IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23633 of 2017

M.Swaminathan ...Petitioner

vs.

1.The Deputy General Manager,
State Bank of India,
Chennai Zone-I, NW-1, Zonal Office,
Rajaji Salai, Chennai - 600 001.

2.The Presiding Officer,
Central Govt. Industrial Tribunal
Cum Labour Court,
Shastri Bhavan, Haddows Road,
Chennai - 600 006. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of from the files of the 2nd Respondent in I.D.No.32/2015 and quash the impugned Award made therein dated 04.04.2017 insofar as the 1st Respondent has denied and negatived the claim of the Petitioner for payment of full salary for the period of suspension and for settlement of terminal benefits including pensioner benefits.

For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.S.Ravindran, Senior Counsel for Mr.S.Bazeer Ahamed for R1
R2-Tribunal

O R D E R

The Award dated 04.04.2017 passed in I.D.No.32 of 2015 is under challenge in the present writ petition.

2.The writ petitioner states that he was appointed in the first respondent Bank at Kattur ADB Branch, Lalgudi on 12.02.1979 and thereafter, transferred to Melsanakuppam Branch in 2004. During the period from 05.06.2004 to 30.09.2010, the petitioner was working as Special Assistant at Melsanakuppam Branch. Under the career progression, he was transferred to Karumbur Branch in 2010 as Senior Special Assistant. The petitioner was placed under suspension vide letter No.DIS/CON/250 dated 27.08.2011 and a charge sheet was issued on 14.02.2012. The Charges alleged against the petitioner are extracted hereunder:

"Charge No:1

You did not exercise due diligence while verifying the address and identity of the gold loan borrowers, in respect of 77 gold loans(details given in the Annexure A)

Charge No:2

You did not verify and satisfy yourself about the purity of the gold ornaments pledged for in respect of each of the 77 gold loans mentioned above before recommending them for sanction.(List of Accounts in Annexure B).The gold ornaments in respect of each of the 77 said gold laons are found to be spurious as tested and certified by an approved appraiser.

Charge No:3

By the above said acts of omission and commission, the Bank is likely to incur an estimated loss of Rs.48.08 lacs.

Charge No:4

In all the 77 Agri. Gold loans, you did not verify and ensure that the loan amount arrived at for the weight of the gold ornaments pledged, is well within the eligible amount of loan arrived at based on the extent of acreage under cultivation, nature of crop and the applicable scale of finance.

Charge NO:5

When you are not authorized to sanction gold loans, you have sanctioned two Agricultural gold loans(A/c Nos.3065794632 and 30700190819) and thereby violated the Bank's instructions(Annexure-C)

Charge No:6

You failed to roll over simultaneously while closing the existing loan(closure done on the next day only) resulting in loans being without security for one day which is against the interest of the Bank.(List of Accounts furnished in Annexure D)

Charge No.:7

You did not make entries and main "In & Out Register" as per laid down instructions

Charge No:8

You put through vouchers in the CBS system without authorization of the Branch Head."

3.A domestic enquiry was conducted and the writ petitioner participated in the process of enquiry. The Enquiry Officer submitted his report holding that the charges levelled against the petitioner are proved. Based on the enquiry proceedings the petitioner was dismissed from service on 28.03.2012. The writ petitioner preferred an internal appeal on 30.03.2012 and the Appellate Authority rejected the said appeal on 12.05.2012. Thereafter, the petitioner raised the Industrial Dispute in I.D.No.132 of 2015 and the Tribunal passed a preliminary order holding that the domestic enquiry conducted was not fair and proper and accordingly, examined documents and witnesses with reference to the charge memorandum issued to the writ petitioner. After adjudication, the Tribunal passed an award holding that non-employment of the petitioner is justified and dismissed the Industrial Dispute. The Tribunal held that the charges levelled against the writ petitioner are proved. Thus, the petitioner is constrained to move this writ petition challenging the Award passed by the Indusrial Tribunal.

4.The learned counsel appearing on behalf of the writ petitioner mainly contended that the Award passed by the Labour Court is perverse as the evidence produced by the writ petitioner are not appreciated properly. The Tribunal did not consider that the agricultural gold loan is extended only to those clients who have savings bank account in the bank and therefore, the verification of KYC norms would not arise at all. At the time of opening of savings bank account, KYC norms have to be verified and only after verification of KYC norms account can be opened. Therefore, the very consideration made in this regard by the Tribunal is incorrect. The learned counsel for the writ petitioner mainly contended that the appreciation of the evidence made by the Tribunal is improper and the Branch Manager himself being a joint custodian had ascertained the quality and quantity of the gold ornaments and sanctioned the loans in question notwithstanding the fact that the duties performed by the Branch Manager viz. checking the purity of gold falls within the purview of the duties of a Special Assistant.

5.The Tribunal failed to consider that on 23.06.2011, the Branch Manager, State Bank of India, Melsanakuppam preferred a complaint before the Superintendent of Police, Vellore, regarding the purity of gold ornaments pledged with the Bank for availing agricultural gold loans, a thorough check up was made with the assistance of professional gold appraiser and it was found that the jewels pledged in respect of 26 out of 84 agricultural loans were spurious and the enquiry further revealed that the account holders S.Thilaganathan S/o Sarangapani, N.T.Prasanna, who are kingpin of the fraud and Mr.Thilaganathan voluntarily confessed about their involvement and ensured the repayment of the entire amount involved in the fraud. Accordingly, a sum of Rs.95,000/- war remitted on 25.04.2011. Various documents filed in this regard are not properly considered by the Tribunal and the Tribunal failed to exercise the powers vested under Section 11(A) of the Industrial Disputes Act. When the writ petitioner is able to establish that he is no way responsible for not following certain procedures, the Tribunal ought to have exercized the power under Section 11 (A) of the Industrial Disputes Act and further, the writ petitioner had served for a considerable length of time in the respondent Bank. Taking note of the long services, the Labour Court should have considered the exercise of discretionary power under Section 11(A) of the Industrial Disputes Act . For all these reasons, the order of the Tribunal is perverse.

6.The learned senior counsel appearing on behalf of the first respondent/State Bank of India disputed the contentions by stating that with reference to charge no.1, the petitioner did not exercise due diligence while verifying the address and identify the gold loan borrowers in respect of 77 gold loans. In respect of charge no.2, the petitioner did not verify and satisfy purity of gold ornaments pledged in respect of 77 gold loans, which were found to be spurious, before recommending them for sanction. In respect of charge no.3, the bank is estimated to lose Rs.40.08 Lakhs. The relevant paragraphs of the counter affidavit filed by the first respondent is extracted hereunder:

> "2.The Petitioner in his cross examination before the Lower Court admitted that para 3 and 4 of the Proof Affidavit of MW1 is correct which is as follows:
>
> > "3.While appraising the jewel loan, the Petitioner should ensure to obtain KYC(Know Your Customer) document which provides for photo ID proof and proof of address to be

given by the person who wants to obtain loan. In the KYC Self Declaration Form, the person should disclose his Name, Parent's Name, Date of Birth and Address. Obtaining KYC is a first step and an important one to know the genuineness of the person to whom jewel loan is disbursed.

4.The second important step in the process of jewel loan is, the Petitioner should satisfy himself about the purity of the gold ornaments pledged by the customers. He should ensure that the gold ornament is tested by him using the testing materials provided in the branch or he should seek assistance of Bank Approved Appraiser and obtain a certificate from him on the purity of gold pledged. The cost would be borne by the customer."

3.The petitioner in his cross-examination admits that in the branch there is apparatus for verifying the purity of the gold.

4.Very importantly, the Petitioner in his cross-examination admits that
"I did not verity the purity of 77 jewel loans personally."

5.Exhibit M1 filed before the Lower Court is the Master Circular issued by the 1st Respondent for agriculture gold loans. Clause 10.2 makes provision for Special Assistant like the Petitioner "responsible for ensuring genuineness and purity of gold ornaments" by using methods a,b,c mentioned (Ex.M1).

6.In Exhibit M2, Master Circular filed before the Lower Court, Clause D-3(j) holds the petitioner "attending to all work connected with processing and disbursement of loans sanctioned against the pledge of gold ornaments, including responsibility for purity…."

7.Exhibit M4 series, M101 to M108 filed before the Lower Court are 77 jewel loan documents duly certified by the petitioner.

8.Exhibit M11 to M36 filed before the Lower Court are the Authorized Appraiser certificates stating that the jewels pledged in respect of 77 jewel loan accounts were spurious ornaments.

9.The Petitioner did not submit his explanation on the merits of the charges levelled against him. His reply dated 25.02.2012(Exhibit M89) he only raised the technical plea by reference to Central Vigilance Commissions Guideline.

10.In cross-examination, the Petitioner admitted as follows:

a.He had 30 years of experience

b.He was a member of State Bank Staff Union

c.He did not make complaint to the Bank or to the Union after the Manager divested him of his "duty to purity of the ornaments".

11.In ground(1) the writ petitioner, the Petitioner states as follows:

"Though as per the laid down rules, it is the duty of the Special Assistant to verity the purity of gold sought to be pledged, the branch manager did not allow the petitioner to verity as he took upon himself the said work and sanctioned loan. The Petitioner was asked to merely affix his signature in the loan applications as if he had verified the purity of gold."

12.Exhibit M87 is the statement showing the estimated loss of the bank in respect of spurious jewel loans at Rs.45,17,723/- due to the failure of the Petitioner to ascertain the purity of the gold ornaments pledged by the customers."

7.Further, he submitted that with regard to charge no.5, the Petitioner unauthorizedly sanctioned 2 agricultural gold loans in violation of bank's instructions and that as per circular Exhibit M45 filed before the Lower Court, agricultural gold loans can be sanctioned only by officials in the rank of Junior Management Grade-I(JMG) and above. The Petitioner working as a Senior Special Assistant has unauthorizedly sanctioned 2 gold loans under Exhibit M43 and M44. In his cross-examination, the admission of the Petitioner is that M43 and M44(wrongly typed as M45)contained his initial with endorsement sanctioned.

In his cross-examination, the Petitioner admits that he did not complain to the Bank or Union when the Manager instructed him to sign as if he sanctioned loans.

8.The findings of the Labour Court reveals that the very admission made by the Petitioner during his examination would show that he did not comply with the procedure through he was bound to as per the circular. The petitioner had not examined purity of the gold ornaments that have come before him during the period from 05.06.2004 to 30.09.2010 in respect of 77 gold jewel loan applications. It could be seen from the proof affidavit itself that the petitioner is impliedly admitting that it is his duty to test the purity of the gold ornaments. He specifically admitted that he did not verify the purity of 77 jewels. It could be seen that by sanctioning the two loans, the Petitioner has acted beyond his authority, against the instructions given by the bank in this regard.

9.Thus it could be seen that the main and grievous charges against the petitioner that he failed to verity the KYC norms and also did not test the purity of the gold involved in 77 agricultural gold loans are proved beyond doubt. This has resulted in the bank having been exposed to a loss of more than Rs.45.00 Lakhs. This is inspite of the fact that the Petitioner has service of 32 years at the time of the incident. He has been continuously resorting to the practice of not testing the purity of the ornaments deliberately or probably out of negligence. The lapses on the part of the Petitioner are very grievous. The petitioner having been placed in a position of faith and was dealing with the public money he should have shown sufficient sincerity in his work. Here is a case where a Senior Special Assistant who was very much acquainted with the banking procedure and was bound to do certain duties on his part had failed to perform those duties, thus, resulting in the Bank being exposed to a loss of almost half crore. It would not be proper to interfere with the punishment of dismissal imposed on the Petitioner. I do not find any reason to interfere with the punishment imposed on the petitioner. I do not find any reason to interfere with the punishment imposed by the Disciplinary Authority. It is submitted that the conduct of the Petitioner in “acting prejudice to the interest of the Bank” is one of the gravest misconducts which deserves the punishment of dismissal.

10.A perusal of the entire Award reveals that the writ petitioner has admittedly admitted the charges and further, the Labour Court independently considered the documents as well as the evidence and arrived at a conclusion that the charges are proved. The High Court would not interfere with the fact findings made by the Industrial Tribunal unless such findings are directly in contravention with the evidences. In the present case, the documents filed as well as the findings are corroborating. Therefore, there is no reason for this Court to interfere with the Award of the Industrial Tribunal under Article 226 of the Constitution of India. When the findings of the Tribunal with reference to the facts as well as the grounds are candid and convincing, this Court is not inclined to interfere with the award of the Industrial Tribunal. Consequently, the award dated 04.04.2017 passed in I.A.No.32 of 2015 is confirmed and the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Deputy General Manager,
State Bank of India,
Chennai Zone-I, NW-1, Zonal Office,
Rajaji Salai, Chennai - 600 001.

2.The Presiding Officer,
Central Govt. Industrial Tribunal
Cum Labour Court,
Shastri Bhavan, Haddows Road,
Chennai - 600 006.

+1 cc to M/s.K.M.Ramesh,Advocate Sr.No. 99520
+1 cc to M/s.S.Bazeer Ahamed,Advocate Sr.No. 99888

AKM/10.02.2020/8P- 5C /

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