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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.11.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.No.1469 of 2016

V.Valmeeki

...Appellant/Petitioner

Vs.

1. The Chief Manager / Disciplinary Authority,
Central Bank of India, C.C.P.C.,
14 & 15, Variety Hall Road,
Coimbatore.

2. The Regional Manager,
Central Bank of India,
Post Box No.13, Narasingpur Road,
Chitnavis Ganj, Chhindwara - 480 002,
Madhya Pradesh.

...Respondents/Respondents

Appeal preferred under Clause 15 of Letters Patent against the order dated 26.03.2015 in W.P.No.30157 of 2013 dismissing the Writ Petition.

Prayer in W.P.No.30157 of 2013:

Writ Petition filed under article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in connection with the impugned order passed by him in CCPC/ DAD/ 2012-13/3 dated 23.05.2012 in and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetay benefits.

For Appellant : Mr.C.Prakasam

For Respondent : Mr.T.S.Anandh
for M/s.T.S.Gopalan & Co.



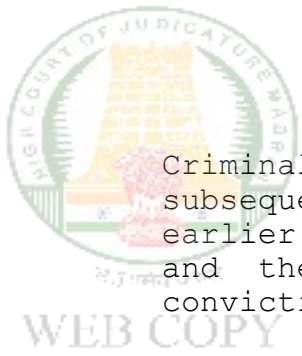
JUDGMENT

(Judgment was delivered by M.DURAI SWAMY, J.)

Challenging the order passed in W.P.No.30157 of 2013, the Writ Petitioner has filed the above Writ Appeal.

2.The appellant filed the Writ Petition to issue writ of certiorarified mandamus to call for the records of the 1st respondent in connection with the impugned order passed by the 1st respondent dated 23.05.2012 and to quash the same and consequently directing the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

3.It is the case of the appellant that he was initially recruited as a Clerk in Central Bank of India and later promoted to the post of Assistant Manager. While he was functioning as Assistant Manager, a criminal case was registered by the Central Bureau of Investigation on 25.05.2009, alleging that he had demanded illegal gratification from a customer. The 2nd respondent initiated disciplinary proceedings by issuing a charge memo dated 21.12.2009. The first charge relates to demanding bribe from the customer. The second charge relates to the arrest of the petitioner by the CBI. In the domestic enquiry, the Enquiry Officer found that the charges framed against the appellant were not proved. However, the Disciplinary Authority disagreed with the said findings and imposed punishment by reducing his pay for a period of three years with cumulative effect. The appellant has not challenged the said order and the same has become final. In the criminal case initiated against the appellant, the II Additional Sessions Judge, Jabalpur, by his judgment dated 09.12.2011 convicted him. Pursuant to the conviction, the 2nd respondent issued a notice dated 12.05.2012 to show cause as to why he should not be dismissed from service on account of his conviction by a Criminal Court. The appellant submitted his explanation to the show cause notice and the Disciplinary Authority passed an order dated 23.05.2012 dismissing the appellant from service. Challenging the order dated 23.05.2012, the appellant has filed the Writ Petition. The only contention of the appellant was that imposition of punishment by the 1st respondent would amount to double jeopardy, hence, the same is liable to be set aside. The learned Single Judge, taking into consideration the case of both sides, dismissed the Writ Petition, finding that the appellant was not punished earlier on account of his involvement either in a criminal case or conviction by Criminal Court. The second charge framed by the 2nd respondent earlier relates to the arrest of the appellant and publication of the said event in a Newspaper. Further, the subsequent proceedings was initiated solely on account of the conviction of the petitioner by the



Criminal Court. The learned Single Judge also observed that the subsequent disciplinary proceedings has nothing to do with the earlier proceedings initiated by charge memo dated 21.12.2009 and the same was an independent charge consequent to the conviction of the appellant by the Criminal Court.

4.As per the provisions of Section 10 (1) (b)(i) of the Banking Regulation Act, 1949, the Banks shall not employ persons who are convicted by Criminal Court for an offence involving moral turpitude. It is not in dispute that the appellant was convicted by the Criminal Court on account of his involvement in a corruption case and was dismissed from service by the 1st respondent. As per the provisions of the Banking Regulation Act, 1949, the 1st respondent passed an order dated 10.05.2012 initiating disciplinary proceedings against the appellant on account of his conviction by the Criminal Court. The appellant was also issued with a show cause notice dated 12.05.2012 and the Disciplinary Authority ultimately passed an order of dismissal.

5.As already stated, Section 10 of the Banking Regulation Act, 1949, prohibits the Banks from employing persons who are adjudicated insolvent or convicted by a Criminal Court for an offence involving moral turpitude. There cannot be any dispute that the conviction for an offence under the Prevention of Corruption Act would constitute a punishment for moral turpitude.

6.Mr.Anandh, learned counsel appearing for the respondents submitted that the contention of the learned counsel for the appellant is liable to be rejected for the reason that the Hon'ble Supreme Court of India in the judgment reported in (2020) 12 Supreme Court Cases 144 [Life Insurance Corporation of India Vs. Mukesh Poonamchand Shah] has clearly held that when a major penalty was proposed to be imposed on the ground of the conduct of the employee which had led to conviction on a criminal charge, the disciplinary action initiated by the Disciplinary Authority imposing punishment of reduction of a pay shall not be construed as double jeopardy. Paragraph-17 of the judgment reads as follows:

"...

17.In State of Haryana v Balwant Singh [(2003) 3 SCC 362 : 2003 SCC (L & S) 279], the respondent, who was an employee of a public transport corporation, caused a death as a result of his rash and negligent driving. The Corporation had to suffer an award of the Motor Accident Claims Tribunal. Following the disciplinary enquiry, the employee was subjected to a punishment of a reduction of pay to the minimum of the time scale of a driver for four years. On the conviction of the employee for offences under Sections



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279, 337, 338 and 304-A of the Penal Code, his services were terminated. On this set of facts, a two-Judge Bench of this Court, speaking through Justice Shivaraj V.Patil, J., rejected the argument based on the principle of double jeopardy and held:

"7... there was no question of the respondent suffering a double jeopardy. The aid of Article 20 (2) of the Constitution of India was wrongly taken. Article 20(2) of the Constitution of India does not get attracted to the facts of the present case."

The Court held that when a major penalty was proposed to be imposed on the ground of the conduct of the employee which had led to conviction on a criminal charge, it was not necessary to take recourse of the provisions of Rules 7(1) and (2) of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 relating to the convening of an inquiry in which a reasonable opportunity of showing cause would have to be given."

7.The ratio laid down by the Apex Court in the judgment cited supra squarely applies to the facts and circumstances of the present case.

8.Following the said ratio, we do not find any ground to interfere with the order passed by the learned Single Judge. The Writ Appeal is liable to be dismissed. Accordingly, the same is dismissed. However, since the second proceedings was initiated only on account of the conviction of the appellant by a Criminal Court, the subsequent acquittal by the Appellate Court would come to his rescue. Since the High Court of Madhya Pradesh is yet to consider the appeal, it is always open to the respondents to recall the order of punishment of dismissal in case the appellant is acquitted by the High Court of Madhya Pradesh. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Manager / Disciplinary Authority,
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Madhya Pradesh.

+1cc to M/s.T.S.Gopalan & Co, Advocate Sr No.57764

W.A.No.1469 of 2016

KSM (CO)
PR (23/11/2021)