

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9.1.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1410 of 2017
and
C.M.P.Nos.19225 & 19226 of 2017

D.Inbavali

Appellant

Versus

1. State Bank of India,
rep. by its Regional Manager (RBO-II)
Chennai Zone-I,
Disciplinary Authority,
Disciplinary Proceedings Cell,
Administrative Office,
Chennai Zone, Chennai Network-1,
86, Rajaji Salai, Chennai 600 001.

2. The National Commission for Scheduled Caste,
rep. by its Director,
Sastri Bhavan, Haddows Road, Chennai 600 006.

Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 27.10.2017 passed in W.P.No.10675 of 2016.

WP.10675/16: Filed u/a.226 of the Constitution of India, praying for the issue of a writ of ceriotrarified mandamus, calling for the records from the 1st respondent relating to the proceedings bearing reference No. DIS/CON/628 dated 15.3.2016 quash the same and consequently direct the 1st respondent not to proceed further with the proceedings against the petitioner relating to the charge sheet dated 10.5.2012.

For appellant : Mr.N.G.R.Prasad for
M/s.Row and Reddy

For R1 : Mr.S.Ravindran, Senior Counsel for
Mr.S.Basheer Ahmed

For R2` : No appearance

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties.

2. Challenging the order passed by the learned Single Judge declining to interfere with the impugned show cause notice which proposed to impose punishment of dismissal from service, the present writ appeal has been filed by the writ petitioner-employee, viz., a Special Assistant working in the first respondent Bank.

3. It appears that alleging some misappropriation to the tune of Rs.1000/-, the appellant/writ petitioner has been found guilty and a second show cause notice proposing punishment of dismissal from service was issued. Challenging the same the writ petition had been filed.

4. The factual position is that from the remittance a sum of Rs.45,00,000/- by one Venkatesan, employee of Ganapathy Fruits, a part of the amount is alleged to have misappropriated by the appellant while discharging her service as Cashier-in-charge.

5. The argument advanced on behalf of the appellant is that the appellant had put in more than 27 years of service by the time of the alleged misappropriation and after having put in that much of service, the allegation made against her that she had indulged into misappropriating such a paltry sum is unimaginable. The further contention on behalf of the appellant is that the allegation of misappropriation of a part of the amount deposited by a Fruit Vendor cannot be sustained in view of the Remittance Challan of the customer and his statement of account found at pages 14 and 15 of the typed set of papers and also the fact that the Vault Check Total Report tallied on the particular day, as evident from page 17 of the typed set of papers and there was no deficiency in the amount as projected by the Bank. Furthermore, our attention has been drawn to the representation received from the appellant dated 25.11.2011 wherein she had stated as under:-

"On 4.10.2011, Shri.M.Venkatesan, employee of M/s.Ganapathy Fruits remitted Rs.45,00,000/- into their CC account. The remittance received from him had an excess amount of Rs.1200/- which was refunded to the employee Shri.M.Venkatesan and the same was informed to his employer M/s.Ganapathy Fruits. The employee who resented the reporting to his employer barged into the cash department and banged the cash table which resulted in the rupee notes falling and flying from the table. The fallen pieces were collected by me and the day's cash was closed without any shortage."

6. The next contention of the learned counsel appearing for the appellant is that as per the charge memo, the allegation is relating to her duty on 16.8.2011, 16.9.2011 and 30.10.2011, however, the abovesaid incident viz., the misappropriation alleged to have been made by the appellant in respect of the transaction of Venkatesan, employee of Ganapathy Fruits alone has been shown as the charge. It is further contended that no specific amount of misappropriation has been mentioned in the charge memo and the material witness viz., PW3-Venkatesan did not turn up during the enquiry proceedings and the finding given by the enquiry officer with regard to the non-appearance of the complainant during the enquiry proceedings as if a normal one cannot be accepted.

7. Per contra, the learned Senior Counsel appearing for the respondent-bank would contend that all the issues raised by the appellant can be agitated only during the appeal and not before the present forum.

8. After hearing the learned counsel appearing for both the parties and also going through all the records filed by both the parties, we find that it is not in dispute that the charge memo does not mention the amount alleged to have been misappropriated and even during the enquiry, there was no mention about the amount alleged to have been misappropriated. However, on the contrary, the bank accounts clearly shows that a sum of Rs.45,00,000/- was deposited to the credit of the customer on 4.10.2011 and his accounts tallied on the particular day and the entire accounts of the Branch also tallied. It is the further stand of the appellant that in fact, the said Venkatesan had tendered the sum of Rs.45,00,000/- and on verification, she found a sum of Rs.1200/- in excess which she had returned to the remitter immediately and the employer of the remitter was also informed of the excess amount tendered. It appears that the retuning of the amount which was found in excess is also evident from the CCTV camera footages and the gestures of the customer, which is not properly appreciated by the enquiry officer, it is contended by the learned counsel appearing for the appellant.

9. In the above factual background, we find that the bona fide action of the appellant is misconstrued and therefore, she has been taken to task. The admitted facts of non-specification of the amount alleged to have been misappropriated by the appellant, the tallying of the accounts without any deficiency and non-examination of the material witness viz., the complainant are in favour of the appellant. It is also not in dispute that the appellant had put in a long unblemished service. Now, the appellant is due to retire within another three months. Such being the position, we find that continuing the disciplinary proceedings any more merely on some misconception will not serve any useful purpose. Therefore, we are inclined to interfere with the same and accordingly, the order passed by the learned Single Judge and the impugned

proceedings are set aside. The respondent is directed to allow the appellant to retire peacefully.

10. However, before parting with, we find that the appellant, being a responsible official, entrusted with the duty of handling public money, ought to have been more diligent while discharging her duty so as to avoid giving room for any misconception and thereby inviting the ordeal disciplinary proceedings, either on personal grounds or on administrative bias. Having found that she had neglected to be so which resulted in unnecessary embarrassment to the administration, she is directed to pay a sum of Rs.5000/- to the Mediation Centre attached to this Bench of High Court within a period of two weeks from the date of receipt of a copy of this judgment. The writ appeal is disposed of accordingly. No costs. The connected miscellaneous petitions are closed.

Assistant Registrar
Dt.23.2.18

//True Copy//

Sub Assistant Registrar

To:

1. The Regional Manager (RBO-II)
State Bank of India,
Chennai Zone-I,
Disciplinary Authority,
Disciplinary Proceedings Cell,
Administrative Office,
Chennai Zone,
Chennai Network-1,
86, Rajaji Salai, Chennai 600 001.
2. The rep. by its Director,
National Commission for Scheduled Caste,
Sastri Bhavan, Haddows Road, Chennai 600 006.
3. The Assistant Registrar,
Tamilnadu Mediation Centre,
High Court, Madras.

+1 cc to Mr.S.Bazeer Ahamed,advocate,sr.1514

+1 cc to M/s.Row & Reddy,advocate,sr.1654.

Ss(co)
krd 27/2

W.A.No.1410 of 2017