



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:27.01.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P. (MD)No.14565 of 2010

and

M.P. (MD) .No.2 of 2010

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A.Joseph Paramaraj

... Petitioner

Vs.

1.The Deputy General Manager,
(Appellate Authority),
Indian Overseas Bank,
763, Anna Salai,
Chennai - 600 002.

2.The Senior Manager/Disciplinary Authority,
Indian Overseas Bank,
763, Anna Salai,
Chennai-600 002.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order of the first respondent passed in DO:VIG:DGM(G.P)AA:3925:2010, dated 20.10.2010 and the order of the second respondent in Proc.No.C/CDAC/1677/2010 dated 30.06.2010 and quash the same and consequently directing the respondents to reinstate the petitioner with arrears of salary from the date of dismissal to till date with all monetary and attendant benefits including the order of promotion.

For Petitioner : Mr.C.Jeganathan
for M/s.Veera Associates

For Respondent No.1 : Mr.M.P.Senthil

For Respondent No.2 : Mr.Srinivasa Murthy

O R D E R

This writ petition has been filed challenging the impugned order of the first respondent passed in DO:VIG:DGM(G.P)AA:3925:2010, dated 20.10.2010 and the order of the second respondent in Proc.No.C/CDAC/1677/2010 dated 30.06.2010 and consequently, direct the respondents to reinstate the petitioner with arrears of salary from the date of dismissal to till date with all monetary and attendant benefits including the order of promotion.



2. The case of the petitioner is that the petitioner was appointed as Sub-Staff in the Indian Overseas Bank on 21.10.1992 and after rendering 18 years of unblemished service, he was promoted as a Clerk. In the said Bank, the post of Clerk and Cashier is interchangeable posts. While so, he was suspended by the second respondent on 02.01.2009 based on the report of the Chief Regional Manager, Indian Overseas Bank, Regional Office, Tuticorin. Thereafter, based on the investigation report, the petitioner was placed under suspension and he was charge sheeted on 31.03.2009 alleging three charges against him. The sum and substance of the charges against the petitioner is that the petitioner caused damage to the property of the respondent Bank and thereby committed a gross misconduct to the Bank under Sub-clause 5(d) and 5(j) of Memorandum of Settlement dated 10.04.2002 between the Bank and its workmen.

2.1. The three charges are; (i) a sum of Rs.1500/- was alleged to have remitted by one Mumtaz Yasneem in her S.B.A/c.No.20917, was not remitted and credited in her account on the same day, however it was remitted on the next day, ie., on 08.01.2008, (ii) on 09.02.2008, on the closing hours of the Branch, a sum of Rs.50,000/- was left in the drawer of the petitioner instead of keeping the same in the safe vault and later it was recovered from the petitioner's drawer and on 14.02.2008, while closing the working hours, a sum of Rs.1,00,000/- was shortage and subsequently, it was brought to the information of the Branch Manager that it was lying behind the computer of the Cashier table, and (iii) on 20.02.2008, since the failure in the system, Rs.50,000/- cash was kept under the petitioner's custody and he reported as 'cash missing' from his custody and the said amount was recovered on the subsequent day, ie., on 21.02.2008. Except the last charge, other charges are proved.

2.2. Based on the above charges, enquiry was conducted and the Enquiry Officer drawn proven minutes, based on the proven minutes, the second respondent Disciplinary Authority has imposed the punishment of dismissal of service on 30.06.2010, as against the said order of dismissal, the petitioner preferred an appeal before the Appellate Authority and the Appellate Authority rejected the petitioner's appeal on 20.10.2010. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the Enquiry Officer held all the three charges are proved, however two charges are flimsy in nature and one charge is grave one as if the petitioner temporarily misappropriated a sum of Rs.1,500/- which was collected and not credited to the account on the same day, however it was remitted on the next day ie., on 08.01.2008. Even the said temporary misappropriation is admitted one the punishment imposed by the Original Authority, which was



of the respondents and the past service of the petitioner was not taken into consideration before imposing the punishment and accordingly, both the authorities have committed grave injustice to the petitioner by passing a non-speaking order. Hence, he prays for allowing this writ petition.

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4. Per contra, the learned counsels appearing for the respondents/Bank would submit that though the two charges are not serious in nature, however the charge of misappropriation of Rs.1,500/- is serious one and based on the Enquiry Officer's report, the order of dismissal was passed and if this Court modifies the punishment, it will be encomium to the wrong doers to do further action. Hence, the order passed by the Disciplinary Authority and the Appellate Authority is perfectly in order and accordingly, he prays for dismissal of this writ petition.

5. Heard the learned counsel for the petitioner, learned counsels for the respondents and perused the materials available on record.

6. However, before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution has to be considered.

7. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In **Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415)**, the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in



rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

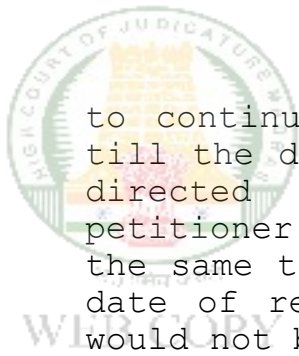
(Emphasis Supplied)

8. This Court, keeping in mind the ratio laid down by the Hon'ble Apex Court in relation to interfering with the punishment imposed by the disciplinary authority, would now proceed to dissect the materials available on record to find out whether the punishment imposed on the petitioner is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court requiring interference.

9. Perusal of the records shows that two charges are not serious in nature and the charge of temporary misappropriation of Rs.1,500/- is grievous one. The said amount was collected and not credited to the account on the same day, however it was remitted on the next day i.e., on 08.01.2008 and the explanation submitted by the petitioner before the Enquiry Officer was not convinced the authorities.

10. The main allegation of all the three charges are the petitioner has not accounted the money immediately after the collection. Subsequently, the explanation submitted by the petitioner is not convinced, however, his lethargic attitude shows that he is not perfect in his duty and at the same time, this Court also considered the fact that there is no loss for the Bank and the missing amounts were deposited subsequently, and the entire records show that the petitioner has no any ulterior intention to misappropriate the bank money and since the amounts, which were kept in the drawer and behind the computer were subsequently identified by the petitioner himself, the punishment imposed on him is highly disproportionate and too excessive. Hence, in the fitness of things, this Court is of the considered view that the punishment imposed on the petitioner should be modified to one of compulsory retirement.

11. Accordingly, the punishment imposed on the petitioner is modified from one of dismissal from service to one of compulsory retirement without back wages, however, the petitioner is entitled



to continuity of service from the date of his entry into service till the date of his compulsory retirement. The respondents/Bank is directed to calculate the monetary benefits payable to the petitioner as a result of the modification of the punishment and pay the same to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. However, the petitioner would not be entitled for any interest on the said payment.

12. With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-2472 [F] dated 29/01/2021)

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-2453[F] dated 29/01/2021)

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