

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2018

CORAM

THE HON'BLE MR.JUSTICE SATRUGHANA PUJAHARI

WRIT PETITION NOS.19427 TO 19432 OF 2018

AND

W.M.P.NOS.22858 TO 22869 OF 2018

P. VIMALA ... PETITIONER in WP No.19427 of 2018
M.SHANKAR ... PETITIONER in WP No.19428 of 2018
V.SIVASANKAR ... PETITIONER in WP No.19429 of 2018
N.SAMRAJ ... PETITIONER in WP No.19430 of 2018
K.SHANKAR ... PETITIONER in WP No.19431 of 2018
E.SENTHIL ... PETITIONER in WP No.19432 of 2018

Vs.

1. Indian Overseas Bank,
rep. by its Chief Manager/Disciplinary Authority,
Central Office-Post Box No.3765,
763, Anna Salai,
Chennai-600 002.
2. Indian Overseas Bank,
rep. by its General Manager,
Central Office-Post Box No.3765,
763, Anna Salai,
Chennai-600 002.
3. Indian Overseas Bank,
rep. by Chief Manager,
Regional Office
Ideal Garden Complex,
II Floor, 5 Roads,
Salem-636 004.

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4. Indian Overseas Bank,
rep. by its Chief Manager,
HRMD -Sub Section,
Central Office-Post Box No.3765,
763, Anna Salai,
Chennai-600 002.

5. Indian Overseas Bank,
rep. by its Branch Manager,
Salem Main Branch,
Salem Region, Salem District.

6. Indian Overseas Bank,
rep. by its Branch Manager,
Oddapatti Branch,
Salem Region, Salem.

... Respondents in all the Wps.

Prayer in W.P.No. 19427 of 2018 :

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of (i)a writ of certiorari to call for the records in respect of order in DO.DA/CM(SK) IR/213/Vig/1188/2018-19 dated 20.06.2018 passed by the first respondent and quash the same in respect of suspension order suspending the petitioner from service.

WP No.19428 of 2018

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of (i)a writ of certiorari to call for the records in respect of order in Do:DA/ CM(PGS)/ IR/ 213/ Vigilance/ 1208/ 2018-19 dated 20.6.2018 passed by the 1st respondent and quash the same in respect of suspension order suspending the petitioner from service.

WP No.19429 of 2018

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of (i)a writ of certiorari to call for the records in respect of order in Do:DA/ CM(SK)/ IR/ 213/ Vigilance/ 1172/ 2018-19 dated 19.6.2018 passed by the 1st respondent and quash the same in respect of suspension order suspending the petitioner from service.

WP No.19430 of 2018

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of (i)a writ of certiorari to call for the records in respect of order in Do:DA/ CM(PGS)/ IR/ 213/

Vigilance/ 1203/ 2018-19 dated 20.6.2018 passed by the 1st respondent and quash the same in respect of suspension order suspending the petitioner from service.

WP No.19431 of 2018

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of (i)a writ of certiorari to call for the records in respect of order in Do:DA/ SM(GS)/ IR/ 213/ Vigilance/ 1249/ 2018-19 dated 20.6.2018 passed by the 1st respondent and quash the same in respect of suspension order suspending the petitioner from service.

WP No.19432 of 2018

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of (i)a writ of certiorari to call for the records in respect of order in Do:DA/ CM(PGS)/ IR/ 213/ Vigilance/ 1127/ 2018-19 dated 19.6.2018 passed by the 1st respondent and quash the same in respect of suspension order suspending the petitioner from service.

For Petitioner in all Wps : Mr.K.Raju

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

COMMON ORDER

Heard Mr.K.Raju, the learned counsel appearing for the petitioners and Mr.N.G.R.Prasad, the learned Senior Counsel, who accepts notice on behalf of the respondents. Since in all these six writ petitions, similar question of law and facts being involved, on consent of the learned counsel appearing for the parties, they are taken up together for disposal at the stage of admission in the absence of reply affidavit.

2. At the very outset, the learned counsel appearing for the petitioners submit that in respect of very same relief, similarly situated persons approached this Court by way of filing W.P.Nos.18165 to 18167 2016, and this Court, vide order dated 18.07.2018, disposed of the Writ Petitions issuing certain observations/directions. He, therefore, prays that similar direction may be issued in the present Writ Petitions as well.

3. The learned Senior Counsel for the respondents has no objection in following the earlier order passed by this Court in W.P.Nos.18165 to 18167 2016, dated 18.07.2018 (referred supra).

4. Considering the submissions made by the learned counsel

for the parties and in view of the earlier order passed by this Court in W.P.Nos.18165 to 18167 2016, dated 18.07.2018, in respect of very same issue, this Court is inclined to dispose of the present Writ Petitions also on the same following lines :

" 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 employees, were terminated and 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 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 petitioners 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 petitioners 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 petitioners 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 petitioners 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 petitioners 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."

5. Accordingly, these writ petitions stand disposed of at the stage of admission. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

30.07.2018
sd

FOR BEING MENTIONED

This Petition having been posted 04/09/2018 for being mentioned in pursuance to the order of this court dated 30/07/2018 and made herein in the presence of Mr.K.Raju, Advocate for the Petitioner and Mr.N.G.R. Prasad, the learned Senior Counsel for the Respondent, the court made the following order:

These matters have been posted today under the caption "'For Being Mentioned'".

2. The learned counsel for the respondent Bank submits that though this Court has taken a lenient view of the matter, directing the petitioner to file their show cause in the disciplinary proceeding if not filed, within 10 days of receipt of the order and also given some observation for disposal of the disciplinary proceeding, but the petitioner without filing the show cause, even if the order was made ready, have not co-operated with the disciplinary proceeding and saying that since they have not received the order, and it is only after receipt of the order after ten days, they shall file the show cause and as such, if the disciplinary proceeding proceeded without their show cause, they will invoke contempt jurisdiction. On his submission, the matter is brought for being mentioned.

3. The counsel appearing for the petitioner however, submits that they have not received the copy of the order and as such not filed the same. But does not dispute that the order is ready and the copy of the order is also available.

4. The counsel for the respondent Bank is also in receipt of the copy of the Order. The petitioner without obtaining the copy of the order, not filing the show cause and lingering the disciplinary proceeding, this court is of the view that they have lost right to file the show cause, given in the order. In such premises, their such rights need to be foreclosed.

5. However, the learned counsel for the petitioner submits that they will advise their client to file show cause within three days and without making further delay. In such premises, this Court should not foreclose their right of filing the show cause as given to them in the order passed.

6. In view of the such submission of the learned counsel for the petitioner, it is clarified that if the show cause is not filed in the disciplinary proceeding within three days hence, the enquiry officer/disciplinary proceeding shall proceed against them in the absence of their show cause. The aforesaid clarification given in the order passed with regard to final order passed in this case.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

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rep. by its Chief Manager/Disciplinary Authority,
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Salem Region, Salem District.
6. Indian Overseas Bank,
rep. by its Branch Manager,
Oddapatti Branch,
Salem Region, Salem.

+1cc to Mr.N.G.R.Prasad, Advocate sr.no.61346

+6cc to Mr.K.Raju, Advocate sr.nos.51292 to 51297(12/10/2018)

Writ Petition Nos.19427
to 19432 of 2018

nr 11/09/2018

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