreed with the Inquiry Officer's report, consequently, show cause notice was issued in which a detailed discussion has been made by the disciplinary authority as is evident from the show cause notice. It was further submitted that the petitioner had handed over charge of the post as well as certain records to one Sh. B.S. Aggarwal who was also subjected to disciplinary proceedings and it was concluded in imposing penalty of reduction of pay. The charge against Sh. B.S. Aggarwal is that he allowed the petitioner to mishandle the Cashier-cum-Clerk work while discharging the duties in this regard, necessary action was not taken. Further petitioner not handed over charge to the concerned Clerk and it was handed over to the Branch Manager. Therefore, there is no infirmity in the order of the disciplinary authority. It was further submitted that appellate authority's order is also considerate order and that criminal proceedings are different from disciplinary proceedings. Therefore, petitioner's any reliance on criminal case to show that she is acquitted has no bearing on the disciplinary proceedings, therefore, no interference is called for. On the ground of delay in initiation of inquiry, it was submitted that respondents are awaiting for the decision in the criminal proceedings. There is no bar for initiation of a parallel proceedings as held by the Supreme Court in number of decisions.

Heard learned counsel for the parties.

Learned counsel for the respondents raised a preliminary issue relating to maintainability of the writ petition stating that petitioner is a Cashier-cum-Clerk in the respondents Bank, therefore, she is a workman. Consequently, she has remedy before the Labour Court. The said preliminary contention is hereby rejected for the reasons that the matter is of the year 1993 and it is an admitted matter. Supreme Court time and again held that if the writ petition is admitted in such event, question of interference on the preliminary issue regarding maintainability cannot be gone into. Accordingly, preliminary issue raised by the respondents-Bank is hereby rejected.

The petitioner submitted that she was on maternity leave from 16.5.1983 to August, 1983. She had handed over charge to the officials of the concerned branch bank. Thus, if there is any shortage of cash, then the concerned incumbent is responsible for any shortage. That apart on 21.7.1983 was the date of inspection and she handed over the charge of the post on 19.5.1983. Thus, initiation of proceedings against the petitioner itself is contrary to the facts. The said contention cannot be taken lightly for the reasons that as is evident from the records, petitioner has not maintained the records properly in respect of Cashier-cum-Clerk. The petitioner failed to hand over the charge on one day. On the other hand, from 13.5.1983 to 19.5.1983, she had handed over charge to various employees in a piecemeal. Therefore, to some extent, petitioner is liable for shortage of ₹ 1,00,000/-. This Court cannot interfere in respect of judicial review unless there is a perverse evidence so as to interfere with the merits of the case.

The petitioner contended that she has been acquitted in the criminal proceedings. Consequently, insofar as the contention that disciplinary proceedings should not have held is concerned, the same is rejected for the reasons that parallel proceedings on same misconduct or misdeed as held by the Supreme Court unless identical issues like charges, list of witnesses each and every thing is common. Learned counsel for the petitioner further submitted that both in the criminal as well as disciplinary proceedings, charges levelled against the petitioner were not proved. Only the disciplinary authority after receipt of the Inquiry Officer's report proceeded to pass the proceedings to hold the charges levelled against the petitioner were proved and further proposed to impose penalty of stoppage of 2 annual increments with cumulative effect. Perusal of the show cause notice dated 31.10.1991, it is evident that there is no disagreement with the Inquiring Officer's report or finding. On the other hand, the disciplinary authority has given his own finding and issued a show cause notice including proposed penalty. If the disciplinary authority disagreeing with the Inquiry Officer's report, disciplinary authority has to identify from which stage there is a defect in the inquiry proceedings. From that stage either he should remand the matter to the Inquiring Officer or to hold inquiry by himself from the defective stage. On the other hand, he has proceeded to give his own finding which is impermissible. It was further submitted that disciplinary authority while imposing penalty of stoppage of one increment with cumulative effect has not appreciated various contentions raised by the petitioner in her reply. Therefore, order of penalty is not a speaking order. So also the appellate authority's order is not a speaking order even though appellate authority has extracted various contentions of the petitioner. At the same time, the same has not been dealt with as is evident from the order. Therefore, the disciplinary authority has erred in issuing show cause notice without disagreeing from the defective stage from the Inquiring Officer's report. Perusal of the show cause notice, it is evident that disciplinary authority is biased since in the show cause notice itself he has proposed to impose penalty of withholding of two increments. In other words, he has already determined his mind to impose penalty on the petitioner. Perusal of disciplinary authority's penalty order and appellate authority's order, it is crystal clear that there is a non-application of mind by both the authorities in not considering the petitioner's contention raised against the reply to the show cause notice and so also in appeal. In view of these facts and circumstances, orders dated 6.1.1992 and 25.11.1992 vide Annexures P-6 and P-8, respectively are set aside. The petitioner is entitled to all service benefits, in accordance with law. The respondents are hereby directed to regulate the intervening period from the date of imposing the penalty till date for the purpose of restoring withheld increment and extend consequential monetary benefits to the petitioner. Insofar as regulating the suspension period is concerned for the period from 23.7.1983 to 15.2.1991, the respondents are at liberty to pass a detailed order as to how the suspension period is required to be regulated. Such order shall be passed within period of 3 months from the date of receipt of certified copy of this order and communicate the same to the petitioner.

Petition stands allowed.

Insofar as withholding of one increment with cumulative effect, the same is restored and consequential benefits be released to the petitioner.

(P.B. BAJANTHRI)
JUDGE

October 04, 2017.
sandeep

Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.