IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.03.2019
CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 976 of 2013
and
M.P. No. 1 of 2013

D. Primson Devaraj Masilamani ... Appellant/Petitioner

-vs-

1. The Deputy Chief Regional Manager,
Madurai Region,
Bank of India, Madurai.

2. The Assistant General Manager,
Coimbatore Zone,
324, Oppenakkara Street,
Coimbatore - 641 001. ... Respondents/Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order dated 30.09.2011 made in W.P. No. 19918 of 2001.

Prayer in WP.No.19918/2001: This Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent issued in Ref.No. MDU 2001-02 IR : 1045, dated 31.05.2001 and the Second respondent dated 12.09.2001 issued in ZO:CBE:IR:174 quash the same and direct the respondents to reinstate the petitioner with all consequential benefits.

For Appellant : Mr. R. Singaravelan, Senior Counsel for M/s.M.Srividhya

For Respondents: Mr. F.B. Benjamin George

J U D G M E N T
(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 08.06.2015 in W.P. No. 16100 of 2015 passed by the Learned Judge of this Court.

2. The facts leading to the filing of the Writ Petition have been extensively captured in the order dated 08.06.2015 passed in W.P. No. 16100 of 2015 and hence, the same are not repeated in this order except with regard to the material facts relevant for the purpose of disposal of this Appeal.

3. The Appellant was employed as Staff Clerk-cum-Typist in Bank of India, the Respondent and he was posted in the Krishnarayapuram Branch in Karur District. At that time, a charge sheet Ref. No. RO:IR:676 dated 23.09.2000 was issued to him by the First Respondent, viz., the Deputy Chief Regional Manager, who was the Disciplinary Authority, which is extracted below:-

> "Acts of misconduct as herein after mentioned are alleged to have been committed by you while posted as Staff Clerk-cum-Typist at Bank's Madurai Branch during the period from 02.05.1989 to 25.09.1999.
>
> CHARGE NO. I:
>
> That you have lent Rs.15,000/- at the rate of 4% per month as interest, to Shri P.S. Murugesan, Staff Subordinate - Daftary, Madurai Branch and the said Shri Murugesan was giving you Rs.600/- per month towards interest against the said principle amount. The said Shri Murugesan had given you 2 blank cheques Nos. 045661 and 045666 issued in his SB A/c. No. 1094 with Madurai Branch by putting his signature on the same as security against the money borrowed from you. To realise the dues from Shri Murugesan, the Cheque No. 045661 for Rs.15,380/- favouring your wife was deposited in your joint SB A/c. No. 9399 with UCO Bank, Madurai Branch and the same was returned unpaid on 01.08.1997. On 02.08.1997 you filled up the cheque No. 045666 for Rs.15,390/- in your favour and deposited the same in you OD A/c. No. 2033 with Madurai Branch for realisation of the money lent to the said Shri Murugesan.
>
> Thus it is alleged against you that you have lent money for interest to the said staff member of the Bank thereby have involved in lending business outside the scope of your duties.
>
> Your aforesaid alleged act/s, if proved, would amount to act of gross misconduct in terms of para 19.5 (a) of the Bipartite Settlement dated 19.10.1966 which is quoted as under:
>
> 19.5(a):
>
> "engaging in any trade or business outside the scope of his duties except with the written permission of the bank".

CHARAGE NO. II:

That on 02.08.1997, while you were working as Computed Terminal Operator at Madurai Branch, you filled up the blank cheque No. 045666 for Rs.15,390/- favouring yourself, given to you by Shri P.S. Murugesan, Staff Subordinate of Madurai Branch in his SB A/c. No. 1094 by putting his signature on the same and you unauthorisedly posted the related debit entry in the computer despite the credit balance in the said account at the time of posting being only Rs.54.13 by unauthorisedly using the 'allow option'. A self generated scroll No. 21 was given by the computer for the aforesaid debit entry and you took a computer print out of the statement of account of the said SB Account by using 'pass book printing', facility unauthorisedly. You also made entry of the aforesaid transaction in page No. 1 of the Payment Scroll Book and sent the said cheque along with the payment scroll book for authorisation with an intention to realise the amount lent by you to the said Shri. P.S. Murugesan.

Thus on 02.08.1997, you have posted the debit entry of Rs.15,390/- in the SB A/c. No. 1094 unauthorisedly and tempered with Bank's computer and records in the aforesaid manner with an intention to realise the amount lent to Shri P.S. Murugesan.

Your aforesaid alleged act/s if proved would amount to act of gross misconduct of 'doing act prejudicial to the interest of the Bank' in terms of para 19.5 (j) of the Bipartite Settlement dated 19.10.1966 which is quoted as under:

19.5

"doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the bank in serious loss".

4. A domestic enquiry was conducted into the aforesaid charges levelled against the Appellant. The Enquiry Officer submitted a report dated 24.01.2001 in which he arrived at the finding that the said charges have been proved. The First Respondent, who was satisfied that the Appellant was given reasonable opportunity to defend himself in the enquiry which was conducted following the principles of natural justice for proving the charges, issued a show cause notice bearing Ref. No. RO:MDU:2001-02:IR:1038 dated 21.05.2001 proposing the punishments of 'censure' in terms of para no. 21 (iv) (f) of the Bipartite Settlement dated 14.02.1995 for Charge I and 'compulsory retirement from service' in terms of para no. 21 (iv) (b) of the Bipartite Settlement dated 14.02.1995 for Charge II. A copy of the findings of the Enquiry Officer was also furnished to the Appellant requiring

him to submit his representation, if any, and show cause as to why the proposed punishment should not be imposed on him.

5. In the personal hearing before the Disciplinary Authority on 26.05.2001, the Appellant submitted that he was not guilty of the charges and the proposed charges are not justifiable and requested to re-consider the proposed punishment sympathetically for reducing the same. The Disciplinary Authority after elaborately considering the case of the Appellant, by a reasoned order Ref. No. RO:MDU:2001-02:IR:1045 dated 31.05.2001 imposed a punishment of censure and compulsory retirement on the Appellant for the Charges I & II respectively. The Appellant had preferred an appeal before the Second Respondent, viz., the Assistant General Manager, Coimbatore Zone, who is the Appellate Authority. The Second Respondent concurred with the order of the First Respondent and dismissed that appeal. The Appellant then filed W.P. No. 19918 of 2001 before this Court challenging the aforesaid order of the First Respondent, which has been confirmed by the Second Respondent. The Learned Judge, who heard the matter, by an elaborate order dated 30.09.2011 in W.P. No. 19918 of 2001, after referring to the various decisions of the Hon'ble Supreme Court of India and this Court on the scope of Judicial Review on disciplinary matters, viz-a-viz, the charges against the Appellant came to the conclusion that there was no infirmity requiring interference by this Court in the exercise of its discretionary jurisdiction in the Writ Petition filed by the Appellant and accordingly dismissed the same. Aggrieved thereby, the Appellant has filed the present appeal.

6. We have heard Mr. R. Singaravelan, Learned Senior Counsel for the Appellant, Mr. F.B. Benjamin George, Learned Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

7. The Learned Senior Counsel appearing for the Appellant strenuously urged that even on a perusal of the deposition of the witness in the domestic enquiry, it cannot be said that the Appellant has committed any mis-conduct, particularly when there is no reliable evidence to support the same inasmuch as the factual matrix would show that it was an inter-se dispute relating to a private transaction of borrowing between the Appellant and another employee, in which no loss had been incurred to the Bank. He further submitted that in any event, the penalty of compulsory retirement was disproportionate to the charges proved against the Appellant, which requires interference by this Court.

8. We do not find any merit in the aforesaid contention made by the Learned Senior Counsel appearing for the Appellant, in

view of the settled legal position. In this regard, reference may be made to the dictum laid down by the Hon'ble Apex Court in State of Andhra Pradesh -vs- S. Sree Rama Rao [AIR 1963 SC 1723], in which it has been held as follows:-

> "The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

Again, in Union of India -vs- Sardar Bahadur [(1972) 4 SCC 618)], the legal position has been reiterated as extracted below:-

> "Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court."

9. As regards the contention that the Bank had not suffered any loss, suffice here to refer to the decision in Chairman and Managing Director, United Commercial bank -vs- P.C. Kakkar [(2003) 4 SCC 364], which reads as follows:-

> "A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager -vs- Nikunja Bihari Patnaik [(1996) 9 SCC 69], it is no defence available to say that there was no

loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct."

10. The Writ Court has already referred to various decisions and rejected the contentions made on behalf of the Appellant with cogent reasons, with which we do not find any reason to differ, particularly when there has not been any violation of the principles of natural justice or statutory provisions for the conduct of the domestic enquiry causing any prejudice to the Appellant. We are also of the considered view that the punishment of compulsory retirement imposed upon the Appellant is commensurate with the gravity of the charges proved against him and that the Appellant cannot have any grievance on that aspect having regard to his unpalatable conduct, which is apparently unbecoming of a Bank employee.

11. In fine, the Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Deputy Chief Regional Manager,
   Madurai Region, Bank of India,
   Madurai.

2. The Assistant General Manager,
   Coimbatore Zone, Bank of India,
   324, Oppenakkara Street,
   Coimbatore - 641 001.

+1cc to Mr.M.Srividhya, Advocate, S.R.No. 23401

W.A. No. 976 of 2013

GN(22/03/2019)