

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.07.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.36170 of 2016 and
W.M.P.No.31128 of 2016

Dr.T.E.Thiruvengadam

...Petitioner

Versus

1. The Principal Secretary to Government,
Ex-Officio Chairman /
Appellate Authority Repatriates Cooperative
Finance and Development Bank,
Public and Rehabilitation Department,
Government of Tamil Nadu,
Fort St.George, Secretariat,
Chennai - 600 009
2. Managing Director-Incharge/
Disciplinary Authority,
Repatriates Cooperative Finance and
Development Bank, Head Office,
33, North Usman Road,
T.Nagar, Chennai-600017
3. General Manager / Inquiry Authority,
Repatriates Cooperative Finance and
Development Bank, Head Office,
33, North Usman Road,
T.Nagar, Chennai-600017

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for the entire records relating to the disciplinary proceedings of the 2nd respondent and her letter Ref.No.1/Emp.No.76/2016/Admn./DA1 dated 06.10.2016 enclosing a disciplinary report of the 3rd respondent dated 6.10.2016 and quash the same consequently direct the first respondent to appoint an independent and unbiased disciplinary authority to conduct the disciplinary proceedings and enquiry.

For Petitioner : M/s.M.Manivasagam Associates
For RR 1 & 2 : Mr.A.Ilangovan
For R3 : Mr.G.Rajagopalan

ORDER

The grievance of the petitioner in this writ petition is that conduction of disciplinary proceeding by the Officer / disciplinary authority who was once junior to the petitioner is illegal on the ground she was biased and as such the disciplinary authority be changed. However, while the writ petition was pending, the disciplinary proceeding was continued, enquiry was concluded and penalty was imposed. The petitioner thereafter came to challenge the same in a statutory appeal provided against the said order pending disposal of this writ petition wherein penalty imposed was modified and thereafter the petitioner challenged the said orders in the disciplinary proceeding before the Board in a review petition under clause 18 of Repco bank Officers' (Discipline and Appeal) Regulations 2003. The said review petition is pending and yet to be disposed of. Under the above circumstances, today the writ petition came to this Court for hearing.

2. During the course of hearing, the learned counsel for the petitioner strenuously argued that notwithstanding the fact that the disciplinary proceeding has been concluded but very disciplinary proceeding being actuated with bias and the prayer is for appointing an unbiased disciplinary authority as such the penalty imposed against him is liable to be quashed.

3. Counsel for the respondents have opposed such prayer made and submissions on the ground that the writ petition has become infructuous.

4. As it appears, in the writ petition no such prayer was made to quash the penalty imposed on the said ground and prayer was made to change the disciplinary Authority on the ground of bias but in the meanwhile the disciplinary proceeding has been concluded and penalty has been imposed, so also statutory appeal before the first respondent having been dismissed, a review petition is filed and still pending before Board. Hence this Court is of the view that such a prayer of change of the disciplinary authority in this writ petition at this stage cannot be entertained nor the prayer to quash the penalty imposed on the ground bias can be entertained in this writ petition when the same was not prayed for and more so when the review petition is pending before the Board challenging the finding and penalty imposed in the departmental proceeding.

5. In the aforesaid facts and situations and regard being had to the submissions, this Court disposes of this writ petition with the direction to the Board to pass an order on the review of the petitioner filed on 11.01.2018 challenging the order passed dismissing the appeal of the petitioner filed

against the order of the disciplinary Authority within a period of four weeks from the date of receipt of a copy of this Order, addressing the contention of the petitioner that since the disciplinary authority was biased against him as such the proceeding of the enquiry officer appointed by him was bad, consequently the acceptance of the same by such disciplinary authority and penalty imposed, by a speaking order.

6. It is made clear that while addressing review petition, the Board shall not be influenced in any manner by the reluctance of this Court to entertain this writ petition inasmuch as this Court has not addressed the writ petition on merit of the prayer made to quash the penalty imposed on the stated ground because the writ petition filed during the continuance of the disciplinary proceeding such a prayer was not made. However, such a plea of bias on the part of the disciplinary authority against him is always available to be raised subsequent to the final order passed in the disciplinary proceeding, including in the stage of review, therefore the Board while considering such review shall take into consideration of the same in proper perspective while disposing review within the period stipulated. Subsequent to the disposal of the review also, if the facts and situations so warrant, the petitioner may approach the proper forum against order passed in the review, if so advised and reluctance of this Court to entertain such prayer at this stage in this writ petition shall not be a fetter on him in any manner. Consequently, connected miscellaneous petition is closed. However, in the circumstances there shall be no order as to costs.

Sd/-

Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

lok

To

1. The Principal Secretary to Government,
Ex-Officio Chairman /
Appellate Authority Repatriates Cooperative
Finance and Development Bank,
Public and Rehabilitation Department,
Government of Tamil Nadu,
Fort St. George, Secretariat,
Chennai - 600 009

2. Managing Director-Incharge/
Disciplinary Authority,
Repatriates Cooperative Finance and
Development Bank, Head Office,
33, North Usman Road,
T.Nagar, Chennai-600017

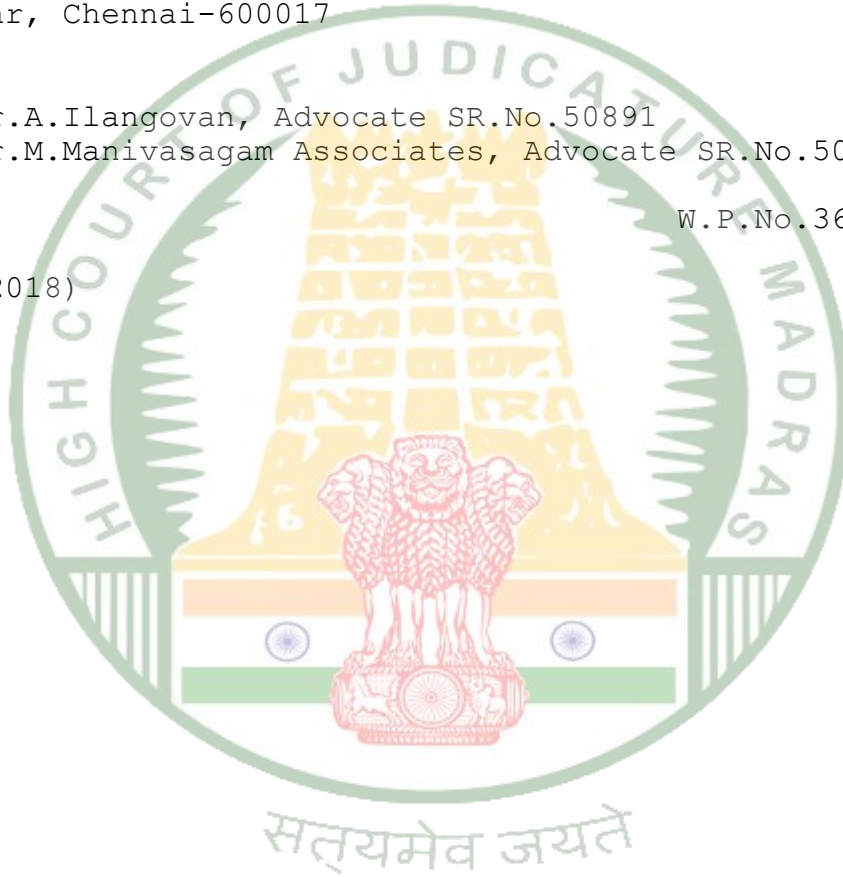
3. General Manager / Inquiry Authority,
Repatriates Cooperative Finance and
Development Bank, Head Office,
33, North Usman Road,
T.Nagar, Chennai-600017

+1cc to Mr.A.Ilangovan, Advocate SR.No.50891

+1cc to Mr.M.Manivasagam Associates, Advocate SR.No.50764

W.P.No.36170 of 2016

GN(23/08/2018)



WEB COPY