THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT APPEAL No.830 OF 2016

JUDGMENT
(*Per Sri Justice Sanjay Kumar)*

The management of Hyderabad District Co-operative Central Bank Limited, the respondent in W.P.No.21152 of 2009, is in appeal under Clause 15 of the Letters Patent. The said writ petition was filed by R.Sudharshan, the first respondent herein, challenging the Nil Award dated 12.02.2009 passed by the Industrial Tribunal-II, Hyderabad, in I.D.No.12 of 2008 (old I.D.No.132 of 2006 on the file of the Labour Court-I, Hyderabad) filed by him, confirming the order dated 26.06.2004 passed by the management dismissing him from service. He sought a further direction in the writ petition to set aside the same and reinstate him in service with consequential arrears of salary and retirement benefits.

In the first instance, the writ petition was dismissed by a learned Judge of this Court, *vide* order dated 04.07.2016. However, upon the first respondent-writ petitioner seeking review of the said order in Rev.WPMP No.30252 of 2016 in W.P.No.21152 of 2009, the learned Judge allowed the writ petition setting aside the Nil Award dated 12.02.2009 with all consequential benefits and also imposed costs of Rs.1,00,000/- to be paid by the management to the first respondent-writ petitioner. Aggrieved thereby, the management preferred this appeal.

By order dated 09.09.2016, the order under appeal was suspended pending further orders. I.A.No.1 of 2018 was filed by the first respondent-writ petitioner to vacate the said order.

Comprehensive arguments having been advanced by Sri K.Raghuveer Reddy, learned counsel for the management, and Sri Chayanam

Ravindranath, learned counsel for the respondent-writ petitioner, the appeal is amenable to final disposal at this stage.

The first respondent-writ petitioner (hereinafter, referred to as 'R.Sudharshan') joined the service of the Hyderabad District Co-operative Central Bank Limited (hereinafter, referred to as 'the bank') as an Assistant in the year 1976. He was promoted as a Senior Assistant in due course. While working as such at the Sanathnagar Branch of the bank, R.Sudharshan reported to the management that P.Ananth Reddy, the then Assistant Manager of the Sanathnagar Branch, had committed fraud to the tune of Rs.50,47,000/-. Thereafter, R.Sudharshan was himself placed under suspension on 07.10.2002. He was subjected to disciplinary proceedings pursuant to the charge-sheet dated 13.03.2003. Four charges were framed against him thereunder. These charges read as follows:

CHARGE No.1:	That contrary to the banking systems, he has arranged for premature payment of (4) time deposit receipts pertaining to Sri P.Ananth Reddy who was placed under suspension against the allegation of fraud committed by him while working as Assistant Manager/Incharge Branch manager of Sanathnagar Branch.
CHARGE No.2 :	That he was knowing about the ongoing fraud from 8/4/2002 onwards in the Sanathnagar Branch but failed to report the same to the Head Office in writing and has suppressed.
CHARGE No.3:	Sri R.Sudharshan, the then Assistant, Sanathnagar Branch has acted detrimental to the interest of the bank by involving in the fraud and caused loss to the bank.
CHARGE No.4 :	He caused damage to the reputation/image of the bank by involving in the fraud.'

The aforestated charges arose in the context of P.Ananth Reddy and his family encashing four Fixed Deposit Receipts (FDRs) prematurely at the Sanathnagar Branch of the bank, which was cleared by R.Sudharshan without proper authorization from the Branch Manager. The other charges pertained to the fraud allegedly committed by P.Ananth Reddy at the said branch. Upon due enquiry, R.Sudharshan was found guilty on all charges leading to his dismissal from service on 26.06.2004. The same stood confirmed in appeal. He thereupon raised an industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947, *vide* I.D.No.132 of 2006 on the file of the Labour Court-I, Hyderabad, which was renumbered as I.D.No.12 of 2008 upon being transferred to the file of the Industrial Tribunal-II, Hyderabad. By Nil Award dated 12.02.2009, the Tribunal dismissed the said I.D. Aggrieved thereby, R.Sudharshan filed W.P.No.21152 of 2009 before this Court. Upon hearing the writ petition, the learned single Judge recorded that R.Sudharshan never claimed that he had secured approval of the Branch Manager and only thereafter released the amounts due under the FDRs in question. The learned Judge also found that targeting of R.Sudharshan alone did not arise as all the employees involved in the transaction were charged and removed from service. It was on these grounds that the learned Judge dismissed the writ petition in the first instance.

However, upon a review petition being filed by R.Sudharshan, the learned Judge reversed his earlier verdict. The learned Judge found that though the bank had reported that an enquiry had been conducted against ten employees, including Attenders, and all of them were dismissed from service, no action had been taken against one Rangaiah, who was admittedly the Assistant Manager at the Santhnagar Branch, and had played a part by signing relevant documents in the course of premature encashment of the FDRs. The learned Judge took note of the fact that the said Rangaiah himself admitted this fact in his deposition before the District Co-operative Officer, Ranga Reddy District, in R.C.No.997 of 2011. In his deposition dated

23.06.2012, Rangaiah stated that he worked as the Incharge Manager of the Sanathnagar Branch of the bank from 16.09.2002 to 25.09.2002. He further stated that on 18.09.2002 at 10.30 AM, he was the Incharge Manager of the said branch and signed the FDRs of P.Ananth Reddy and his family enabling their premature encashment. As this aspect of the matter had not been taken into account while dismissing the writ petition in the first instance, the learned Judge found sufficient cause to recall his earlier order of dismissal and to allow the writ petition. As the bank had not disclosed this aspect of the matter, which would have been within its knowledge, the learned Judge imposed upon it costs of Rs.1,00,000/-.

Sri K.Raghuveer Reddy, learned counsel for the bank, would assert that the finding of the learned Judge that Rangaiah was the Incharge Branch Manager is not borne out by the record. He would rely upon the specific finding of the Enquiry Officer in support of his argument that this was not so. He, however, does not deny the fact that the bank had no charge over the amounts covered by the FDRs of P.Ananth Reddy and his family. Premature encashment of such fixed deposit receipts by them therefore could not have been prevented in law. It is also not in dispute that R.Sudharshan was not involved in any fraud in this regard whereby he himself stood personally benefited. He merely allowed premature encashment of the FDRs in question and the charge against him was that he did not follow the due procedure.

In this regard, the finding recorded by the Enquiry Officer in his report dated 02.06.2004 is relevant:

> 'On 19.9.2002 i.e., the day on which the above-mentioned (4) term deposit receipts belonging to Sri P.Ananth Reddy and his wife were received by Sri R.Sudharshan for premature payment, the regular Branch Manager was very much on duty, but was away on some official duties for a while. The charged employer should have waited till the Branch Manager returned to the Branch and after taking his permission only he should have arranged to premature payment of

> time deposit receipts or otherwise. Instead, he himself has taken the decision to foreclose the (4) term deposit accounts of the nature of E/S without waiting for the regular Branch Manager and arranged for their payment, more particularly when the depositors were not physically present in the Branch to receive the payment, which is quite contrary to the rules.'

Sri Chayanam Ravindranath, learned counsel, fairly concedes that he is not in a position to produce any document in evidence of Rangaiah being the Incharge Manager of the Sanathnagar Branch on the fateful day. Except for the bald statement made by the said Rangaiah before the District Co-operative Officer, Ranga Reddy District, there seems to be no other material to support this claim. On the other hand, the bank categorically asserted that the regular Branch Manager was very much on duty on the said date and was only away from the branch for a few hours. To that extent, it cannot be denied that R.Sudharshan failed to follow the prescribed procedure while allowing premature encashment of the FDRs in question. However, even if R.Sudharshan had reported to the Head Office that P.Ananth Reddy and his family were encashing their FDRs prematurely, the bank could not have prevented the same as it admittedly had no charge over the said amounts. In this regard, it may also be noted that the District Co-operative Officer, Ranga Reddy District, *vide* order dated 06.02.2009, held that the pre-requisites were not fulfilled to pass a surcharge order against R.Sudharshan in relation to the premature encashment of the FDRs. Involvement of R.Sudharshan in such premature encashment therefore cannot be said to be fraudulent and, at best, it would only be indicative of negligence and carelessness in discharge of duties.

In so far as the other charges are concerned, it was R.Sudharshan who blew the whistle on the fraud allegedly committed by P.Ananth Reddy while working as an Assistant Manager of the bank at its Sanathnagar

Branch. There is no evidence of R.Sudharshan benefitting from the alleged fraudulent activities of P.Ananth Reddy.

Significantly, R.Sudharshan raised the issue of proportionality before the Industrial Tribunal in the context of his punishment. However, no clear finding was rendered in the Nil Award dated 12.02.2009 on this aspect. The learned Judge also did not consider the issue of proportionality of the punishment imposed upon R.Sudharshan in the context of the charges leveled and held proved against him. We are of the opinion that though fraud was alleged against R.Sudharshan and held proved by the Enquiry Officer, the same cannot withstand judicial scrutiny. Sri K.Raghuveer Reddy, learned counsel, also does not dispute that R.Sudharshan did not benefit from the premature encashment of the FDRs.

In that view of the matter, the punishment of dismissal from service visited upon R.Sudharshan is shockingly disproportionate. Given the only lapse on his part in allowing premature encashment of FDRs without obtaining the due clearance of the Branch Manager, we are of the opinion that imposition of the major penalty of withholding of one increment with cumulative effect would be commensurate and serve the ends of justice.

The writ appeal is accordingly allowed to the extent of substituting the dismissal from service visited upon R.Sudharshan with withholding of one increment with cumulative effect. Though he sought reinstatement in service, it is an admitted fact that R.Sudharshan attained the age of superannuation even before filing the writ petition. The relief of reinstatement does not arise at this late stage and he would therefore not be entitled to any monetary benefits for the period that he remained out of service, pursuant to his dismissal from service which now stands set aside. The said period shall however be taken into account by the bank for reckoning his retirement benefits. After giving due effect to the lesser penalty now visited upon him, the bank shall compute the amounts due and payable to R.Sudharshan towards his retirement benefits and remit the same to him. This exercise shall be completed within four weeks from the date of receipt of a copy of this order. Considering the facts and circumstances of the case, we are of the opinion that imposition of costs on the bank was not warranted. The direction to the bank to pay costs shall accordingly stand set aside.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR,J

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T.AMARNATH GOUD,J

17th JULY, 2018

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