

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

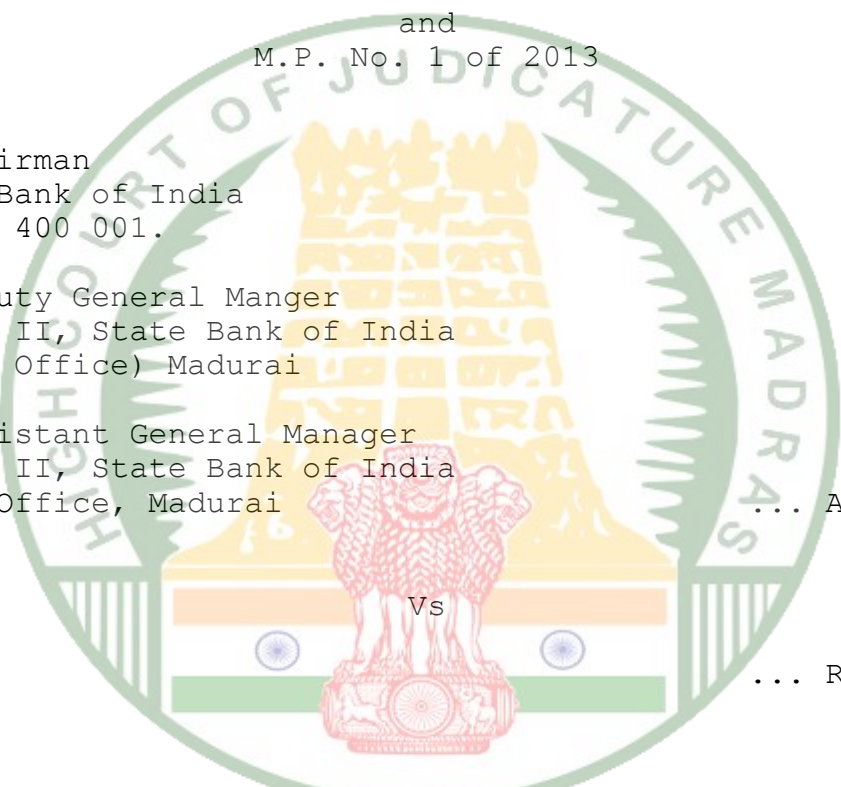
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THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.No. 1290 of 2013

and

M.P. No. 1 of 2013

- 
1. The Chairman
State Bank of India
Mumbai 400 001.
2. The Deputy General Manger
Region II, State Bank of India
(Zonal Office) Madurai
3. The Assistant General Manager
Region II, State Bank of India
Zonal Office, Madurai ... Appellants
- Vs
- C. Anthony ... Respondent

Appeals filed under Clause 15 of the Letters Patent against the order dated 25.03.2013 passed in W.P.No. 31270 of 2002.

Prayer in W.P.No.31270/2002:- Writ Petition praying to Writ of Mandamus calling for the records and quash the same passed by the 3rd respondent in DIS.CON.NO.108 dated 2.5.2002 and confirmed by the 2nd respondent in DIOS.CON.NO.341 dated 27.06.2002 and consquently directing the Third respondent to re-instate the petitioner with continuity of service back wages with all attendant benefits.

For Appellants : Mr. K. Sankaran

For Respondent : Mr. A. Mohan

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This writ appeal is directed against the order of the learned single Judge, who, while upholding the order of dismissal of the respondent, nonetheless directed the appellants to pay the terminal benefits for the period he worked i.e., from the date of appointment till the date of dismissal by taking into consideration the services rendered by him.

2.The charge against the respondent was one of misappropriation. Two charge sheets have been filed on 23.05.2001 and on 06.12.2001. In the first charge sheet, charge is to the effect that the respondent has misappropriated a sum of Rs.10,000/- and caused disappearance of the relevant vouchers. The allegation in the second charge sheet is with respect to not returning excess cash of Rs.10/- found in remittance of Rs.81,141/-.

3.Though the enquiry officer found that the charge relating to disappearance of the vouchers and misappropriation was not proved as against the proved charge of execution of promissory note for Rs.10,000/- to the remitter by name K.Kalyanasundaram, the disciplinary authority disagreed with that. Accordingly, notices were issued, explanation was called for and thereafter final order was passed imposing the punishment of dismissal from service. The appeal filed was also dismissed.

4.In the writ petition filed, the learned single judge was pleased to remit the matter for fresh consideration. Aggrieved over the same, appeal was filed before the Division Bench. The Division Bench held that there is no need for remitting the matter and therefore directed the learned single Judge to dispose the matter on merit. Learned single Judge, on such remittal, found that the charge of misappropriation has been proved. However, he went on to say that the respondent is entitled for all the terminal benefits. Challenging the same, the appellants have come forward to file the present writ appeal, though the respondent has not filed any appeal.

5.Learned counsel appearing for the appellants would submit that when once the order of dismissal has been upheld, the consequence will have to follow. He would further submit that law does not permit for the release of terminal benefits and Regulations governing also do not provide for such relief to be granted.

6.Learned counsel appearing for the respondent would submit that though no appeal has been preferred against the order of the learned single Judge, the fact remains that the respondent has put in 18 years of service and at present, he has lost his both eyes and suffering. Therefore, the order of the learned single Judge may be confirmed, considering the peculiar facts of the case and applying the doctrine of proportionality.

7.Doctrine of proportionality per se cannot have an application when the charge relating to misappropriation is proved. Not only the disciplinary authority but also the appellate authority concurred with the charge levied. Learned single Judge also found that the charge of misappropriation has been proved, which has become final as against the respondent. In such view of the matter, we are not inclined to interfere with the finding rendered by the learned single Judge with respect to the charge of misappropriation. However, we find that the learned single Judge was not correct in directing the appellants to release all the terminal benefits to the respondent. The terminal benefits such as pension and other things cannot be made available to the respondent when once the order of dismissal from service has been upheld, while upholding the charge of misappropriation. Therefore, there is no doctrine of proportionality that can be applied in the given case. While holding so, we are of the view that some relief will have to be granted, particularly, with respect to the payment of gratuity. Gratuity inheres on an employee. Such an amount has been earned by him for the services rendered by him. Therefore, it stands on a different footing than the other terminal benefits such as pension etc., Gratuity is one which accrues through payment made by the employee as well as the contribution made by the employer. As stated earlier, it is for the services rendered already by the employee. Further, we are of the view that some leniency will have to be shown to the respondent, who is stated to have lost both eyes now.

8.In such view of the matter, while exercising our discretion and in the light of the discussions made above, we direct the appellants to release the gratuity amount, which is due to the respondent, while declining the relief of other terminal benefits as ordered by the learned single Judge. Consequently, we hold that the respondent is not entitled for terminal benefits except gratuity, which is accrued till the date of termination. The aforesaid amount will have to be paid within a period of eight weeks from the date of receipt of a copy of this order, if it has not already been paid.

9. In the result, the writ appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

mmi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chairman,
State Bank of India,
Mumbai - 600 001.
2. The Deputy General Manager,
Region - II,
State Bank of India,
Zonal Office,
Madurai.
3. The Assistant General Manager,
Region - II,
State Bank of India,
Zonal Office,
Madurai.

W.A.No. 1290 of 2013

MG (CO)
kak (28/02/2019)

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