

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.21743 OF 2004

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with the proceedings of the 1st respondent dated 28.11.2003; to quash the said proceedings and also to quash the proceedings of the 2nd respondent dated 26.7.2004, and consequently, to direct the 1st respondent to continue the petitioner as Scale-I Officer in the Bank with all consequential benefits.

2. Heard Sri Vedula Srinivas, learned Counsel for the petitioner and Smt. V. Uma Devi, learned Counsel for the respondents.

3. The case of the petitioner in brief is as follows:

The petitioner joined in the 1st respondent-Bank in the year 1984 as a Scale I Officer and since then, he has been working as such. During the years 2000 to 2002, he suffered serious sickness and he applied for leave and the respondents sanctioned the leave on loss of pay and the petitioner had foregone his salary for all the days of leave. While so, the 1st respondent vide order dated 16.3.2002 placed the petitioner under suspension contemplating to initiate disciplinary action against him on the ground that he availed leave excessively, which caused inconvenience to the Bank work. A

charge sheet was issued to the petitioner on 27.4.2002, for which he submitted explanation. Being not satisfied with the same, the 1st respondent conducted enquiry and imposed punishment of compulsory retirement from service. The petitioner preferred the appeal before the 2nd respondent and the said appeal was also rejected. Hence the petitioner filed this writ petition.

4. The learned Counsel for the petitioner contends that the management sanctioned the leave on loss of pay and therefore, it cannot be construed as misconduct on the part of the petitioner. He further contends that the petitioner put in 18 years of unblemished service and the punishment imposed on the petitioner is very disproportionate to the misconduct alleged to have been proved against the petitioner, and therefore, the orders impugned are liable to be set aside.

5. The learned Counsel for the respondents contends that the petitioner was habituated not to attend the duties very frequently without following the leave rules/guidelines and he applied for leave on the ground of sickness though he was not really sick and that the petitioner violated the regulations deliberately as it was conclusively proved in the enquiry, and therefore, the proceedings in question are in accordance with rules and they do not warrant any interference.

6. This Court has considered the rival submissions made by the parties and perused the material available on record. It is the case of the petitioner that he applied for leave on all occasions as and when he was absent and the respondents also sanctioned the leave. Further, it is the case of the petitioner that as and when he attended his duties, he performed his duties well to the utmost satisfaction of the customers and he never caused any inconvenience to the bank.

7. The learned Counsel for the petitioner while relying upon the cross-examination of the management witnesses contended that the petitioner applied for leave on most of the occasions and the performance of the bank work had not come down because of his absence from duty. He further contended that the respondents sanctioned the leave as and when applied by the petitioner, and therefore, now they cannot turn around and contend that because of the absence of the petitioner, the bank has suffered. The learned Counsel for the petitioner has drawn the attention of this Court to page No.39 of the material papers, wherein in the cross-examination, the management witness No.1 stated that whenever the petitioner attended the Branch, he performed the duties assigned to him and completed the work.

8. The learned Counsel for the petitioner to strength his arguments relied upon cross-examination of the management witness No.2 at page No.41, where he stated as under:

“The CSO has gone on leave on a number of occasions pleading sickness. It is the duty of the employee to atleast orally inform the Manager that he is going on leave. On so many occasions, the CSO has not at all informed the Branch Manager regarding not attending the office.”

It has been submitted that to another question, the same witness No.2 stated as follows:

“On many occasions, Branch Manager informed over phone that CSO has not attended the office and he has gone on leave without any prior information. Therefore, it is not correct to say that the CSO has gone on leave with prior intimation.”

Further, the learned Counsel for the petitioner has relied upon page No.43 in respect of the answer given by the same witness to one such question, which reads as follows:

“He has applied for sick leave on most of the occasions and on a few occasions, the CSO has not submitted medical-cum-fitness certificates and in other cases, the medical-cum-fitness certificates were submitted belatedly.”

The learned Counsel for the petitioner has further relied upon the cross-examination of management witnesses No.3 at page No.45, which reads as under :

“When the Branch accrual of NPAs is zero, generally, it is a good performance and the Manager is the person of the Branch who can assess the performance of the officer (credit) in the Branch.”

The learned Counsel for the petitioner also contended that because of the absence of the petitioner, the branch has not suffered and most of the occasions, when the petitioner had gone on leave, he submitted leave applications.

9. Admittedly, the petitioner was holding a responsible post and merely because NPAs was zero, it does not mean that the branch was achieving good results. The evidence of the management witnesses relied upon by the petitioner would no way support the case of the petitioner. The above extracted statements of the management witnesses would make it clear that the petitioner had gone on leave with prior intimation to the management of the Bank but it is not their evidence that on all occasions, he submitted leave applications. The statements of the management witnesses on which the petitioner relied upon make it abundantly clear that the petitioner had submitted medical certificate belatedly. Further, the functioning of the Bank has no nexus with the account of zero NPAs. Had the petitioner not availed excessive leave, out of which, though some of them were sanctioned, some of them were not sanctioned, and he discharged his duties diligently, the growth of

the branch would have been still better. This Court cannot judge just because the NPAs in the branch is zero, the Bank has good performance. Therefore, this Court is of the view that it is not for this Court to say whether because of the absence of the petitioner any inconvenience was caused to the work in the Bank. It is for the administrative authority of the bank to decide whether the absence of the employee has caused any convenience. No procedural irregularity has been pointed out by the petitioner. Further, the petitioner has preferred appeal and the appellate authority has also confirmed the order of the disciplinary authority. Having considered the circumstances of the case, this Court is of the view that there are no grounds to interfere with the proceedings impugned.

10. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 10th September, 2018.
Nn.



HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.21743 OF 2004



/09/2018

Nn.