IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.31163 OF 2019

Shanmuga Sundaram,
S/o (Late) Ramaswamy

.. Petitioner

Vs.

1. The Chief General Manager,
State Bank of India,
Local Head Office,
College Road,
Nungambakkam,
Chennai-600 006.

2. The Deputy General Manager (B & O),
State Bank of India,
Zonal Office,
No.86, Rajaji Salai,
Chennai-600 001.

3. The Assistant General Manager
(Administrative Officer),
Disciplinary Cell Administrative Unit,
State Bank of India, Chennai Network-1,
No.86, Rajaji Salai,
Chennai-600 001.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari and quash the impugned order No.DIS/CON/120, dated 09.06.2011 passed by the third respondent.

For petitioner : Mr.A.J.Mohamed Kassim
For respondents : Mr.S.Raveendran, Senior Counsel for M/s.S.Bazeer Ahamed

O R D E R

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to quash the impugned order passed in No.DIS/CON/120, dated 09.06.2011 by the third respondent.

2. The case of the petitioner is that when he was working as a Special Assistant at the Vellore Main Branch of the respondent Bank, he was alleged to have unauthorisedly and wrongfully debited from various accounts to the tune of Rs.21,85,030/-. In the face of the allegations, he was placed under suspension on 07.04.2010 in terms of provisions of Memorandum of Settlement dated 10.04.2002.

3. Thereafter, a charge memo was issued and an enquiry was conducted into the charges. On conclusion of the enquiry, a report was submitted holding that three charges were proved against him. Subsequently, on 09.06.2011, the petitioner was dismissed from service. As against the same, the petitioner has preferred an appeal on 21.07.2011 before the second respondent and according to the petitioner, he has not received any communication as to the status of the appeal to the 2nd respondent filed as early as in 2011. According to the petitioner, he has also sent a reminder on 27.02.2017.

4. While the matter stood thus, simultaneously when disciplinary action was initiated against him, a criminal case was lodged and the petitioner was charged for the offence under Sections 120(b), 420 and 409 of IPC. The case was numbered as C.C.No.1 of 2013 and finally, the Trial Court appeared to have acquitted the petitioner vide judgment dated 30.05.2019.

5. After having been acquitted by the trial Court, the petitioner is said to have submitted a representation on 01.08.2019 to the first respondent to settle all his retirement benefits like Gratuity, Provident Fund Contribution, salary arrears payable during the period of suspension, medical benefits etc. As there was no response forthcoming from the respondent bank, the present Writ Petition has been filed seeking to quash the impugned order of dismissal which was passed as early as on 09.06.2011.

6.The learned counsel for the petitioner reiterated the above facts. According the learned counsel, once the petitioner was acquitted by the trial Court, he is entitled to the relief of getting the dismissal order recalled and cancelled. The learned counsel has also quoted a judgment in this regard in the grounds as contained in the affidavit filed in support of the Writ Petition.

7. In response to the notice, Mr.Raveendran, learned Senior Counsel appeared for the respondent bank. A detailed counter

affidavit has been filed. Mr.Raveendran, learned Senior Counsel for the respondent bank would submit that the order of dismissal was passed on 09.06.2011 and this Writ Petition was filed after a period of 8 years and on this ground alone, the Writ Petition is liable to be dismissed. The learned senior counsel would further submit that as long as the dismissal order is in force, the petitioner cannot pray for settlement of any retirement benefits.

8. The learned senior counsel would further submit that the petitioner has fully participated in the domestic enquiry and after giving full opportunity to him, a report was submitted holding the charges proved against him. As the charges framed were serious in nature, namely, misappropriation of public money, the bank had no option except to dismiss him from service.

9. The appeal preferred by the petitioner was also rejected on 23.7.2012 and a copy of which was also communicated to him and received by him on 02.08.2012.

10. In the counter affidavit, the genuineness of letters dated 05.07.2019 and 01.08.2019 had been questioned. Moreover, the learned senior counsel would submit that even assuming that those letters were genuine, yet the standard of proof in the domestic enquiry is completely different and what is required for proving the charges in the domestic enquiry is only preponderance of probability and not unimpeachable evidence beyond reasonable doubt. Even otherwise, the tenor of the nature of charges was different in the departmental action and it is not a case of the petitioner that he was not given any opportunity at all in the departmental enquiry.

11. The allegation that the petitioner had not been paid subsistence allowance has been disputed factually in the counter affidavit in paragraph 7. The details of payment have also been furnished. The learned senior counsel would submit that this case has to be dismissed both on the ground of maintainability and on merits as well.

12. This Court considered the submission of the learned counsel for the petitioner and the learned senior counsel for the respondent bank.

13. The fact that the petitioner was dismissed from service on the basis of serious allegation of misappropriation as early as on 09.06.2011 is not disputed. It also transpired that the appeal preferred as against the order of dismissal by the disciplinary authority was also rejected on 23.07.2012, which

appeared to have been communicated and received by the petitioner. But, it is stated in the affidavit filed by the petitioner that he had not received any communication from the appellate authority till date.

14. Even otherwise, it could be seen that when the petitioner was dismissed from service as early as on 09.06.2011 and even assuming that he had not heard anything from the appellate authority, nothing precluded or prevented the petitioner from challenging the dismissal order passed against him all these years. The petitioner having slept over his right, cannot be allowed to revive the right to challenge the dismissal order dated 09.06.2011 after he was said to have been acquitted in the criminal case in 2019.

15. As rightly contended by the learned senior counsel for the respondent Bank the standard of proof in the departmental action is not as rigorous as that in the criminal proceedings and in such circumstances, merely because the petitioner has been acquitted in the criminal case, it cannot ipso facto deemed to have been exonerated of the departmental charges.

16. As regards the proportionality of the punishment is concerned, this Court considering the serious allegation of misappropriation against the petitioner, particularly, when he was holding the position of public trust and involved in unauthorised and wrongful debits of the customers of the Bank, cannot be inflicted with lesser penalty than dismissal order. This Court is in agreement with the submissions made by the learned senior counsel for the respondent bank that in view of the serious charge of misappropriation which was held proved, the punishment of dismissal was imposed. This Court therefore, does not find any infirmity in the order of dismissal passed against the petitioner.

17. Therefore, the Writ Petition is dismissed both on the ground of laches and on the ground of merits. No costs. Connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Chief General Manager,
   State Bank of India,
   Local Head Office,
   College Road,
   Nungambakkam,
   Chennai-600 006.

2. The Deputy General Manager (B & O),
   State Bank of India,
   Zonal Office,
   No.86, Rajaji Salai,
   Chennai-600 001.

3. The Assistant General Manager
   (Administrative Officer),
   Disciplinary Cell Administrative Unit,
   State Bank of India, Chennai Network-1,
   No.86, Rajaji Salai,
   Chennai-600 001.

+1cc to Mr.A.J.Mohamed Kassim, Advocate, S.R.No.68899

W.P.No.31163 of 2019

RSV(CO)
RLP(31/01/2022)