

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.5567 of 2010

R.Murugesan

... Petitioner

Vs.

1. The Deputy General Manager,
Andhra bank, Zonal Office,
TTK Salai, Chennai 600 018.

2. The Asst.General Manager & Disciplinary Authority,
Andhra Bank, Zonal Office,
TTK Salai, Chennai - 600 018.

3. The Deputy General Manager (P) & Appellate Authority,
Andhra Bank, Head Office, Hyderabad.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorari, to call for the records in letter No.0666/3/HC/986/2613 dated 10.02.2010 on the file of the 3rd respondent and quash the same.

For Petitioners : Mr.V.Bhiman

For Respondents : Ms.Rita Chandrasekar &
Mr.V.Kalyanaraman
for M/s.Aiard and Dolia

O R D E R

The instant writ petition challenges the order of Compulsory Retirement passed by the Human Resources Department (IR), Head Office, Hyderabad, in letter No. 0666/3/HC/986/2613 dated 10.02.2010.

2. The petitioner was working in Andhra Bank, Chetpet Branch as Cashier cum Clerk. According to the petitioner, he had applied for leave in connection with the marriage alliance of his sister. He states that he had gone to his village and sent a telegram to the Bank on 03.09.2001, requesting for sanction of 10 days leave. The leave was not sanctioned. The petitioner was directed to report back for duty immediately. The petitioner states that he received a letter dated 25.09.2001 from the Senior Manager (P&A) Andhra Bank stating that his absence without prior approval or sanction of leave

is highly irregular. The petitioner asked to explain the reason for absence of leave and direct the petitioner to report for duty immediately.

3. The petitioner states that he requested for sanction of leave for six months from 03.09.2001 to attend his domestic affairs. The same was declined by the Branch Manager, Andhra Bank, Chetpet Branch, Chennai. A domestic enquiry was initiated against the petitioner on the following charges:-

"1. You have remained absent from duty from 11.08.2001 to 23.08.2001 without obtaining prior permission or sanction of leave from competent authority.

2. On 27.08.2001, it is alleged that you have left the office at 2.45 p.m much before the scheduled close of office hours without obtaining prior permission or approval from competent authority and without completing the work entrusted to you.

3. On 28.08.2001, you were entrusted with the work of taking jottings of allotted SB ledgers. It is reported that you have refused to sign the work allotment register and as well as to perform the work entrusted to you.

4. On 30.08.2001, you have left the office at 2.45 p.m much before the scheduled close of office hours without obtaining prior permission or approval from competent authority.

5. On 30.08.2001 and 31.08.2001, it is reported that you have failed to perform the following work entrusted to you: daily Daily jotting of COD, SOD and ODCC and SB ledger consolidation work. It is also reported that you left the office at 2.10 p.m. On 31.08.2001 much before the scheduled close of office hours without obtaining prior permission or approval from competent authority.

6. It is reported that you are remaining absent from duty from 03.09.2001 to till date, without obtaining prior permission or approval from competent authority"

4. The petitioner gave a reply. Enquiry Officer was appointed. The petitioner did not participate in the enquiry. The Enquiry Officer gave a report on 09.12.2002 found that all the charges against the petitioner had been proved and the

petitioner is guilty of the misconduct leveled against him. The petitioner gave an explanation to the enquiry report. The respondent Bank by order dated 10.03.2003 concurred the order of the Enquiry Officer and awarded the punishment of compulsory retirement. Appeal was filed by the petitioner. The Appellate Authority rejected the appeal on the ground that the appeal was filed after more than one year and cannot be entertained.

5. The petitioner thereafter filed a writ petition No.1613/2005. This Court by order dated 09.11.2009 directed the Appellate Authority to once again look in to the matter, keeping in mind the fact that the petitioner had been a good worker and his work has been appreciated by everybody including the Disciplinary Authority. The Appellate Authority passed the impugned order on 10.02.2010. The Appellate Authority after going through the entire records, the order of the Disciplinary Authority and the explanation given by the petitioner came to the conclusion that the petitioner had abstained from the duty unauthorizedly from 03.09.2001 to 09.02.2002. It is observed by the Appellate Authority that even after the enquiry was initiated, and during the enquiry, the petitioner did not choose to report for duty. Instead of attending his duty, the petitioner attributed a crime against Branch Manager, Andhra Bank. It is this order which has been passed by the Appellate Authority in letter No.0666/3/HC/986/2613 dated 10.02.2010, is challenged in the instant writ petition.

6. The respondents have entered their appearance and filed their counter. Heard the counsel for the parties.

7. The learned counsel for the petitioner strenuously urged that the punishment of compulsory retirement is shockingly disproportionate to the alleged misconduct. He stated that the responsibility of a brother to take of his sister's marriage proposal cannot be completely ignored and the bank should have taken a sympathetic attitude towards the petitioner. He stated that even if the entire charges are taken into account, the unauthorized leave of absence was about 5 months and therefore, the order of compulsory retirement should not have been imposed on the petitioner.

8. On the other hand, the learned counsel for the respondents would argue that the conduct of the petitioner is such that this Court should not grant any indulgence to the petitioner. The learned counsel for the respondent urged that the petitioner was guilty of insubordination on several occasions. The Enquiry Officer had found that the acts of insubordination alleged against the petitioner is proved. The explanation given by the petitioner has not been accepted by the Appellate Authority also and in any event, it cannot be

disputed that the petitioner was on unauthorized leave from 03.09.2001 to 09.02.2002.

9. This Court has gone through the submissions and records. The facts are more or less undisputed. The petitioner had abstained from the duty unauthorizedly from 03.09.2001 to 09.02.2002. The leave sought for the petitioner had been expressly denied. The petitioner had therefore no other option but to report for duty. The acts of insubordination also stands proved. The question therefore which arises for consideration is as to whether the punishment is shockingly disproportionate to the misconduct.

10. The learned counsel for the petitioner draws the attention of the judgment of the Hon'ble Supreme Court of India in the case of Jagdish Singh V. Punjab Engineering College & ors. reported in AIR 2009 SC 2458. In the said judgment, while dealing with the argument that the punishment imposed by the Disciplinary Authority is disproportionate to the gravity of the charges is alleged in a case of unauthorized leave. The Hon'ble Supreme Court of India held that the case before it was not one of habitual absenteeism. The case of the petitioner before the Hon'ble Supreme Court was that he remained absent for fifteen days on four occasions in the months of February and March 2004. This was primarily to sort out the problem of his daughter with her in-laws. The Hon'ble Supreme Court held that the filial bondage and the emotional attachment might have come in his way to apply and obtain leave from the employer. The Hon'ble Supreme Court held that the misconduct though this would amount to indiscipline, but may not fit into the category of gross violation of discipline. The Hon'ble Supreme Court, modified the penalty to that of stoppage of two increments with cumulative effect.

11. The learned counsel for the petitioner therefore prayed that the facts in AIR 2009 SC 2458 is similar to the present case can be applied to him. Unfortunately, we cannot accept the contention of the petitioner. Absence of 6 months on the ground of the sister's marriage, this Court might have persuaded to accept the argument of the petitioner. However, in this case the petitioner aggravated the misconduct by not attending duty even after domestic enquiry. If the petitioner had joined his duty during the enquiry proceedings, then this Court could have taken in to account the fact that the work of the petitioner had been appreciated by his superior officers including the Disciplinary Authority. The fact of the petitioner did not attend the duty even after the enquiry was initiated, dissuades this Court from exercising its discretionary power under Article 226 of the Constitution of India. This court is aware that what is being taken note of is an action which took place after the initiation of enquiry .

12. Taking in to account the circumstances and keeping in mind that a Writ Court should refrain from interfering the punishment passed by the Disciplinary Authority as upheld by the Appellate Authority and more so, the post enquiry conduct of the petitioner. This Court is not exercising its discretionary power under Article 226 of the Constitution of India. In any event, as pointed out by the learned counsel for the respondent, punishment of compulsory retirement does not cause any stigma on the petitioner. It will not come in the way of the petitioner seeking further employment. Resultantly, the writ petition is dismissed. No Costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Pkn.
To

1. The Deputy General Manager,
Andhra bank, Zonal Office,
TTK Salai, Chennai 600 018.

2. The Asst.General Manager & Disciplinary Authority,
Andhra Bank, Zonal Office,
TTK Salai, Chennai - 600 018.

3. The Deputy General Manager (P) & Appellate Authority,
Andhra Bank, Head Office, Hyderabad.

+1cc to M/s.Aiyer and Dolia , Advocate SR.No. 77792

+1cc to Mr.V.Bhiman , Advocate SR.No. 77007

rgn

A.SK(14/10/2019)

सत्यमेव जयते

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