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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.07.2021

PRONOUNCED ON : 28.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.3435 of 2016
and
WMP.Nos.24499 of 2018
& 2804 of 2016

B.Annamalai

... Petitioner

Vs.

1. State Bank of India
rep. by the Chief General Manager,
Local Head Office,
16, College Road,
Chennai-600 006.
2. The Deputy General Manager (B & O),
(Appellate Authority), State Bank of India,
Chennai Zone-II,
Network-1, Chennai Zone-II,
HR Section,
86, IV Floor, Rajaji Salai,
Chennai-600 001.
3. The Assistant General Manager,
(Disciplinary Authority),
Liability Central Processing Centre,
State Bank of India,
Karim Mansion,
787, Anna Salai,
Chennai-600 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records from the files of the respondents 2 and 3 pertaining to their impugned orders (i) bearing Staff/AWD/102 dated 11.02.2015 imposing the punishment of "discharging from service .." in terms of paragraph 5 (f) & (j) of Memorandum of Settlement dated 10.04.2002 issued by the



third respondent and (ii) the order of the second respondent bearing No.DGM (B&O)/ZO-II/Hr/01418 dated 07.08.2015 and to quash both the orders and consequently direct the respondent bank to reinstate the petitioner in service with continuity of service and with all monetary benefits and provide him suitable employment in non sensitive post as per 47(1) of Persons with Disabilities (Equal Opportunities, protection of rights and full participation) Act, 1995 or in the alternative consider providing appointment to the petitioner's wife in suitable post.

For Petitioner : Mr.K.M.Ramesh

For Respondent : Mr.S.Ravindran,
Senior counsel

O R D E R

The present Writ Petition is heard through Video Conferencing on 19.07.2021.

2. Heard Mr.K.M.Ramesh, learned counsel appearing for the petitioner and Mr.S.Ravindran, learned counsel appearing on behalf of the respondents.

3. The brief facts of the case are as follows:-

(i) The petitioner herein, while working as a Senior Assistant in the respondent bank, was levelled with five charges on acts of misconduct, pertaining to misappropriation of Government cheque, deposit of excess cash on twenty three occasions, cash shortage on three occasions, misappropriation of three customers' monies and deposit of less amount of a customer. The petitioner had submitted a reply, admitting to all the charges and undertaking to refrain from indulging in such a happenings in future.

(ii) Nevertheless, an enquiry came to be held and out of the five charges, charges 2 to 5 were held to be proved by the Enquiry Officer. Consequently, the petitioner was imposed with the punishment of discharge from services, with superannuation benefits and without disqualification from future employment, through an order dated 11.02.2015. The appeal preferred by the petitioner against the punishment was rejected on 07.08.2017.

(iii) The petitioner seeks for quashing of the punishment in the first portion of the prayer in the Writ Petition. In the consequential prayer sought for, the petitioner seeks for providing alternative employment to his wife in a suitable post on the ground of his medical incapacitation, by seeking for



retirement on medical grounds.

4. Today when the matter was taken up for final disposal, Mr.K.M.Ramesh, learned counsel for the petitioner submitted that though he has raised grounds challenging the order of punishment with the consequential prayer for reinstatement, he does not press the grounds with regard to petitioner's reinstatement. Alternatively, the learned counsel raised grounds touching upon the second portion of the prayer in the Writ Petition, wherein he has sought for modification of his punishment into one of retirement on medical grounds due to incapacitation and consequently, sought for compassionate appointment for the petitioner's wife in accordance with the Revised Scheme for compassionate appointment dated 16.05.2021, (hereinafter referred to as 'the Scheme').

5. It is the submission of the learned counsel for the petitioner that the Scheme is applicable to a dependent family member of a permanent employee of the respondents, who had retired on medical grounds due to incapacitation and the dependent of such an employee would be entitled for compassionate appointment. In the light of the Scheme, the learned counsel submitted that the Medical Board had certified the petitioner with the disability of "Cognitive Dysfunction Mood Disorder" and in the report dated 16.10.2014, the Board had certified his disability to be of serious nature, rendering him unfit for continuing his service in the bank. Hence, the learned counsel submitted that in the light of the Scheme, his wife's candidature may be considered for compassionate appointment, for which purpose, he made an earnest request to have the original punishment modified into one of 'retirement on medical grounds'.

6. Per contra, the learned Senior counsel for the respondents made a preliminary objection stating that the petitioner is a workman as defined under Section 2(s) of the Industrial Disputes Act, and therefore, the present Writ Petition is not maintainable, since the alternate remedy under the Industrial Disputes Acts, 1947 [ID Act] has not been exhausted. Insofar as the ground raised by the petitioner claiming compassionate appointment is concerned, the learned Senior counsel submitted that the Scheme would be applicable only for a person who had retired on medical grounds and not to persons who have been discharged from their services. He further added that the Scheme itself is intended for the dependents of the employees, who had expired due to COVID 19.

7. In the light of the submissions of the learned counsel for the petitioner that he is not pressing upon the grounds raised in the Writ Petition, seeking for setting aside the



orders of punishment for the purpose of reinstatement and by taking note of the fact that the petitioner has not raised such grounds during the time of oral arguments also, the grounds raised in this regard in the affidavit filed in support of the Writ Petition, are not answered.

8. Insofar as the modification of the punishment imposed on the petitioner from "discharge of service into retirement on medical grounds due to incapacitation" is concerned, the applicability of the Scheme to the petitioner and his wife were looked into.

9. The Revised Scheme, dated 16.05.2021, on which the petitioner places reliance, has been made applicable to a dependent family member of a confirmed regular permanent employee of the State Bank of India, who either i) dies while in service or ii) is retired on medical grounds due to incapacitation before reaching the age of 55 years, for which, the medical grounds are required to be certified by the Medical Board, as detailed in the Scheme.

10. For the purpose of availing compassionate appointment under the Scheme, the petitioner at the foremost, requires to establish that the Scheme itself is applicable to his case. The issue as to whether the petitioner's original punishment can be modified into one of retirement on medical grounds would gain significance only when it found that the Scheme is applicable to the petitioner's case. In other words, if the Scheme is held to be inapplicable, no useful purpose would be served by modifying the punishment from 'discharge of service' into 'retirement on medical grounds'. On this aspect, the applicability of the Scheme to the petitioner's case, was looked into.

11. The first glaring impediment on the applicability of the Scheme is the effective date of applicability of the Scheme. Paragraph 4 of the Scheme clearly states that the effective date for applicability was the date of the Circular i.e., on 16.03.2021. Apart from isolating the cases of death due to COVID 19 with retrospective effect from 24.03.2020, no other portion of the Scheme has been given effect to retrospectively. When the Scheme itself has not been made applicable to the dependent of a permanent employee of the State Bank of India, who was discharged from the services on 11.02.2015, exploring the possibility of modifying the original punishment of discharge from service into retirement on medical grounds, would be a futile exercise.

12. It is not in dispute and as a matter of fact by both the parties that prior to the present Revised Scheme dated 16.05.2021, there is no other Scheme which envisages the



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provision for compassionate appointment to the dependents of a permanent employee, who is rendered medically incapacitated and consequently permitted to retire. Thus, the petitioner may not have a valid legal ground to seek for compassionate appointment in favour of his wife.

13. The learned Senior counsel for the respondent raised a preliminary ground of maintainability of the Writ Petition, since the petitioner has failed to exhaust the alternate remedy under the ID Act. This Court does not intend to go into the depth of such a submission in view of the various powers recognized by the Hon'ble Supreme Court, to the effect that the High Court is vested with inherent powers of discretion to entertain the Writ Petition, when it is satisfied that the aggrieved party cannot have an adequate and suitable relief in the alternate remedy. Such discretionary powers has been well established in a catena of judgments of the Hon'ble Supreme Court, as well as by various High Courts.

14. In the instant case, the petitioner seeks to invoke the benefits of the Scheme by foregoing his right to challenge the punishment imposed on him. Though this Court may have found that the petitioner may not be entitled to the Scheme, yet for the sake of consideration of his entitlement to be considered under the Scheme, the appropriate remedy preferable would be under Article 226 of the Constitution of India and the provisions of the Industrial Disputes Act in this regard, may not be substantive or efficacious remedy.

15. For all the foregoing reasons, I do not find any merits in the above Writ Petition. Consequently, the Writ Petition stands dismissed. Connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CO-III)

//True Copy//

Sub Assistant Registrar

DP



To

1. The Chief General Manager,
State Bank of India,
Local Head Office,
16, College Road, Chennai-600 006.
2. The Deputy General Manager (B & O),
(Appellate Authority), State Bank of India,
Chennai Zone-II,
Network-1, Chennai Zone-II,
HR Section, 86, IV Floor, Rajaji Salai,
Chennai-600 001.
3. The Assistant General Manager,
(Disciplinary Authority),
Liability Central Processing Centre,
State Bank of India, Karim Mansion,
787, Anna Salai, Chennai-600 002.

+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.36220

W.P.No.3435 of 2016 and
WMP.Nos.24499 of 2018
& 2804 of 2016

NK(CO)
CT(12/08/2021)