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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2022

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.397 of 2022

Shanmuga Sundaram ... Appellant

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
(Adminstrative officer) Disciplinary cell
Administrative Unit State Bank of India
chennai Network- 1 No 86 Rajaji Salai
chennai-1. ... Respondents

Prayer:Writ Appeal is filed under clause 15 of the Letter Patent praying to set aside the order made in WP No.31163 of 2019 by the order dated in 21.12.2021.

Prayer in W.P.No.31163 of 2019:

Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or Direction in the nature of Writ Of Certiorari and quash the impugned order No. DIS/CON/120 dated 9.6.2011 passed by the 3rd Respondent.

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For Appellant : Mr.A.J.Mohamed Kassim

JUDGMENT

The present appeal has been preferred against the order in W.P.No.29747 of 2013 dated 16.12.2013 whereby the writ petition was dismissed and the order of dismissal passed by the Bank dated 09.06.2011 was not interfered with by the learned single Judge.

2. It is the case of the writ petitioner/appellant that he worked as a Special Assistant at the Vellore Main Branch of the respondent Bank and was alleged to have unauthorisedly and wrongfully debited the amount from various accounts to the tune of Rs.22 lakhs. On account of the said misconduct he was placed under suspension on 07.04.2010 in terms of provisions of Memorandum of Settlement dated 10.04.2002. It is further case of the appellant that after a detailed enquiry, three charges were framed against him, which have been held to be proved and was dismissed from service on 09.06.2011. Hence the appellant preferred an appeal on 21.07.2011. According to the appellant/writ petitioner, the appeal was not at all disposed of and that he has sent a reminder on 27.02.2017. Apart from the Disciplinary Proceedings a criminal case was also initiated against the appellant/writ petitioner for various offences under IPC, which was taken up as Calendar Case 1 of 2013. It is stated by the Appellant that he was acquitted by the Criminal Court on 30.05.2019 and after acquittal by the criminal Court, the appellant/writ petitioner made a representation on 01.08.2019 to settle the terminal benefits, including all the arrears due to him. Since the request was not acceded to the writ petitioner has approached this Court challenging the dismissal order dated 09.06.2011.

3. The learned single Judge, after taking note of the contention of the writ petitioner and the pleadings of the respondents, wherein it has been contended by the Bank that the writ petition has been filed beyond a period of eight years on the ground of laches dismissed the writ petition.

4. The contention put forth by the respondent / Bank is that when the dismissal order is in force, the appellant is not entitled to get any relief including the retirement benefits. The Bank further contended that the employee participated in the Domestic Enquiry and due opportunity was given. Since the charge

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levelled against him is grave in nature, viz., misappropriation of the public money, the Bank has no other option, except to dismiss him from service. The appeal was also rejected on 23.07.2012 which was received by him on 02.08.2012. In the counter filed by the Bank before the learned Single Judge, the genuineness of the letters dated 05.07.2019 and 01.08.2019 mentioned supra was questioned and even in the absence of standard of proof in the Domestic Enquiry, what is required is to prove the charges based on preponderance of probabilities and need not be proved beyond the reasonable doubt. The learned single Judge has accepted the contention of the Bank that the employee has committed a great misconduct and that the standard of proof in Domestic Enquiry and criminal proceedings are completely different. It was held that in the Domestic Enquiry, charges have been proved and the punishment cannot be interfered with. Insofar as the proportionate of punishment is concerned, as the Bank employee who was holding a responsible position of public trust had involved in unauthorised and wrongful debit from the customers account of the bank, which cannot be taken slightly by imposing lesser penalty than dismissal. Hence the learned single Judge did not interfere with the punishment of dismissal, passed against the writ petitioner.

5. It is seen that the Bank has established the charges in the Domestic Enquiry and that the appellant/writ petitioner has knocked at the doors of the Court after eight years and even assuming for the sake of argument that the Appellate order has not been communicated to him, nothing prevented the employee from approaching this Court immediately or raise an Industrial Dispute under the I.D.Act 1947, wherein the powers of the Tribunal is wider to invoke Section 11 A to modify the punishment based on the severity of the misconduct.

6. In this case, the period of limitation to raise an Industrial Dispute is only three years in terms of amendment to Section 2A of the I.D.Act, which came into effect from 15.09.2010. The employee did not take any steps to get his grievance redressed either before the appropriate Labour Forum or before this Court immediately after the order of dismissal passed against him. Even for approaching the Industrial Forum the employee can bypass the appellate remedy available under the Bipartite settlement or regulation, as the order of the Disciplinary Authority would be confirmed and in very rarest of the rare cases, it would be modified by the Appellate Authority and powers of the Industrial Tribunal is much wider and the proceedings of the Industrial Tribunal can step into the shoes of the Disciplinary Authority, in case Domestic Enquiry is held

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to be not fair and proper and after affording an opportunity to the employer the Tribunal may come to a different punishment depending upon the charges framed against the employee.

7. In this case as the appellant/writ petitioner has not availed alternative remedy and at this distant point of time this Court cannot permit the petitioner to approach the alternative Forum, as he has not filed the writ petition within three years from the date of dismissal from service and that there is a delay of eight years in approaching this Court, apart from the fact that the charges against the appellant/writ petitioner is one of misappropriation, which is very grave in nature and the punishment imposed by the employer is perfectly valid and the order does not suffer from any infirmity.

8. Accordingly the writ appeal is dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The Chief General Manager,
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Chennai Network- 1 No 86 Rajaji Salai,
Chennai-1.

+1cc to Mr.A.J.Mohamed kassim, Advocate Sr.13418

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