IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.P.No.21332 of 2007

V.Sundaresan ...Petitioner

Vs

1.Union Bank of India,
Rep by its General manager (HRM),
Central Office,
239, Vidhan Bhavan Marg,
Nariman Point, Mumbai 400 021.

2.Union Bank of India,
Rep by its Deputy General manager (HRM),
(Appellate Authority)
Central Office,
239, Vidhan Bhavan Marg,
Nariman Point, Mumbai 400 021.

3.Union Bank of India,
Rep by its Asst. General manager (HRM),
Industrial Relations Dept.
(Disciplinary Authority)
Central Office,
239, Vidhan Bhavan Marg,
Nariman Point, Mumbai 400 021.

4.Union Bank of India,
Rep by its Deputy General manager ,
Nodal Regional Office
139, Broadway,
Chennai 600 108. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of a writ of Certiorarified mandamus to call for the entire records pertaining to the order of the third respondent in CO:IRD:2508 dated 10th May 2004 as confirmed by the order of the second respondent in CO:IRD:2217:07 dated 18th April 2007 and quash the said orders and consequently direct the respondents to reinstate the petitioner in the service of the bank with all consequential benefits including continuity of Service, back wages etc.

For Petitioner : Mr.Sundar Narayan
for R. Sunil Kumar

For Respondents : M/s T.S. Gopalan & Co
Counsel for R1 to R4.

O R D E R

This writ petition has been filed challenging the order dated 10.05.2004 passed in CO:IRD:2508 by the third respondent which was confirmed by the order dated 18.04.2007 in CO:IRD:2217:07 by the second respondent.

2. It is averred in the writ petition that the petitioner was appointed as a clerk in the first respondent bank on 18.09.1971 and he was employed as Senior Manager, Service Branch Chennai. When he was working as a Senior Manager in Service Branch, Chennai, he was suspended from service on 07.03.2002 vide memorandum No. GMO:GM:714 dated 07.03.2002 by the General Manager, Chennai for certain alleged acts of omission and commission purported to have been committed by him. According to the petitioner, the General Manager is not the prescribed competent Authority as per Regulation 12 of Union Bank of India officer Employees (Discipline and Appeal Regulations) Regulation 1976 to suspend him. Therefore, in violation of the said Regulations, suspension itself is not valid.

3. It is further averred by the writ petitioner that he received memorandum No.CO.IRD:3304 dated 24.05.2002 from Industrial Relations Department, Central Officer, Mumbai listing out certain allegations including encashment of National Savings Certificate and calling upon him to submit his explanation with the permission to inspect documents only for the allegations of M/S Raaj Enterprises and M/S Hindustan Steel Co and he submitted at that stage itself. i.e. On receipt of memorandum dated 24.05.2002, he made representation to the 3rd respondent to furnish copies of documents for other allegations including NSC matters. Further he submit that the 3rd respondent turned down his request and he was not allowed even to inspect the documents pertaining to other allegations which are against the principles of natural justice. However, in order to avoid any delay in the matter, he had submitted his detailed reply dated 17.06.2002.

4. The following charges are leveled against the petitioner :-

(i) He allegedly fabricated letters, documents and obtained a duplicate National Savings Certificate from Anna Nagar Post Office and got it encashed knowing well that the original NSC was under bank's lein for the loan availed by him.

(ii)He held deposit in his name, singly, jointly with relatives, which appear to be much beyond his known sources of income. He maintain Savings Bank Accounts in six branches of Union Bank of India and at Central Bank of India, Mogappair branch and he had not mentioned the details of account, viz., Central Bank of India, in his Assets and liabilities statement.

(iii) He purchased a flat at measuring 900 Sq.fts in Velachery, Chennai, at a cost of Rs.4.11 lakhs and payments for the flat have been made between July 1992 and July 1994 and though he had obtained permission form Regional Office/Central Officer to avail loan from HDFC/LIC for purchase of the flat, but he had not obtained any loan from any of the above sources. Further the charge said that he had given false declaration the he has submitted his Assets and Liabilities statement as of March 2000 and March 2001.

(iv)He failed to follow the lending norms/systems and got limits sanctioned favouring M/s Raaj Enterprises and M/s Hindustan Steel company and allowed excess drawings as well as diversion of funds in both the above accounts resulting the bank funds to the tune of Rs.110 lakhs being at stake.

(v)He failed to withhold a sum of Rs.50,000/- from Mr.Ravishankar (Asst. Manager), while releasing his terminal benefits on his voluntary retirement being recovery arising out of modified fitment formula on his promotion from clerical to officer cadre.

5. According to the learned counsel for the petitioner, the third respondent had not given any findings on two aspects in his final order . Hence the findings of the inquiry Authority on the two matters are contrary to the evidences.

6.Petitioner preferred appeal to the 2nd respondent DGM-HRM Mumbai on 28.02.2007 with relevant documentary evidences. The second respondent impugned order CO:IRD:2217 dated 18.04.2007 paras 1 to 5 are statement of facts leading to the appeal preferred by petitioner and the 2nd respondent has failed in his duty to consider the contentions raised by the petitioner with reference to the oral/documentary evidences emerged during enquiry with the application of mind. Therefore, the impugned order of the 2nd respondent dated 18.04.2007 is not sustainable under law and he submit that the impugned order CO:IRD;2217 dated 18.04.2007 of the 2nd respondent is not a speaking order as respondent has made only a general statement without any corroborative evidence and without going into the issues raised by petitioner.

7.The learned counsel for the petitioner would submit that the 2nd respondent while passing the impugned order dated 18.04.2007 has not considered the evidences and not justified the disagreement action of the 3rd respondent with the findings of the Inquiry Authority, had held almost all charges as not proved, further the 3rd respondent had intended to impose a punishment other than dismissal after seeking advice from CVC as per the information furnished by the CPIO of the bank vide his reference OCPIO/PRR/DIS/F/133/01/2006-2007 dated 29.01.2007 under RTI Act 2005. Respondent have not been supplied the CVC second stage advice along with his view to enable petitioner to submit his representation as per CVC direction No. 99/VGL/66 dated 28.09.2000. After having an observation of the Hon'ble Supreme Court in SBI Vs D.C. Agarwal, the same has not been supplied till date and the punishment of dismissal has been made behind petitioner back without transparency and in violation of the CVC direction and observations of Hon'ble Supreme Court. This is clear violation of principles of natural justice.

8. Respondents filed counter affidavit submitting that on 05.02.2003, the enquiry commenced and petitioner and his representative participated in the enquiry. On that day, the list of documents and list of witnesses which the bank proposed to rely in the enquiry was furnished to the petitioner along with the copies of the documents. They were marked as M.EX.1 to M.EX.57. The petitioner sought 15 days time to go through the documents furnished by the bank and sought to provide a list of documents. On 18.02.2003, the enquiry was resumed and the documents of the defence were marked serially as 1 to 177. The bank was not in a position on that day to provide 57 other documents and time was sought. In the enquiry, it was informed that one witness was present and petitioner was enquired whether he would have any objection to examine the said witness in chief examination. Agreeing to the request, one R.Subramaniam was examined in chief on that day. The enquiry was then adjourned to 3rd March 2003 on which date 146 documents produced by the defence was taken on record. The representative of the petitioner also informed the Enquiry Officer that he had received the photostat copies of the documents from Sirmour Chowk Branch through the Presenting Officer and they were also admitted as defence documents. Thereafter the first witness was extensively cross examined. The enquriy was adjourned to 04.03.2003. Then the second witness was examined. On conclusion of cross examination of MW.2, the petitioner produced additional documents which were marked as D.EX.152 and 153 and the bank had also produced Xerox copies of certain documents which were taken on record as M.EX.42A and B and 60. Thereafter, 3rd witness was examined and the said witness was cross examined on 05.03.2003. On conclusion of the examination of management witness, the petitioner did not let in any oral evidence or submit any written submissions regarding the charges levelled against him. However on 28.03.2003 the petitioner forwarded a copy of the written brief to the Enquiry Officer.

9.The Enquiry Officer gave a report on 17.04.2003 in which he exonerated the petitioner of the charge relating to the National Savings Certificate, opening of account in 6 branches, purchase of flat at Velachery, failure to withhold 50% of terminal benefits from B.Ravi Shankar. The Enquiry Officer however held that the petitioner was guilty of the allegations in that petitioner had not mentioned the details of his account in the Central Bank of India in his assets and liabilities statement, that the charge relating to non fulfillment of condition in respect of Raj Enterprises and Hindustan Steel were proved to the extent indicated in the Enquiry report. The copy of the findings of the enquiry was forwarded to the petitioner for his comments. The disciplinary authority scrutinized the enquiry papers and the enquiry report. However, petitioner chose to disagree with the findings of the Enquiry Officer in so far as it exonerated the petitioner in respect of the charges and issued a memorandum dated 23.01.2004 requiring the petitioner to show cause regarding the findings. On 11.02.2004 the petitioner gave his reply and after considering the same, orders were passed on 10.05.2004 imposing a punishment of dismissal form the service of the bank.

10.The learned counsel for the respondent would submit that the petitioner had a right of preferring an appeal against the order of dismissal but however chose to file WP.No.15003 of 2004 before this Hon'ble Court directing the first respondents to hear the appeal and dispose the same. As the order of this Hon'ble Court was not in conformity with the provisions of the Union Bank of India Officer Employees (Discipline and appeal) Regulation 1976, the bank preferred Writ Appeal No.1605 of 2006. On 09.02.2007, a Division Bench of the Hon’ble Court passed orders modifying the order on W.P.No.15003 of 2004 and directed the petitioner to prefer an appeal before the second respondent. The Second respondent passed orders on 18.04.2007 declining to interfere with the punishment of dismissal. The present Writ petition is against the order dated 18th April 2007 confirming the order of dismissal dated 10.05.2004. But the Petitioner has not made out any error apparent on the face of record warranting interference by this Hon'ble Court in its discretionary jurisdiction under Article 226 of the constitution of India. The entire affidavit proceeds on the footing that the petitioner is attempting to convert this Hon'ble Court as appellate forum to reappraise the evidence that was adduced in the enquiry and come to a contrary finding. Such an exercise is impermissible and therefore the prayer in the writ petition cannot be countenanced.

11. Heard both sides and perused the records carefully.

12. The case of the petitioner is that he received charge memo, listing out certain allegations and he submitted his explanation and participated in the enquiry. However, the 3rd

respondent turned down his request for certain documents sought for by him and the 3rd respondent has not given any findings on two aspects in his order. Against which, petitioner preferred appeal to the 2nd respondent. But the 2nd respondent also failed to consider the points raised by the petitioner and therefore, impugned order passed by the 2nd respondent is without going into the issues raised by him. Ultimately, the the Disciplinary Authority/3rd respondent who passed the impugned order of dismissal from service is in violation of the CVC direction.

13. The respondents has clearly stated that the list of documents and list of witnesses relied on in the enquiry was furnished to the petitioner along with copies of the documents. Admittedly, the petitioner has been served with charge memo and he has given explanation. The respondent authorities, by following due procedures as contemplated in the Rules and the provisions of the Union Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976, conducted enquiry and the enquiry officer based on the findings given report and the Disciplinary Authority, passed the order of punishment, on the basis of the proved charges. Challenging the same, the present writ petition is filed by the writ petitioner.

14. A perusal of the records would go to show that there is no violation of Rules and Regulations stipulated by the respondent Bank and the respondent-authorities by following procedures contemplated in the Rules, conducted enquiry and passed the impugned order. This court does not find any violation of principles of natural justice in passing the impugned order and also in the disciplinary proceedings. Since, this court finds no illegality or irregularity in the impugned order passed by the respondent-Bank, no interference is called for. Accordingly, the writ petition is dismissed as devoid of merits. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The General manager (HRM),Union Bank of India,
Central Office,
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4.The Deputy General manager,
Union Bank of India,
Nodal Regional Office
139, Broadway, Chennai 600 108.

+1cc to Mr.Sundar Narayan, Advocate SR. No. 57226
+1cc to Mr.T.S.Gopalan & Co, Advocate SR. No. 57082

W.P.No.21332 of 2007

KV (CO)
PR (29/11/2021)