



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 27.03.2018
DELIVERED ON : 04.06.2018
CORAM

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.21275 of 2014 and
M.P. (MD) No.2 of 2014 and
M.P. (MD) No.1 of 2015

M.Raja

... Petitioner

Vs.

1. State Bank of India,
Represented by,
The Regional Manager, Region IV,
(Disciplinary Authority),
Disciplinary Proceedings Section,
Administrative Office,
Mc Donald Road,
Tiruchirappalli - 610 001.
2. The Enquiry Officer,
Chief Manager,
State Bank of India,
RASMECCC,
Office of the State Bank of India,
Tiruchirappalli - 1.
3. A.Karunakaran,
Enquiry Officer &
Chief Manager,
State Bank of India,
RASMECCC,
Office of the State Bank of India,
Trichy -1.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings issued by the first respondent dated 17.11.2014 vide No.RM-IV-12-1818/75 along with Enquiry report in respect of Charge Sheet No.DIS/CON/310, dated 20.11.2003, DIS/CON/350, dated 17.12.2003 issued by the erstwhile Enquiry Officer, namely, M.Srinivasan, and in respect of Charge Sheet No.DIS/CON/368, dated 15.12.2004, issued by the second respondent and the proceedings of the first respondent, dated 13.12.2014 vide No.RM-IV-1958-82 and the "order of dismissal without notice" passed by the first respondent in his proceedings No.RM-IV-2006/84, dated 19.12.2014 and quash the same and consequently direct the first respondent to reinstate the petitioner into service with all



attendant benefits including the continuity of service, arrears of salary and allowances to the petitioner.

For Petitioner : Mr.V.P.Raman,
for Mr.P.Mahendran
For R-1 : Mr.Om Prakash,
Senior Counsel,
for Mr.Pala Ramasamy

For R-2 & R-3 : Mr.Sethuraman

O R D E R

The petitioner herein was employed as Assistant(Accounts) in Kulithalai Branch of the State Bank of India. He was placed under suspension on 03.03.2002. He was issued with a Charge Memo dated 20.11.2003. It contained as many as 17 Articles of charge. The petitioner submitted his explanation, dated 07.02.2004. The Management issued yet another Charge Memo, dated 15.12.2004. To which also, the petitioner submitted his explanation. The petitioner had originally obtained permission to be represented by one Thiru.M.Rajarathinam, in the enquiry as his Defence Representative. The first respondent/disciplinary authority passed an order stating that the said Rajarathinam should no longer continue as Defence Assistant. Therefore, the petitioner filed W.P.(MD)No.7999 of 2005. The same was allowed on 16.07.2007. The Management filed W.A.(MD) No.662 of 2007, but the same was dismissed on 05.12.2007. Thereafter, Review Application No.78 of 2010 was filed and the same got allowed on 13.03.2013. Questioning the same, the petitioner filed S.L.P., before the Hon'ble Supreme Court, but the same was dismissed on 25.11.2013.

2. In the meanwhile, based on the complaint given by one Thiru.S.Padmanabhan, Branch Manager of Vangal Branch, a criminal case in Crime No.5 of 2003, dated 06.06.2003 was registered by the District Crime Branch, Karur, for the offences under Sections 409, 464 r/w 466 and 471 r/w 468 of I.P.C. The petitioner figured as the third accused. Final report was filed and the same has been taken on file by the learned Judicial Magistrate No.II, Karur. The prosecution is presently pending in C.C.No.494 to 496 of 2006.

3. Following the dismissal of the S.L.P. filed by the petitioner, the Management proceeded against the petitioner. The petitioner engaged one Thiru.S.Gunasekhar, as his Defence Representative. Since the criminal case as well as the departmental enquiry were proceeding on the same set of facts, the petitioner gave a representation dated 31.12.2013 to the enquiry officer requesting him to defer the disciplinary proceedings till the conclusion of the prosecution. Since the said request was not considered, the petitioner filed W.P.(MD)No.679 of 2014 for deferring the departmental action. This Court disposed of the said writ petition, with a direction to the Management to pass orders on the petitioner's representation, dated 31.12.2013. Actually in the



meanwhile, the first respondent had already rejected the petitioner's representation by passing an order dated 17.01.2014. The Management took the stand that since the criminal cases are not showing any progress, they will have to expeditiously conclude the departmental enquiry.

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4. One Thiru.M.Srinivasan was appointed as enquiry officer and he informed the petitioner that he should be present for enquiry on 04.02.2014. According to the petitioner, he fell ill and could not attend the enquiry. The petitioner wanted an adjournment of the proceedings. But the enquiry officer went ahead and submitted an ex-parte enquiry report. The petitioner questioned the said enquiry report dated 04.03.2014 and consequential proceedings dated 05.03.2014 issued by the first respondent. In the said proceedings, the first respondent had called upon the petitioner to make submissions in respect of the said enquiry report. The petitioner also simultaneously questioned the order dated 17.01.2014. Thereby, the disciplinary authority took the stand that departmental action will not be put on hold till the conclusion of the criminal case. By order dated 23.07.2014, this Court allowed W.P.(MD)No.5224 of 2014 and dismissed W.P.(MD)No.6080 of 2014. The matter was remitted to the enquiry officer with a direction to continue the enquiry from the stage where it stood on 04.02.2014. Certain other directions with regard to conduct of the enquiry were also given. Thereafter, the enquiry proceedings commenced afresh. In the meanwhile, the earlier enquiry officer Thiru.M.Srinivasan had retired from service.

5. A new enquiry officer, Thiru.A.Karunakaran had assumed charge. The petitioner informed the enquiry officer that his Defence Representative Thiru.Gunasekar is suffering from ill health and that therefore he was not in a position to get along with the enquiry, on 16.08.2014, 22.08.2014 and 25.08.2014. The enquiry officer submitted report, dated 10.11.2014. The first respondent called upon the petitioner to offer his explanation. The petitioner submitted his detailed explanation by a Letter dated 01.12.2014. He highlighted the gross errors in the enquiry report. He wanted the disciplinary authority to reopen the enquiry and to ensure its conduct as per the directions given by the High Court in W.P.(MD)No.5224 of 2014. But the first respondent by proceedings dated 13.12.2014, proposed the punishment of dismissal from service. Forfeiture of the entire Gratuity payable under the Gratuity Act was also proposed. The petitioner was directed to appear on 18.12.2014, for personal hearing regarding the proposed punishment. Questioning the same, the petitioner filed the present Writ petition.

6. During the pendency of the proceedings, the first respondent passed final order dated 19.12.2014, dismissing the petitioner from service. In fact an interim order was granted in favour of the petitioner on 23.12.2014. The petitioner therefore amended the prayer by questioning the order dated 19.12.2014, dismissing him from service. This Court allowed the amendment application on 15.02.2018. On the side of the Management, a



detailed counter affidavit has been filed. The petitioner filed a Rejoinder. Typed set of papers were also filed on behalf of both sides.

7. Heard the learned counsel appearing for the petitioner and the learned Senior counsel appearing for the Bank/Management and the learned counsel appearing for respondents 2 and 3.

8. The learned Senior counsel appearing for the Management argued at great length and wanted this Court to sustain the impugned order of dismissal.

9. This Court is of the view that the Writ petition can be allowed on a short ground. It is not in doubt that the petitioner was set ex-parte by Thiru.M.Srinivasan, the then enquiry officer and an adverse report was submitted. This necessitated the petitioner to file W.P.(MD)No.5224 of 2014. It is necessary to extract the prayer made by the petitioner herein in the said Writ petition.

"For the reasons stated in the accompanying affidavit, it is humbly prayed that this Hon'ble Court may be pleased to issue a Writ, Order or direction, more particularly in the nature of Writ of Certiorarified Mandamus calling for the records from the second respondent with regard to the enquiry report dated 04.03.2014 in respect of the Charge Sheet Nos.DIS/CON/310, dated 20.11.2013, DIS/CON/350, dated 17.12.2003 and DIS/CON/368, dated 15.12.2004 and also proceedings of the first respondent dated 05.03.2014 in RM/4/12/1940/106 and quash the same and consequently directing the respondents to conduct a fresh enquiry after affording sufficient opportunity to the petitioner in the enquiry and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice."

10. An elaborate counter affidavit was filed in the said Writ petition. This Writ petition was taken up along with another Writ petition filed by the petitioner and a common order dated 23.07.2014 was passed. This Court in paragraph No.23 framed the issue as under:-

"23. The second issue relates to the legality and correctness of the enquiry report submitted by the second respondent, after conducting the enquiry exparte."



11. W.P.(MD)No.5224 of 2014 filed by the petitioner was allowed in the following terms:-

"29. Since the petitioner participated in the enquiry initially and his subsequent absence was on account of several reasons, the enquiry officer should have given a final opportunity. This is all the more necessary, in view of the long list of allegations levelled against the petitioner. The enquiry officer is expected to act impartially and his attempt is to unearth the truth. Since the enquiry officer failed to give reasonable opportunity to the petitioner during the final stage of enquiry, I am inclined to set aside the enquiry report.

30. The enquiry report dated 04.03.2014 and the consequential show cause notice dated 05.03.2014 issued by the first respondent are set aside and the matter is remitted to the enquiry officer. The enquiry officer is directed to continue the enquiry from the stage at which it stood on 04.02.2014. The petitioner should be given two weeks' time from the date of next posting to appear for the enquiry along with his defence representative. In case the petitioner fails to avail the said opportunity, without any reasonable cause, it is open to the enquiry officer to proceed further, after setting him exparte."

12. The matter was remitted to the file of the enquiry officer. As already pointed out, in the meanwhile, the said Thiru.M.Srinivasan had retired and Thiru.A.Karunakaran had been appointed as the new enquiry officer. It is not necessary to go into how the matter was dealt with after such remand. The disciplinary authority vide Communication dated 17.11.2014 called upon the petitioner to offer his submissions to the enquiry reports. Strangely, the disciplinary authority wanted the petitioner to respond to the enquiry report dated 04.03.2014 submitted by Thiru.M.Srinivasan. For the sake of easy understanding, the relevant text in the said Communication dated 17.11.2014 deserves to be extracted verbatim:-

" With reference to above, enclosed please find the Enquiry Officer's report dated 10.11.2014 containing 9 pages in respect of the charge sheet no.DIS/CON/368 dated 15.12.2004, submitted by Shri.A.Karunakaran, Enquiry Officer, Chief Manager, RASMECCC, Tiruchirapalli, from the proceedings of 04.02.2014 of earlier enquiry,



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as per the directions of Madurai Bench of Madras High Court order dated 23.07.2014. We also forward the previous enquiry officer's report dated 04.03.2014, containing 31 pages in respect of the charge sheet Nos.DIS/CON/310 dated 21.11.2003 and DIS/CON/350 dated 17.12.2003, submitted by then Enquiry Officer Shri.M.Srinivasan, Chief Manager (Retired on Superannuation). If you desire to make any submission, you may do so within 07 days from the date of receipt of this letter."

13. The petitioner submitted his explanation dated 01.12.2014, pointing out the grave fallacies in the Communication dated 16.10.2014 issued by the disciplinary Authority/the first respondent. The petitioner wanted the first respondent to reopen the enquiry. A mere look on the same would show that the enquiry report dated 04.03.2014, submitted by Thiru.M.Srinivasan was relied upon for passing the final order. As already pointed out, the report dated 04.03.2014 was set aside by this Court in W.P.(MD) No.5224 of 2014 on 23.07.2014. In other words, a report that was quashed by this Court was relied upon by the disciplinary authority to dismiss the Writ petitioner from service. On this sole ground, the entire proceedings will have to be quashed and the Writ petition will be allowed. Normally, when an order of this nature is passed, the usual course is to quash the proceedings and remit the matter to the file of the disciplinary authority to pass orders afresh in accordance with law. But this Court is of the view that considering the factual matrix obtaining in this case, interest of justice would be better served by giving a quietus here itself. This is for more reasons than one.

14. The cause of action arose in the year 2002. The Charge Memos itself were issued on 20.11.2003 and on 15.12.2004. A decade and a half had elapsed since the initiation of disciplinary action. This Court had set aside the enquiry report on 23.07.2014. A report that was set aside by this Court had been relied upon by the disciplinary authority to pass the order of dismissal. This indicates pre-determination on the part of the first respondent. This Court is of the view that if the matter is remitted to the file of the respondents, once again an order on the very same lines would be passed.

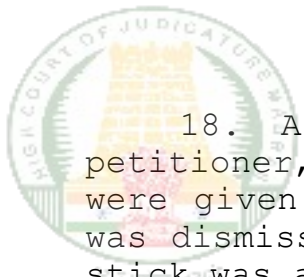
15. As already pointed out, this Court while allowing W.P.(MD)No.5224 of 2014 gave a direction that the enquiry officer must continue the enquiry from the stage at which it stood on 04.02.2014. The report of Thiru.M.Srinivasan was in respect of both the Charge Memos dated 20.11.2003 and 15.12.2004. In fact he submitted two reports, both the reports have been enclosed at page Nos.28 and 60 of the Writ petitioner's typed set. The show cause notice dated 05.03.2014, issued by the disciplinary authority

pertained to both the Charge Memos. In fact in the subject portion, it is clearly mentioned as "enquiry reports dated 04.03.2014". The expression, "reports" is significant. As already pointed out, both the reports were set aside. But Thiru.A.Karunakaran, enquiry officer was under the impression that there was no need to hold the second enquiry in respect of the first Charge Memo. Therefore, his report states that it is confined only to the second Charge Memo dated 15.12.2014. This is a complete violation of the order passed by this Court. When this Court gave a direction to resume the entire enquiry in respect of both the charge memos, the enquiry officer chose to proceed on the premise that there was no need to hold any fresh enquiry as regards the first Charge Memo.

16. This Court can only express its shock and surprise over the manner in which the direction given by this Court has been understood and acted upon by the enquiry officer. This Court has dealt elaborately on this aspect of the matter only to show that not only the disciplinary authority did not follow this Court's order, but even the enquiry officer also did not heed to the directions of this Court. This is another reason for not remitting the matter and for giving quietus here itself.

17. When the matter was taken up for final hearing, this Court gave a direction on 15.02.2018 wanting to know as to how the Management dealt with the co-delinquents. A mere look at the Charge memo would show that the allegations essentially pertained to processing of loan applications. Apart from the petitioner, disciplinary action was initiated against the Branch Manager and other officials. The following table would show the punishment imposed on them:-

NAME	DESIGNATION	PUNISHMENT IMPOSED
S.Padmanabhan	Branch Manager	Censure.
M.Vijayakumar	Branch Manager	Reduction of Scale of Pay by two stages for a period of two years.
R.Palani	Assistant Manager (Accounts)	Censure.
K.Thillaivillalan	Officiating Branch Manager	Administratively warned.
R.Venkatesan	Assistant Manager (Accounts)	Reduction of Scale of Pay by one stage for period of one year.



18. As strongly contended by the learned counsel for the petitioner, the officials who had the authority to sanction loans were given mild punishments whereas the petitioner who was a Clerk was dismissed from service. This shows that a discriminatory yardstick was applied against the petitioner.

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19. The learned Senior counsel appearing for the Management submitted that the petitioner has rushed into this litigation without exhausting the alternative remedy available to him. This Court is not impressed by the said objection. This is because when a report that was set aside by this Court in an earlier round, was relied by the disciplinary authority and when the direction given by this Court was not followed, it would be a fit case to bypass the alternative remedy available to the petitioner and directly challenge the impugned order before this Court itself.

20. In view of the voluminous materials placed by the parties both sides, this Court has to sum up the reasons.

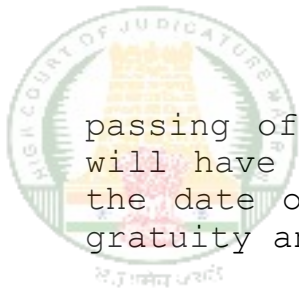
(i) It is beyond doubt that Thiru.M.Srinivasan submitted two reports dated 04.03.2014, in respect of two Charge Memos. Both the reports were set aside by this Court. But the disciplinary authority chose to rely on the report dated 04.03.2014 pertaining to the first Charge memo dated 20.11.2003. Since it also forms the foundation for passing the impugned order, this Court will have to necessarily interfere. It was downright illegal on the part of the disciplinary authority to have relied upon a report that was quashed by this Court.

(ii) The direction given by this Court with regard to holding a fresh enquiry was not adhered to by the enquiry officer. The enquiry officer acted on the premise that he needed to hold a fresh enquiry only as regards the second Charge Memo and that the enquiry in respect of the first Charge Memo ended long ago. This is in complete violation of the orders passed by this Court.

(iii) The charges pertained to processing of loan applications. The petitioner was at the bottom of the administrative hierarchy. Apart from him, there were five other senior officials including the Branch Managers. They have been very lightly dealt with. In the case of the petitioner alone a tough approach was adopted. This amounts to selective discrimination and a violation of equality principle.

21. For all these reasons, the impugned order is set aside.

22. This Court is of the view that the petitioner can be permitted to go on voluntary retirement with effect from 04.06.2018. The learned counsel for the petitioner on instructions submitted that the petitioner shall forego 75% of backwages from the date of



passing of the dismissal order till today. However, the petitioner will have to be paid the Subsistence Allowance payable to him upto the date of dismissal. The petitioner will be entitled to pension, gratuity and other service benefits.

23. The Writ petition is allowed on these terms. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Regional Manager, Region IV,
(Disciplinary Authority),
Disciplinary Proceedings Section,
Administrative Office,
Mc Donald Road,
Tiruchirappalli - 610 001.
2. The Enquiry Officer,
Chief Manager,
State Bank of India,
RASMECCC,
Office of the State Bank of India,
Tiruchirappalli - 1.

+1CC to Mr.Pala Ramasamy, Advocate, SR.No.66848
+1CC to Mr.P.Mahendran, Advocate, SR.No.66593

W.P. (MD) .No.21275 of 2014 and
M.P. (MD) No.2 of 2014 and
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