

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.712 of 2019

and

W.M.P.Nos.6932, 7564, 7569, 801 of 2019

G.Mahendru

.. Petitioner

Vs..

1.Indian Overseas Bank,
Rep.by its Chief Executive Officer/MD (in charge),
Central Office, 763, Anna Salai,
Chennai - 600 002.

2.The Chief Manager/Disciplinary Authority/
Central Office, 763, Anna Salai,
Chennai - 600 002.

3.The Chief Manager/Enquiry Officer,
HRMD, Inquiry Cell, Indian Overseas Bank,
Central Office, 763, Anna Salai,
Chennai - 600 002.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned letter bearing No.DO:CM(SK)/DA/IR/213/2744/2018-19 dated 09.10.2018 issued by the second respondent and to quash the same and consequently direct the respondents to provide legal assistance to the petitioner in the departmental enquiry held against him pursuant to charge sheet dated 25.05.2018.

For Petitioner : Mr.K.M.Ramesh

O R D E R

The writ petition has been filed seeking a writ of Certiorarified Mandamus, to call for the records relating to the impugned letter bearing No.DO:CM(SK)/DA/IR/213/2744/2018-19 dated 09.10.2018 issued by the second respondent and to quash the same and consequently direct the respondents to provide legal assistance to the petitioner in the departmental enquiry held against him pursuant to charge sheet dated 25.05.2018.

2. The case of the petitioner is that the petitioner is working as Special Assistant in the first respondent-Bank and he was placed under suspension pending enquiry. In respect of the same allegation, FIR has been registered by the CBI and the same is pending. The first respondent issued a charge sheet wherein the allegations are same as that of the allegations made in the FIR. The second respondent disciplinary authority has appointed enquiry officer. On 27.08.2018, the petitioner requested permission to engage a lawyer to defend him in the enquiry as per the provisions of the Bipartite settlement. However, the second respondent issued the impugned order dated 09.10.2018, rejecting the request on the ground that the presenting officer is not a legally qualified person. As against the said impugned order, the present writ petition is filed.

3. Mr.K.M.Ramesh, the learned counsel appearing for the petitioner would submit that the issue before this Court has already been settled by this Court in a series of orders in W.P.No.14401/2017, dated 21.06.2007, W.A.No.875/2017, dated 16.08.2017 and W.P.No.4530 of 2017, dated 13.11.2017. The relevant portions of the order passed by this Court are extracted below:-

W.P.No.14401 of 2017

19. Thus, in view of the above said observations and settled legal proposition, I am of the considered view that the Enquiry Officer as well as the Disciplinary Authority failed to exercise their discretionary power properly. Therefore, this Court, by setting aside the impugned order dated 12.03.2015, directs the first respondent to permit the petitioner to engage a lawyer to represent his claim in the domestic enquiry.

W.A.No.875 of 2017

Heard the learned counsel for the parties for sometime. It appears that while passing the order in the writ petition, the learned Single Judge has imposed a condition on the appellant/writ petitioner to give an undertaking before the disciplinary authority to the effect that he will not raise a plea that he ceases to be an employee of the bank. But we are of the view that since the appellant has sought for only legal assistance, the same has been ordered by the learned single Judge, with which we do not find any fault. However, the remaining aspect of the undertaking to be given is shown to be a precautionary measure having understood the mindset of the parties. In such circumstances, although we

do not insist for giving an undertaking, in the event if the appellant/writ petitioner does not participate in the enquiry proceedings, this order will not tenure to his benefit and that the order of the learned single Judge will stand confirmed on this aspect. The writ appeal stands disposed of accordingly.

W.P.No.4530 of 2017

6. But this Court is unable to agree with the said contentions. The reason is that when the petitioner has been requesting the union, in which he is also a member, to spare an experienced representative to handle his case before the pending disciplinary proceedings initiated against him, it could be seen that the charge memo issued against the petitioner and the charge sheet filed by the CBI related to 19 imputations and 49 sub-imputations. Moreover, the case has been handled by the CBI. Therefore, the reply letter dated 20.02.2017 addressed by the General Secretary of the All India Overseas Bank Employees' Union informing the petitioner that the office bearers in defence assistance are unable to consider his request, cannot be lightly brushed aside. Therefore, the case of the petitioner, in my considered opinion, squarely falls into clause 12(a) (iii) of the bipartite settlement, which states that the bank can grant permission to a delinquent officer to engage a lawyer. In similar circumstances, I have also issued a direction in W.P.No.14401 of 2017 dated 21.06.2017 (M.Ramasamy v. Indian Overseas Bank represented by its Chief Executive Officer/MD incharge), Chennai and another). Therefore, the impugned order is set aside and the second respondent is hereby directed to permit the petitioner to engage a lawyer to represent his claim in the domestic enquiry. It is also brought to my notice that the enquiry is posted to 14.11.2017. Therefore, the second respondent is directed to hold the enquiry after two weeks. In the meanwhile, the petitioner is permitted to engage a lawyer, without asking for further time.

4. The learned counsel for the respondent would submit that this Court's order in W.P.No.14401/2017 was challenged in W.A.No.875/2017 and subsequently, the order was confirmed by the Division Bench and the facts of the said case are not applicable to the present case on hand. Further, in respect of other case,

the respondent bank has preferred an appeal and the same is pending before this Court.

5. Considering the facts and circumstances, this Court passed an order on 21.06.2017 and this Court granted lawyer's assistance for the purpose of effective adjudication before the enquiry officer and the same was confirmed by the Division Bench of this Court in W.A.No.875/2017 and in respect of the same Bank based on the very same bipartite settlement, a similar case was allowed by this Court and the same was confirmed by the Division Bench of this Court. Hence, I am inclined to extend the said benefit to the petitioner also. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chief Executive Officer/MD (in charge),
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+1 cc to M/s.K.M.Ramesh, Advocate Sr.No. 79196
+1 cc to M/s.Row and Reddy, Advocate Sr.No. 78637

AKM/03.12.19/4P-6C /

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