



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2021

CORAM:

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P. (MD) .No.20352 of 2021

W.M.P. (MD) .Nos.16993 & 16995 of 2021

WEB COPY

C.Balamurugan

... Petitioner

Vs.

1. The Chief Manager/Disciplinary Authority,
Indian Overseas Bank,
Human Resources Management Department,
Industrial Relations Section,
Regional Office, Anna Nagar,
Madurai-625 020.

2.The Senior Manager/Inquiring Officer,
Indian Overseas Bank,
Bye Pass Road Branch,
Madurai District.

3.The Senior Manager,
Indian Overseas Bank,
No.66, Cumbum Main Road,
Lakshmipuram-625 523,
Theni District.

... Respondents

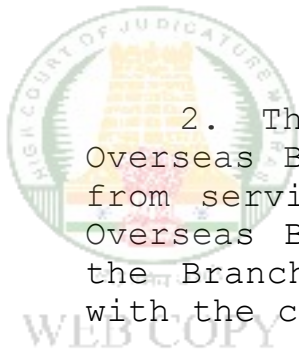
Prayer: Writ petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 28.09.2021 passed by the 1st respondent vide RO/MDU/IR/DA:CM(GC)/184/81/2021-22 and quash the same as illegal and consequently direct the respondents to reinstate the petitioner in the service with all backwages and benefits.

For Petitioner : Mr.C.Senthil Murugan

For Respondents : Mr.N.Dilip Kumar

ORDER

This writ petition has been filed against the order dated 28.09.2021 passed by the first respondent vide R.O RO/MDU/IR/DA:CM (GC)/184/81/2021-22 for a consequential direction to reinstate the petitioner in the service with all backwages and benefits.



2. The petitioner was working as a clerk in the Indian Overseas Bank, Theni Branch and on 12.10.2020, he was terminated from service by the Chief Manager/Disciplinary Authority, Indian Overseas Bank on the ground of in-subordination, disobedience to the Branch, acted against the interest of the Bank, misbehaved with the customers and caused disturbances in the Branch.

3. When the writ petition was taken up for admission, Mr.Dhilip Kumar, learned counsel has raised a preliminary objection on the ground of maintainability of the petition by referring 11th Bi-partite settlement dated 11.11.2020. He has also produced the circular issued by the Central Officers of the Indian Overseas Bank dated 10.02.2021 and referred the judgment of this Court in the case of **P.Pitchamani vs. Manager of Shri Sachakara Tyres Limited, reported in 2004 (3) CTC 1.**

4. As per the Memorandum of settlement, Disciplinary Action Procedure for workmen between the Indian Overseas Bank's Association and the workman Unions has been amended in 11th Bi-partite settlement on 11.11.2020 and as per the Settlement, as against the order passed by the Disciplinary Authority, the workman is having a right of appeal. The Appellate Authority is also defined in the Memorandum as follows:

2. Appellate Authority:

a. AGM, Central Office will be the Appellate Authority.

b. In the event of the disciplinary case handled by an Executive as DA, the next higher cadre executive at CO may function as AA.GM(HR) will appoint the AA on case to case basis.

5. Sub-clause (I) to Section 45(c) of Disciplinary Action Procedure is extracted below:

"an employee who has been awarded the punishment of dismissal, compulsory discharge or removal from service by the Disciplinary Authority and subsequently where the punishment is confirmed by the Appellate Authority, shall be given an opportunity to seek reconsideration by the authority higher than the Appellate Authority".

6. The Reviewing Authority is also defined in the said memorandum as follows:

In case of employees, who were awarded punishment of dismissal/compulsory discharge/removal and subsequently punishment is confirmed by the Appellate Authority, the employees now have the provision to submit a representation for reconsideration. The Authority to review the punishment



may be entrusted to an Executive one layer above the AA. The appointment of RA will be approved by GM(HR) on case to case basis.

7. In the judgment cited by the learned counsel for the respondent, the Hon'ble Full Bench of this Court held that "In view of what is stated supra, we hold that

(i) only such violations under I.D. Act, which involve public duties, are amenable to Writ jurisdiction under Article 226 of Constitution of India;

(ii) dismissals, transfers and other matters concerning the service conditions of employees governed by I.D. Act, have to be adjudicated only by the forums created under the said statute and not otherwise;

(iii) it is needless to mention that the disputes relating to matters not governed by I.D. Act have to be resolved only by common law Courts;

(iv) the transfers effected in these cases do not involve any public duties and involve the disputed questions of fact and they should be resolved only before the forums under the I.D. Act;

(v) the appellants/petitioners-employees shall be entitled to seek for reference by filing application under Section 10 of the ID Act within two weeks from the date of receipt of a copy of this order;

(vi) if any industrial disputes are raised, then the concerned forums, be it Labour Court or Industrial Tribunal, shall dispose of the same within four months from the date of receipt of the reference, after affording opportunity to either party;

(vii) without prejudice to the contentions of the appellants/ petitioners-employees, one week time from the date of receipt of a copy of this order is given to the employees to join at the transferred places and in respect to such of those dismissed employees, for non-joining at the transferred places, the delay is condoned if they join as stipulated above and in that event, dismissal orders passed against them disappear automatically; and

(viii) the respondents-managements shall sympathetically consider the payments of wages/salaries to the appellants/petitioners-employees so as to maintain the industrial peace and harmony."

8. In view of the above judgment, as against the disciplinary proceedings, the petitioner is having remedy of appeal and review. Therefore, as per eleventh Bi-partite settlement dated 11.11.2020



and the guidelines issued by the Hon'ble Full Bench of this Court in Pitchaimani's case in entertaining a writ petition under Article 226 of the Constitution of India, this Court is not inclined to entertain this petition at this stage. Therefore, this Writ Petition is dismissed with a liberty to the petitioner to file an appeal before the appropriate authority. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (AS)

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/ /2021

Sub Assistant Registrar(CS)

ssb

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.N. DILIP KUMAR, Advocate (SR-34683[F] dated 16/11/2021)

W.P. (MD) .No.20352 of 2021

Dated :

12.11.2021

RK(02/12/2021) 4P 2C