

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.27126 of 2018
and W.M.P.Nos.31531 and 38868 of 2018

K.Somasundaram ...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,
Indian Overseas Bank,
Central Office, HRMD (Industrial Relations Department)
763, Anna Salai,
Chennai - 600 002.
- ...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, seeking for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned letter bearing CM(PGS)/DA/VIG/213/2466/2018-2019 dated 15.09.2018 issued by the 2nd 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 31.05.2018.

For Petitioner : Mr.K.M.Ramesh
For Respondents : Mr.N.G.R.Prasad for R1 and R2

ORDER

(*)The Writ Petition has been filed seeking a Writ of Certiorarified Mandamus, to call for the records relating to the impugned letter bearing CM(PGS)/DA/VIG/213/2466/2018-19, dated 15.09.2018 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 31.05.2018.

2.The petitioner is facing departmental proceedings for certain alleged delinquencies. When the petitioner was issued with a charge memo dated 31.05.2018 and when the departmental proceedings are to be commenced, he submitted a letter dated 14.08.2018 seeking to permit him to engage a lawyer to assist

him in defending the departmental proceedings. Such a request made by the petitioner was rejected by the respondent, hence, the present writ petition.

3.It is needless to mention that while facing departmental proceedings, the delinquent can be given all due adequate opportunity to defend such proceedings. While so, refusing to permit the petitioner to engage a lawyer of his choice would amount to denial of fair opportunity and it is in violation of principles of natural justice. In this context, the learned counsel for the petitioner also relied on a decision of 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. In the light of the above, this Court is of the view that impugned order is legally not sustainable as it is in violation of principles of natural justice. Accordingly, the impugned order is set aside and the respondent is directed to permit the petitioner to have the assistance of a lawyer of his choice to defend the departmental proceedings initiated against him. No costs. Consequently, the connected miscellaneous petitions are closed."

Sd/-

Assistant Registrar (CJ Conf)

Dated: 30/01/2019

* order dated 12/11/2019 in WP. 27126/18
recalled and corrected order
substituted as per of this court
dated 27/01/2020

Sd/- Assistant Registrar (CS III)

Dated: 19/03/2020

//True Copy//

Sub Assistant Registrar

Pam

To

To be substituted for the order already despatched on
03/01/2020

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

2. The Chief Manager/Disciplinary Authority,
Indian Overseas Bank,
Central Office, HRMD (Industrial Relations Department)
763, Anna Salai, Chennai - 600 002.

+1cc to Mr.K.M.Ramesh, Advocate, S.R.No. 5967

+1cc to Mr.N.G.R.Prasad, Advocate, S.R.No. 6559

W.P.No.27126 of 2018

SPD(CO)

GN(31/12/2019)

GN(19/03/2020)