

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.2.2018

Judgment Delivered on : 16.2.2018

CORAM

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

W.A.No.288 of 2018
and
C.M.P.No.2183 of 2018

S.Viswanathan

Appellant/Petitioner

Versus

- 1 State Bank of India rep by its
Regional Manager RBO-1
(Disciplinary Authority)
Region-1 Network-1
Administrative Unit No.86 Rajaji Salai
Chennai-600 001
- 2 S.Ravi Kumar
The Chief Manager (Enquiry Officer)
State Bank of India
No.22 Taylors Road Kilpauk
Chennai-600 010
- 3 T.Deivanayagam
The Chief Manager (Law)
The State Bank of India
Zone-I N.S.C. Road
(Opp to High Court) Chennai-600 001

Respondents/Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 30.11.2017 passed in W.P.No.31215 of 2017 on the file of this court and Writ petition filed under Article 226 of the Constitution of India, calling for the records relating to the order bearing Ref. No.RM-1/ 1306 dt.06.11.2017 in appointing the 3rd Respondent to assist the presenting officer and the consequential order bearing ref. No.RM-1/ 1326A dt.09.11.2017 passed by the 1st Respondent in rejecting the petitioners request (1) to conduct a denovo

enquiry in respect of the charge sheet dt.10.06.2014 (2) to appoint an enquiry officer from outside the region (3) for payment of legal fees to the defence Assistant and to quash the order dt.06.11.2017 & 09.11.2017 as being illegal arbitrary and contrary to the principles of natural justice and for a consequential Mandamus to the 1st Respondent Bank to conduct the denovo enquiry in respect of the charge sheet dated 10.06.2014.

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

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

JUDGMENT

Challenging the correctness of the order passed by the learned Single Judge on 30.11.2017 in W.P.No.31215 of 2017, the petitioner has filed the present writ appeal.

2. For the sake of convenience, the parties are referred to hereunder as per their ranking in the writ petition.

3. On behalf of the first respondent, Mr.S.Ravindran, learned Senior Counsel takes notice. By consent of both the parties, the main writ appeal has been taken up for final disposal.

4. Brief history leading to the filing of the above writ petition is as under:-

The petitioner, having joined the respondent-Bank as Clerk-cum-Cashier on 7.8.1980, was issued with a charge memo dated 10.6.2014, when he was working as Deputy Head Assistant (Cash) in Sowcarpet Branch for certain irregularities. The charge memo contains two charges as under:-

"Charge No.1

On the undernoted dates, you have accessed Core Banking System by using our ID No.2455943 and made 1668 enquiries relating to non-home accounts of Bank's customers. Dates accessed: 01.10.2013, 03.10.2013, 04.10.2013, 05.10.2013, 07.10.2013 to 12.10.2013, 15.10.2013, 03.03.2014 to 07.03.2014, 25.03.2014 to 29.03.2014 and 09.04.2014. Such enquiries are not related to your day to day job assigned to you in the Branch during the said period. Thus you have committed security violation under Clause 16.5.1.15 of Acceptable Usage of IT

Policy, IS Security Policy-Guidelines with Standards and Procedures prescribed by the Bank.

...

Charge No.2

You have disclosed the information which you had collected through the unauthorised act of accessing CBS as mentioned in Charge No.1 to Shri.S.Gunasekaran, Special Assistant, State Bank of India, Chennai Branch, thereby you have unauthorisedly disclosed the information regarding the affairs of the customers of the Bank which is prejudicial to the interests of the Bank. Thus you have not only committed security violation under Clauses 16.5.1.14 of Acceptable Usage of IT Policy, IS Security Policy-Guidelines with Standards and Procedures prescribed by the Bank but also breached 'Rules of Conduct' prescribed by the Bank as you have failed to maintain the secrecy regarding the Bank's affairs and the affairs of its constituents."

5. During the enquiry, the charge sheeted employee sought for engaging legal assistance which was rejected by the Enquiry Officer. Hence, the first round of litigation appears to have come before this court by way of W.P.No.23000 of 2014 which was allowed on 18.8.2014 and the disciplinary authority was directed to consider the matter afresh on merits and take a decision in the light of clause 12 of the Bipartite Settlement. However, the first respondent had once again rejected the request to engage a lawyer, by order dated 12.3.2015. Such order was challenged in W.P.No.8407 of 2015 and the writ petition was allowed on 6.6.2016 and thereafter, the order granting permission to have legal assistance was confirmed by a Division Bench of this court in W.A.No.984 of 2016 by judgment dated 17.8.2016 and the same was confirmed by the Supreme Court by dismissing the S.L.P.(C) No.35443 of 2016 on 23.1.2017.

6. Thereafter, during the enquiry scheduled on 16.9.2017, the petitioner had engaged the services of an Advocate by name R.Thirumoorthy and he also filed memo of appearance before the Enquiry Officer. It is alleged that after the petitioner had availed the legal assistance, the respondent-Bank has permitted the Chief Manager (Law) Thiru.Deivanayagam to attend and assist the Presenting Officer in the enquiry proceedings. By letter dated 21.11.2017, the Advocate engaged by the delinquent sent a letter to the disciplinary authority as well as the enquiry officer objecting the presence of the Chief Manager (Law) Mr.T.Deivanayagam, the Chief Manager (Law) in participating the

enquiry and assisting the Presenting Officer and thereafter, the present writ petition viz., W.P.No.31215 of 2017 has been filed with the following reliefs:-

"Certiorarified mandamus calling for the records relating to the order bearing Ref.No.RM-1/1306 dated 06.11.2017 in appointing the 3rd Respondent to assist the presenting officer and the consequential order bearing Ref.No.RM-1/ 1326A dated 09.11.2017 passed by the 1st Respondent in rejecting the petitioner's request (1) to conduct a denovo enquiry in respect of the charge sheet dated 10.06.2014 (2) to appoint an enquiry officer from outside the region (3) for payment of legal fees to the defence Assistant and to quash the order dated 06.11.2017 & 09.11.2017 as being illegal, arbitrary and contrary to the principles of natural justice and for a consequential Mandamus to the 1st Respondent Bank to conduct the denovo enquiry in respect of the charge sheet dated 10.6.2014."

7. On consideration of the rival contentions advanced by the counsel appearing for the parties and also taking note of the Bi-partite Agreement entered into between the Trade Union and the State Bank, the learned Single Judge, by order dated 30.11.2017, has allowed the writ petition in part to a limited extent of directing the Enquiry Officer to start the enquiry proceedings afresh, while observing that the petitioner can get the assistance of a lawyer in the domestic enquiry.

8. Having aggrieved with the non-consideration of the other two reliefs sought for by the petitioner in the writ petition, the writ petitioner has preferred the present writ appeal.

9. Mr.N.G.R.Prasad, learned counsel appearing for the appellant would contend that the learned Single Judge has failed to consider the other two reliefs sought for by the writ petitioner viz., (a) to appoint an Enquiry Officer from outside the Region and (b) for payment of legal fees to the defence Assistant (legal assistance-lawyer).

10. Per contra, Mr.Ravindaran, learned Senior Counsel appearing for the respondent-Bank would contend that though the petitioner was suspended on 26.4.2014, subsistence allowance has been regularly paid to him and also relying upon the additional counter affidavit filed on behalf of the first respondent-Bank, he would submit that the petitioner has been paid a sum of Rs.29,18,677/- a subsistence allowance from May 2014 to January 2018 and for the month of January 2018, the petitioner has been paid subsistence allowance of Rs.82,374.37 and therefore, his monetary capacity is more than enough to pay the professional charges to the Lawyer engaged by him to assist him in the

enquiry proceedings.

11. After hearing the learned counsel appearing for the parties and taking note of the Bi-partite Agreement entered into between the Trade Union and the respondent Bank, this court has no hesitation to hold that the appointment of the enquiry officer in the Madras Region cannot be said to be in violation of the Bipartite Agreement as far as he is an independent person and Officer available in the Madras Region and therefore, the contention raised by the learned counsel appearing for the respondent that the enquiry officer has to be appointed outside the Region cannot stand to reason and accordingly, we have no hesitation to reject the said contention and the appointment of Mr.Deivasigamani from the Madras Region cannot be found fault with and accordingly, the relief sought for in that regard, in the writ petition and the writ appeal stands rejected.

12. The next contention raised by the learned counsel appearing for the petitioner is with regard to payment of fees to the defence assistant. In this regard, the learned counsel has cited the following decisions:-

- (1) PUSHPA IYENGER v. INDIAN AIRLINES CORPORATION (MADRS) 1988 (1) LLJ 385
- (2) DIRECTOR, BCG VACCINE LABORATORY v. S.PANDIAN ((1997) 11 SCC 346)
- (3) M.PAUL ANTHONY v. BHARAT GOLD MINES LTD ((1999) 3 SCC 679)

13. We have carefully considered the claim of the petitioner with regard to payment of fee to the legal assistance engaged by him in the light of the decisions cited supra. The decisions relied upon by the learned counsel appearing for the appellant relate to the cases of either non-payment of subsistence allowance or payment of professional charges where the employee happens to belong to low income group, whereas in the case on hand, the employee had been paid subsistence allowance from his suspension till January, nearly for four years amounting to Rs.29,18,677/-. Therefore, we are unable to apply the above ratios to the facts and circumstances of the present case and the contention of the learned counsel appearing for the petitioner that the legal expenses have to be borne by the respondent-Bank cannot be countenanced. Therefore, the relief sought for by the petitioner in this regard also stands rejected.

14. In the result, both the contentions raised by the learned counsel appearing for the appellant stand negatived. However, taking note of the fact that the disciplinary proceedings had been initiated wayback in June 2014 and the learned Single Judge has directed to hold de novo enquiry, we are of the considered view that the de novo enquiry, as ordered by the learned Single Judge, shall be conducted and concluded

within a period of three months from the date of receipt of a copy of this judgment. With the above observation, the writ appeal stands disposed of. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS IX)

//True copy//

Sub Assistant Registrar

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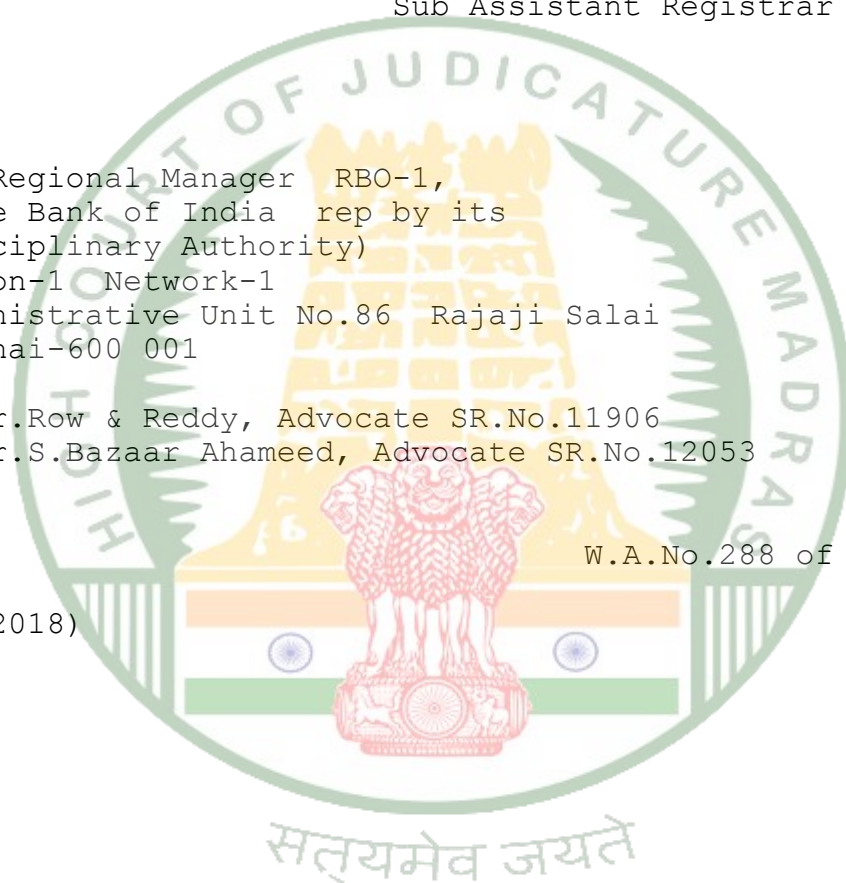
- 1 The Regional Manager RBO-1,
State Bank of India rep by its
(Disciplinary Authority)
Region-1 Network-1
Administrative Unit No.86 Rajaji Salai
Chennai-600 001

+1cc to Mr.Row & Reddy, Advocate SR.No.11906

+1cc to Mr.S.Bazaar Ahameed, Advocate SR.No.12053

W.A.No.288 of 2018

NRJK (CO)
GN (12/03/2018)



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