

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.Nos.18165 to 18167 of 2018 &  
WMP.Nos.21460 to 21465 of 2018

K.Suganthi

....Petitioner in  
WP.No.18165 of 2018

S.Pasupathi

....Petitioner in  
WP.No.18166 of 2018

S.Shanmuga Priya

....Petitioner in  
WP.No.18167 of 2018

Versus

1.Indian Overseas Bank,  
rep. by its Senior Manager,  
Disciplinary Authority,  
Central Office-Post Box No.3765,  
Industrial Relations Department,  
763, Anna Salai,  
Chennai-600 002.

2.Indian Overseas Bank,  
rep. by Chief Manager,  
Regional Officer,  
Personal Administration Department,  
Ideal Garden Complex,  
II Floor, 5 Roads,  
Salem-636 004.

सत्यमेव जयते..

Respondents 1 & 2 in  
all Wps.

3.The Branch Manager,  
Indian Overseas Bank,  
Narasingapuram Branch,  
Salem District.

.. 3<sup>rd</sup> Respondent in WP.No.18165 of  
2018

4.The Branch Manager,  
Indian Overseas Bank,  
Kadaiyampatty Branch,  
Salem District.

....3<sup>rd</sup> Respondent in  
WP.No.18166 of 2018

5.The Branch Manager,  
Indian Overseas Bank,  
Seelanaickenpatti Branch,  
Salem District.

....3<sup>rd</sup> Respondent in  
WP.No.18167 of 2018

Prayer: Writ Petitions filed under Article 226 of the  
Constitution of India, seeking for issuance of

(i)a writ of certiorari to call for the records in respect  
of order in DO.DA/SM(GS)IR/213/Vig/1239/2018-19 dated  
20.06.2018 passed by the first respondent and quash the same in  
respect of suspension order suspending the petitioner from  
service.

(ii)a writ of certiorari to call for the records in respect  
of order in DO.DA/CM(SK)IR/213/Vig/1193/2018-19 dated  
20.06.2018 passed by the first respondent and quash the same in  
respect of suspension order suspending the petitioner from  
service.

(iii)a writ of certiorari to call for the records in  
respect of order in DO.DA/CM(PGS)IR/213/Vig/1147/2018-19 dated  
19.06.2018 passed by the first respondent and quash the same in  
respect of suspension order suspending the petitioner from  
service.

For Petitioner(in all Wps): Mr.R.Singaravelan, Senior  
Counsel for Ms.S.Sujatha

For Respondents(in all Wps): Mr.N.G.R.Prasad,  
Senior Counsel

ORDER

In all these three writ petitions, similar question of law  
and facts being involved all are taken up together.

2. Mr.Srinivasan represents Mr.N.G.R.Prasad who appears for  
the respondent Bank, accepts notice on all the writ petitions on  
behalf of the respondents and on consent of the counsel  
appearing for the parties all these writ petitions are taken up  
for disposal at the stage of admission in the absence of reply  
affidavit.

3. As it appears the petitioners in these writ petitions  
joined in different branches / offices of the respondent bank as  
Messengers / Sweepers / Office Attendants etc. pursuant to the  
absorption policy adopted by the respondent Bank to absorb  
temporary Messengers / Sweepers working for more than 240 days  
in a calendar year for not less than three years in different

branches / offices of the bank. The said policy decision was the outcome of a settlement under Section 12 (3) of the Industrial Disputes Act. In the said policy / agreement the details of the terms of absorption has been provided which includes the eligibility criterias for such permanent absorption. It was also stipulated therein the settlement that persons benefited by the aforesaid policy of absorption, if subsequently found to have no requisite eligibility their services are liable for termination without prior notice. After absorption of the petitioners, as it stated to have come to the knowledge of the bank that they were not having the requisite eligibility that is working in the respondent bank for requisite period and with managed certification of required employment for the required period in connivance with head of the office / branches of the bank to make them eligible for absorption, got absorbed, their services were terminated. Challenging the same they had approached this Court in different writ petitions which were allowed and the impugned orders were set aside inasmuch as the termination order being stigmatic, could not have been passed without adhering to the principle of Audi Alteram Partem, a salutary principle of natural justice / conducting appropriate domestic enquiry, the respondents as such were directed to reinstate the petitioner but without backwages. The aforesaid order of this court was complied with by the reinstatement of the petitioners. However, soon after reinstatement they have been put under suspension by common order of suspension and charge memo issued to each of them alleging that they misconducted themselves by obtaining employment pursuant to settlement 12(3) of the Industrial Disputes Act by submitting managed required work experience certification. The petitioner came to challenge the same in the writ petitions to be illegal and arbitrary inasmuch as when this Court had earlier set aside the termination order made on the said ground, thereafter charge sheet cum suspension order could not have been issued to them. Hence the same is liable to be quashed.

4. The learned counsel appearing for the petitioners submits that when this Court had earlier set aside the orders of termination passed as the same were contrary to law and directed reinstatement of the petitioners into service, soon after their reinstatement pursuant to such direction, they could not have been issued with the impugned orders inasmuch as the same were nothing but to overreach the orders passed by this Court for their reinstatement. Furthermore, when the respondents have earlier held that the petitioners have managed to get the works certificate to get themselves absorbed permanently and got absorbed and consequently terminated their service, which this Court set aside to be illegal, the subsequent charge memo issued asking them to furnish their explanation to proceed and also after conducting disciplinary proceeding, if any, is nothing but

an empty formality to overreach the orders of termination, set aside on the grounds stated. The learned counsel for the petitioners therefore submits that the respondents be asked to file their reply affidavit and after getting their reply affidavit this Court may quash the same but pending disposal of the writ petition, operation of the impugned orders be stayed.

5. The learned counsel for the respondent bank who has accepted notice on behalf of the respondents, submits that such contention of the petitioners in this writ petition is fallacious inasmuch this Court while disposing of the writ petitions filed earlier set aside the order of termination on the ground stated therein that is the order of termination being stigmatic one the same could not have been passed without giving appropriate opportunity of hearing to the petitioners / domestic enquiry but had not fettered the respondent to proceed in accordance with law. As this Court while setting aside the said order had put no fetter on the bank to proceed against the petitioners on the said charges adhering to the principles of natural justice / by conducting a disciplinary proceeding / domestic enquiry, the bank thereafter reinstated the petitioner and finding prima facie the allegation of getting absorbed by spurious certificate of eligibility to put them under suspension and decided to proceed against them on the aforesaid charges and as such the impugned orders were issued, the same hence, in no manner can be said to have been passed to overreach the order passed by this Court. The respondent employer having every right to put under suspension pending enquiry on a charge memo and also in a contemplated domestic enquiry against a delinquent employee, the writ petitions filed therefore challenging the same are devoid of merits and liable to be dismissed at the stage of admission, more so when there is no material to indicate that on the charge memo decision shall be taken without adhering to the proper procedure for enquiry and also the principles of natural justice. The learned counsel appearing for the respondents further submits that on proper enquiry as contemplated under the regulations of the bank and giving chance of hearing, the decision shall be taken in this regard.

6. It is not in dispute that the petitioners got permanently absorbed in the bank as Sweepers, Messengers, Office Assistants, etc. pursuant to a settlement arrived under Section 12 (3) of the Industrial Disputes Act to absorb daily rated workers who were working in different branches / offices to manage the work of the bank which are perennial in nature subject to fulfilment the terms and conditions therein, one such condition was that they must have continuously worked for 240 days in a year in such capacity for the last three consecutive years and also some other terms and conditions. The petitioners accordingly were absorbed but according to the respondents when it came to the

knowledge of the respondents that such absorbed staff had not worked in the offices / branches of the bank for the requisite period or had not worked at all, however after such settlement managed such previous employment for the required period as prescribed in the settlement and got absorbed in the bank, matter was officially enquired into and when it came to the knowledge of the bank that some of the officials in connivance with such ineligible absorbed employees issued employment for the requisite period, though in fact they had not worked in different offices / branches of the bank then the bank terminated their service alleging the same. The aforesaid order of the bank which was taken unilaterally without giving chance to the absorbed employee terminated on the said allegations were challenged in different writ petitions, this Court as such held such unilateral act of the bank to be unsustainable being contrary to law inasmuch as the same was in violation of the principle of Audi Alteram Partem, that is no one should be condemned without being heard, a salutary principle of natural justice or conducting a domestic enquiry / disciplinary proceeding as provided in the rules and regulations of the bank giving chance of hearing to the petitioner to defend such charges. The same was passed as the impugned orders were stigmatic one not a termination simplicitor. However, this Court had put no fetter on the bank not to proceed against the persons on the said charges, but had given liberty to the bank to proceed against them on such allegations adhering to the principles of natural justice and by conducting domestic enquiry / disciplinary proceeding. Thereafter, it appears that the bank reinstated them but issued charge memo asking their response in the allegations and also put them under suspension to proceed against such charges. According to the learned counsel for the bank thereafter necessary enquiry to be conducted giving chance to the petitioner to defend them on the said charges and depending on the result of the enquiry appropriate action shall be taken by the disciplinary authority. Furthermore, pending disposal of such enquiry into the said charges, the bank having prerogative to put the employees under suspension being the employer and the same being permissible under the relevant regulations, in such premises, this Court is of the view that challenging to the aforesaid orders impugned are without any substance and as such this Court is not inclined to seek reply affidavit before disposal of the same inasmuch as challenge to the same at this stage is devoid of merits. However, so far as the apprehension of the petitioner is concerned that the departmental enquiry, if any shall be an empty formality inasmuch as the authority once having terminated, the enquiry officer and the disciplinary authority shall have a binding tie on the same and the aforesaid charge memo issued as such being nothing but a post decisional hearing, has no sanction of law. Therefore, submits on the said ground the impugned order needs

to be interfered with.

7. But I am unable to accept such contention to interfere with the impugned orders as no material is placed before this Court to substantiate that the disciplinary authority shall not proceed with the material on record that is likely to come out during the course of enquiry but on the foundation of earlier decision of removal on such allegation which was a unilateral decision of the bank concerned / of the disciplinary authority, which was set aside by this Court on the grounds stated. However, to dispel the apprehension of the writ petitioner that the disciplinary authority shall have a binding tie with the earlier decision while considering the explanation and the materials that may come out during course of enquiry to be conducted without appreciating the same in the proper prospective, it is observed that the disciplinary authority while proceeding on the basis of the aforesaid charge memo, shall conduct it in the manner as contemplated under the regulations, so also give a proper reasonable opportunity of hearing to the petitioner to repel such allegation against them to be groundless and only on an objective assessment of the material on record, in other words, only on the foundation of such materials available shall take a decision without being influenced by the earlier order of termination in any manner but in accordance with the law, as the disciplinary authority concerned may deem it fit and proper.

8. Further, it goes without saying that the petitioners shall also be given appropriate reasonable opportunity of hearing to meet the aforesaid allegations including adducing evidence to repel such allegation made against them to be without any substance. So also, it is observed that if the petitioners have not filed their show cause in the meanwhile pursuant to the impugned orders, they shall be given opportunity to file their explanation within a period of 10 days from the date of receipt of a copy of this Order.

9. With the aforesaid order, this writ petitions stand disposed of at this stage of admission.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dn

To

1.The Senior Manager,  
Indian Overseas Bank,  
Disciplinary Authority,  
Central Office-Post Box No.3765,  
Industrial Relations Department,  
763, Anna Salai,  
Chennai-600 002.

2.The Chief Manager,  
Indian Overseas Bank,  
Regional Officer,  
Personal Administration Department,  
Ideal Garden Complex,  
II Floor, 5 Roads,  
Salem-636 004.

3.The Branch Manager,  
Indian Overseas Bank,  
Narasingapuram Branch,  
Salem District.

4.The Branch Manager,  
Indian Overseas Bank,  
Kadaiyampatty Branch,  
Salem District.

5.The Branch Manager,  
Indian Overseas Bank,  
Seelanaickenpatti Branch,  
Salem District.

+6cc to Ms.S.Sujatha, Advocate, S.R.No.47711 to 47713  
+1cc to Mr.K.Srinivasa Moorthy, Advocate, S.R.No.48167

सत्यमेव जयते

W.P.Nos.18165 to 18167 of 2018

KGK(Co)  
CS/05/09/18

WEB COPY