

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
12.07.2018

Delivered on
20.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.465 of 2017

V.Chandrasekaran

... Appellant

versus

1. The General Manager/Personnel,
Vijaya Bank, Head Office,
41/2, M.G.R. Road, Trinity Circle,
Bangalore 560 001.

2. The Deputy General Manager,
Vijaya Bank, Regional Office,
No.123, Rukmanilakshmipathi Road,
Egmore, Chennai 600 008.

... Respondent

Appeal filed against the order passed by this Court dated
03.11.2016 passed in W.P.No.23102 of 2001.

W.P.No.23102 of 2001:

Writ Petition filed under Article 226 of the constitution of
India praying for issuance of a Writ of Certiorarified Mandamus
calling for the records relating to the order passed by the
Second respondent in his proceedings No.ROCH/IRS/637/99 dated
28.10.1999 which was confirmed by the first respondent in his
proceedings No.PER/IRD/1963 dated 22.08.2000 and quash the same
and further direct the respondents go give all monetary and
other benefits from the date of compulsory retirement.

For appellant : Mr.S.V.Jayaraman, Senior Counsel
for M/s.G.Surya Narayanan

For Respondents : Mr.R.Sivakumar

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra court appeal is to the order of
the learned single judge dated 3-11-2016 made in W.P.No: 23102
of 2001 in and by which the writ petition filed by the appellant
challenging the punishment of compulsory retirement imposed on
him by second respondent which was confirmed on appeal by the
first respondent was dismissed.

The case of the appellant as projected in the writ petition is as follows:

2. The appellant was appointed as an agricultural officer in the respondent bank on 24-3-1986. After having completed the period of probation he had worked as an agricultural officer in various places for nearly 13 years and has been discharging his duties to the utmost satisfaction of his superiors. While so the second respondent issued a charge memo on 3-7-1998 framing as many as five charges against the appellant. The charges related to the period during which the appellant worked as an agricultural officer in the Thanjavur branch of the respondent bank. According to the appellant though he had submitted an explanation to the charge memo the same was not accepted by the respondent bank and the respondent bank appointed a Senior Manager working in the Regional office of the bank at Chennai as the enquiry officer. The appellant would further claim that the enquiry officer without holding a proper enquiry concluded that the appellant is guilty of all the charges. While charges 1, 2, 3 and 5 were held to be partly proved charge 4 was held to be proved. On receipt of the report of the enquiry officer the second respondent issued a show cause notice seeking the explanation of the appellant to the findings of the enquiry officer. The appellant submitted his explanation on 28-8-1999. The second respondent however rejected the said explanation without properly appreciating the same and imposed the following punishments:

Charge No: 1: With holding of two increments permanently.

Charge No:2 : Reduction to a lower stage in timescale of pay two stages with cumulative effect.

Charge No:3 : Reduction to a lower stage in timescale of pay by two stages with cumulative effect.

Charge No:4 : Reduction to a lower stage in timescale of pay by two stages with cumulative effect.

Charge No:5 : Compulsory retirement.

Finally the second respondent imposed the punishment of compulsory retirement as the other punishments are lesser than the same.

3. Aggrieved the appellant preferred an appeal to the first respondent on 09/12/1999. The appellate authority rejected the appeal by its order dated 22/08/2000. Challenging the said rejection the appellant had approached this court by way of the above writ petition.

4. The respondent bank resisted the writ petition contending that all the charges were very serious in nature and the enquiry officer had after analysing the evidence on record concluded

that the appellant is guilty of the charges. In fact a very elaborate enquiry report has been filed by the enquiry officer and the same was accepted by the disciplinary authority. Since charge No:5 related to corruption the respondent bank had no other option but to compulsorily retire the appellant. The respondent bank also pleaded that the senior manager of the branch was also charge-sheeted for the same delinquencies was also imposed the same punishment of compulsory retirement. The said senior manager Mr. Nandakumar had challenged the said punishment by way of a writ petition before the Kerala High Court and the said writ petition was also dismissed. The respondent bank would also contend that once it is found that the enquiry was fair and proper this court sitting under Article 226 cannot re-appreciate the evidence and on the basis of such the re-appreciation interfere with the findings of the enquiry officer even if another conclusion is possible.

5. The learned single judge who heard the writ petition dealt with each and every issue raised by the learned counsel for the appellant and finally concluded the enquiry was fair and proper and the claim of the appellant that there was a delay of nearly 2 years in taking the disciplinary proceedings vitiated the same cannot be accepted in view of the number of complaints involved and the documents that are to be looked into before framing the charges. The other contention of the appellant that Regulation 10 of the Vijaya Bank Officer Employees (conduct) Regulations 1981 mandates that the bank should conduct a common disciplinary enquiry if more than one official is involved was also rejected by the learned single judge observing that Regulation 10 is not mandatory inasmuch as it only uses the expression "may". The learned single judge also considered the fact that the charges particularly charge 5 which relates to corrupt practices having been proved the punishment of compulsory retirement cannot be held to be disproportionate to the proved delinquencies. On the above conclusions the learned single judge dismissed a writ petition. Aggrieved the appellant is before us by way of this intra court appeal.

6. We have heard Sri.S.V.Jayaraman learned Senior Counsel appearing for M/s. G. Suryanarayanan, counsel for the appellant and Mr.R.Sivakumar learned counsel appearing for the respondents bank.

7. Sri. S.V. Jayaraman learned senior counsel appearing for the appellant would contend that the charges are repetitive in nature, there is no direct evidence to show that the appellant had received monies from the customers as loan or otherwise. He would also further contend that all the witnesses have only deposed that they had paid the money is to one Seralathan. He would also further point out that some of the witnesses had in fact stated that an amount less than the sanctioned the loan amount was paid to them by the said Seralathan and that he had

assured them that the appellant would deposit the balance amount in their accounts. Drawing our attention to the aforesaid evidence on record, the learned senior counsel appearing for the appellant, would contend that the enquiry officer was wrong in concluding that charge 5 was partly proved. Arguing further the learned senior counsel would submit that Charges 3 and 5 are same charges and the enquiry officer had given different set of findings for the same charges.

8. Per contra Mr. R. Sivakumar learned counsel appearing for the respondent bank would contend that the claim of the appellant that charges 3 and 5 are the same is actually based on a misconception. The learned counsel would point out that while Charge 3 relates to 33 loans sanctioned under the category of production loan, mortgage loan and 18 loans under the category of secured loans Charge 5 relates to several agricultural loans. He would further point out that the appellant had understood the charges and has submitted his explanation to the charges separately and had defended himself in the enquiry proceedings treating the two charges as separate charges. It is before this court, for the first time, a plea that both the charges are same was sought to be raised. While the enquiry officer had concluded that Charge 3 has been fully proved and the punishment proposed for that charge would be a reduction in rank but insofar as Charge 5 is concerned since it relates to corrupt practices a major punishment of compulsory retirement was proposed. The appellant had submitted this explanation for the second show cause notice issued by the second respondent proposing to impose the said punishments on him.. Therefore according to the learned counsel for the respondent bank the learned single was right in rejecting all the contentions raised by the appellant and dismissing the writ petition.

9. We have considered the rival submissions. The law on the scope of interference in disciplinary proceedings under Article 226 of the Constitution of India is by now well settled. The Honourable Supreme Court has time and again pointed out that the Constitutional Courts do not sit as appellate authorities over the factual findings recorded during departmental proceedings. The power of judicial review does not empower the High Court to substitute its own conclusions with regard to the guilt of the delinquent in the place of the conclusions of the disciplinary authorities. Reappraisal of the evidence by the Constitutional Courts is not permissible unless it is shown that the disciplinary authority or the appellate authority have reached the conclusions which can be termed as perverse or there is total lack of evidence that would justify the conclusions of the authorities. This view of the Honourable Supreme Court was reiterated in Apparel Export Promotion Council-versus-A.K. Chopra reported in 1999-I-LLJ 962. The learned single judge has also after referring to the judgment of the Supreme Court in Apperal Export promotion Council-versus-A.K. Chopra had held

that the material available on record would definitely lead to the conclusion that the findings of the enquiry officer as well as the disciplinary authority cannot be said to be perverse. We have also gone through the entire enquiry report that has been placed before us and we do not find any material so as to enable us to reach the conclusion that the findings of the enquiry officer are either perverse or are based on no evidence. We are unable to countenance the contention of the learned senior counsel for the appellant to the effect that there is no direct evidence to show that the appellant was involved in corrupt practices. The cumulative effect of the entire evidence on record would definitely justify the conclusions of the enquiry officer as well as the disciplinary authority that the appellant had in collusion with the senior manager extracted money from the persons who had borrowed agricultural loans with the aid of one Seralathan.

10. As regards the submission of the learned senior counsel that charges 3 and 5 are one and the same, we find that though the same appears to be attractive superficially, a deeper examination of the charges demonstrates that they relate to different loan transactions and as rightly pointed out by the learned counsel for the respondent bank the appellant himself has understood that they are different charges even during the departmental enquiry proceedings. We are therefore of the considered opinion that no case has been made out by the appellant in order to enable us to interfere in exercise of the powers of judicial review, under Article 226 of the Constitution of India, with the punishment imposed on the appellant. We should also point out that this juncture that a similar punishment imposed upon the senior branch manager by the respondent bank has been upheld by the Kerala High Court.

11. In view of the foregoing reasons the intra-court appeal stands dismissed confirming the judgment of the learned single judge made in W.P.No: 23102/2001. However in the circumstances of the case we direct the parties to bear their own costs.

सत्यमेव जयते

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

jv

To

1. The General Manager/Personnel,
Vijaya Bank, Head Office,
41/2, M.G.R. Road, Trinity Circle,
Bangalore 560 001.

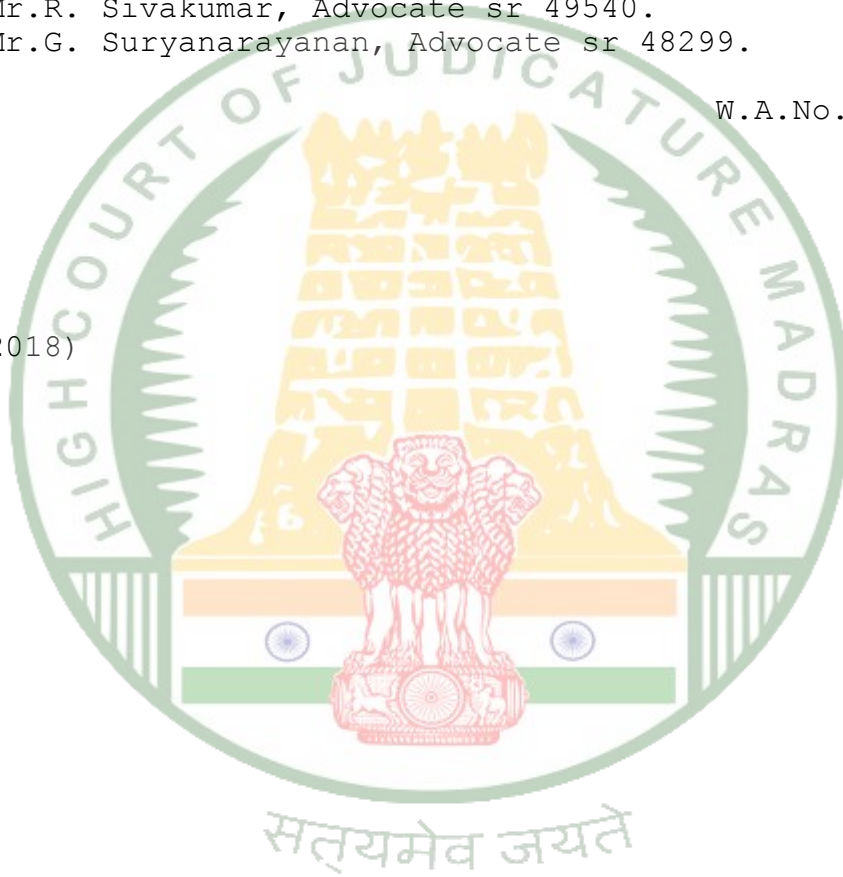
2. The Deputy General Manager,
Vijaya Bank, Regional Office,
No.123, Rukmanilakshmipathi Road,
Egmore, Chennai 600 008.

+1 CC to Mr.R. Sivakumar, Advocate sr 49540.

+1 CC to Mr.G. Suryanarayanan, Advocate sr 48299.

W.A.No.465 of 2017

GMR (CO)
SP (06/08/2018)



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