



W.P.No.33660 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

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S.Shanmugam

... Petitioner

Vs.

1. The Disciplinary Authority/
Deputy General Manager,
Bank of Baroda, TN Region,
82, Bank Road, III floor,
Coimbatore-18.
2. The General Manager and Appellate Authority,
Bank of Baroda, No.10., C.P.Ramasamy Salai,
Chennai 600 018.
3. S.Srinivasan, Sr. Manager/HR Manager,
Regional Office Bank of Baroda,
Coimbatore.
4. Mr.Ravichandran, Branch Manager,
Bank of Baroda, Perambalur Branch,
Perambalur District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus to call for the records, relating to the proceedings No.SZ/HRM & COORD/39/817



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dated 27.04.2012 of the second respondent, confirming the order in proceedings No.R.O: TN: HRM: 47:3915 dated 19.03.2012 of the first respondent and quash the same and consequently direct the first respondent to reinstate the petitioner into service with all attendant benefits and back wages.

For petitioner : Mr.S.Silambanan, Senior Counsel
for M/s Profens Associates

For Respondents : Mr.Arun Kumar
for M/s Sampathkumar Associates
for R1 to R4.

ORDER

This writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus quashing the proceedings No.SZ/HRM & COORD/39/817 dated 27.04.2012 of the second respondent, confirming the order in proceedings No.R.O: TN: HRM: 47:3915 dated 19.03.2012 of the first respondent and consequently direct the first respondent to reinstate the petitioner into service with all attendant benefits and back wages.



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2. The case of the petitioner in brief:

The petitioner had joined the respondent bank in the clerical cadre during the year 1994. On 3.12.2010, while he was working as Single Window Operator at Perambalur Branch, he went to lunch at 12.00 noon and he had misplaced the cash key. Hence, he did not return to office on that day and returned only next day i.e. on 04.12.2010 and informed in writing that he lost the keys.

2.1.The Branch Manager issued memo on 09.12.2010 and called for explanation for not attending the office on the afternoon of 3.12.2010 and also for not informing the branch in person or writing about the loss of keys on 3.12.2010. He submitted his explanation. However, the first respondent issued suspension order on 13.12.2010.

2.2. Thereafter, the petitioner was served a charge memo on 26.02.2011 with ulterior motive with regard to the period, while he was serving in Perambalur Branch; Mandapam Branch and Suriyampalayam Branch. In the charge memo, the respondents, for the first time, stated that they have received complaints from the customers



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as well as from the staff members, while he was working at Suriyampalayam and Mandapam Branch. But none of the complaint have been put on notice to the petitioner during the time, they received complaints. All the complaints have been more or less in the same week.

2.3. An Enquiry Officer was appointed to conduct Departmental Enquiry. Without considering the fact that the charges are made belatedly and are fabricated, the Enquiry Officer filed a report that charges levelled against the petitioner are proved. Thereafter, the respondents passed an order on 19.03.2012, dismissing the petitioner from service. Appeal before the second respondent was also not considered and it was dismissed on 27.04.2012. Hence this writ petition.

3. The second respondent filed counter affidavit, wherein, it is stated as follows:

On 03.12.2010, the petitioner was handling cash receipts and payments at Perambalur Branch of the respondent bank. He left the



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branch at 2.00 p.m. unauthorisedly and not turned up. Hence, a staff of the bank Mr.R.Senthilkumar was sent to fetch him and he found the petitioner near the new bus stand of Perambalur in an inebriated condition. The petitioner refused to come bank and while asking to handover the cash keys, he replied that he had lost the keys. On 04.12.2010, the petitioner came to branch at 11.15 a.m. and gave a letter stating that he had lost the cash keys and asked the Manager in audacity to get keys, making duplicate and he would bear the cost. As his conduct was worsening, a charge sheet was issued on 26.02.2011 and enquiry was conducted. The enquiry officer filed report that the petitioner was found guilty of the charges. Therefore, by order dated 19.03.2012, the petitioner was removed from service, which was upheld by the Appellate Authority vide order dated 27.04.2012.

3.1. The petitioner himself admitted that he had lost the cash key and he returned office only on the next day. Without producing any supporting documents, the petitioner denied the allegations that he had some neuro problem. The petitioner has not challenged the procedure and conduct of the enquiry proceedings and he has not challenged the



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other serious charges against him that he had attended office in drunken state, misbehaving with customers, leaving office without informing branch etc. Hence, the writ petition is liable to be dismissed.

4. The learned counsel appearing for the petitioner contended that the show cause notice dated 09.12.2010 was issued to the petitioner for not attending the office in the afternoon of 03.12.2010 and there was no show cause notice issued to the other charges relating to the other branches. Only at the time of enquiry, the respondent bank has included the aforesaid charge of unauthorised absent and passed final order. Further the petitioner was highly punished by removing from service, for the charge of unauthorised absent and hence, it is liable to be quashed.

5. He further submitted that the petitioner has submitted his explanation for not attending the office on the afternoon of 03.12.2010 that due to neuro problem, he was not able to attend the office. Further there is no loss in cash, due to non attending the office by the petitioner. But the enquiry officer had come to the conclusion that the petitioner



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was under the intoxication of liquor. There is no evidence or materials placed before the enquiry officer that the petitioner was under intoxication and he misbehaved with the customer, while he was working in other branches. Therefore, the charges levelled against the petitioner were unfounded and hence, the orders passed by the respondent bank is liable to be quashed.

6. To support his arguments, he also relied upon a decision of the Honourable Supreme Court in Civil Appeal No.10956 of 2013 dated 11.12.2003 between Bank of Baroda Vs. S.K.Kool (D) Through Lrs. and another. According to the petitioner, he submitted his explanation pointing out various discrepancies in the disciplinary proceedings, however, it was not considered by the original authority as well as the appellate authority and there is no reason for rejecting the claim of the petitioner. Therefore, the impugned order is liable to be set aside.

7. The learned counsel appearing for the respondent bank submitted that the petitioner was served charge memo for the serious allegation that while he was working as Acting Head Cashier on



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03.12.2010, without any permission from the bank, he was unauthorisely absent in the afternoon. Hence, charge memo was issued and an enquiry officer was appointed. The enquiry officer came to know that the charges levelled against the petitioner is not the first time and earlier, he was was served with similar charges and he was punished with minor punishment, but still the petitioner has not corrected himself. Further, the enquiry officer found that the explanation submitted by the petitioner himself shows that he was unauthorisedly absent on the afternoon of 03.12.2010. Therefore, based on the available materials, and taking into account the earlier disciplinary proceedings initiated against the petitioner and the punishments imposed on him, the enquiry officer found that the charges levelled against the petitioner were proved. Therefore, major punishment was imposed and the appeal filed by the petitioner also dismissed by the appellate authority. Hence, the impugned order does not warrants any interference by this court.

8. Heard the rival submissions made by the learned counsel appearing for the petitioner and the respondents.



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9. The following charges were framed against the petitioner.

1. *Drunkenness, or riotous or disorderly or indecent behaviours in the premises of the Bank – A Gross Misconduct under Clause 5(c)*
2. *Willful damage or attempt to cause damage to the property of the Bank or any of its customers -A Gross Misconduct under Clause 5(d).*
3. *Willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior – A Gross Misconduct under clause 5(e)*
4. *Misbehaviours towards customers arising out of Bank's business – A Gross Misconduct under Clause 5(q)*
5. *Doing acts prejudicial to the interest of the bank – Gross Misconduct under clause 5(j)*
6. *Absence without leave – A Minor Misconduct under Clause 7(a).*
7. *Unpunctual or irregular attendance – A Minor Misconduct under Clause 7(b)*
8. *Neglect of work/Negligence in performing duties – A minor misconduct under Clause 7(c).*
9. *Committing nuisance in the premises of the Bank. A Minor Misconduct under Clause 7(e).*
10. *Failing to show proper consideration, courtesy or attention towards officers, customers or other employees of the Bank, Unseemly or unsatisfactory behaviour while on duty – A Minor Misconduct under Clause 7(j)*



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10. After framing of charges, an Enquiry Officer was appointed and he conducted enquiry on various dates and the petitioner had appeared on the hearings of enquiry. It is the specific contention of the petitioner that, he submitted an explanation on 04.12.2010, by explaining the reasons for not attending the bank on 03.12.2010 after 2.00 p.m, but it was not considered. It is an admitted fact that on 03.12.2010, the petitioner was working as Acting Cashier. When the petitioner is handling a sensitive job, especially dealing with cash, un-attending the bank, without handing over the keys, is a very serious inaction.

11. The petitioner made explanation on 04.12.2010 that, due to neurotic problem, he could not attend the office on 03.12.2010 A.N. One of the Staff member namely Mr.Senthil Kumar gave evidence that the petitioner was in an inebriated condition on the afternoon of 3.12.2010. In the earlier occasions also, similar charges were framed against petitioner for attending the office under the influence of liquor and was punished with minor punishments. Therefore, from the above said allegations and the enquiry report, it is clear that petitioner



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had involved in the misconduct under the provisions of the Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.04.2002. The said act of the petitioner is wilful insubordination and disobedient also. However, there is no allegation that on 03.12.2010, there was any misappropriation of cash or any missing of cash from the respondent bank. There is no direct evidence to show that the petitioner was under drunken state on the particular date. But, considering the facts and circumstances of the case and also based on the evidence adduced by one Mr.Senthil Kumar the said order has been passed.

12. The learned counsel appearing for the petitioner submitted that the petitioner had already attained the age of retirement and for the purpose of getting retirement benefits such as Pensionary benefit, Gratuity, etc., the punishment of removal from service may be modified. To that extent, this court is considering the submission made by the counsel for the petitioner.

13. It is to be noted that the learned counsel appearing for the



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respondent bank has placed a Memorandum of settlement entered into between the bank as well as the employees' Association dated 10.04.2002, wherein, Clause 6(b) reads as follows.

6. An Employee found guilty of gross misconduct may

a. ...

b. be removed from service with superannuation benefits i.e. Pension and/ or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment:

14. He also relied upon the judgment of the ***Hon'ble Supreme Court in Civil Appeal No.10956 of 2013 between Bank of Baroda Vs. S.K.Kool(D) through LRS and another dated 11.12.2013,*** wherein, it is stated as follows:

Having considered the rival submissions, we do not have the slightest hesitation in accepting the broad submission of Mr.Gupta that the Regulation in question is statutory in nature and the court should accept an interpretation which would not



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make any other provision redundant. Bearing in mind the aforesaid principle, we proceed to consider the rival contentions. The terms and conditions of service of the employees are governed and modified by the Bipartite settlement. Various punishments have been provided under the Bipartite Settlement which cant be inflicted on the employee found guilty of gross misconduct. In 2002, a Bipartite Settlement was signed by the Indian Banks Association and the Banks workmen Union with regard to disciplinary action procedure. It is common ground that in the light of the said Bipartite settlement, clause 6(b) was inserted as one of the punishments which can be inflicted on an employee found guilty of gross misconduct and the same reads as follows.

“6. An employee found guilty of gross misconduct may;

a)

b) be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment, or xxx xxx xxx” The employee undisputedly has been visited with the aforesaid penalty in terms of the Bipartite Settlement.



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Article 22 of the Regulation, which is relied on to deny the claim of the employee reads as follows:

“22. Forfeiture of service:

(1)Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.” From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits “as would be due otherwise under the Rules or Regulations prevailing at the relevant time”. The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.

The Regulation does not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulation whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Article 14 of the Regulation. Therefore, the expression “as would be due otherwise” would mean only such employees who are eligible and have put in minimum number of years of



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service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefit though removed from service in terms of clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulation if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulation shall not be entitled to that.

Accordingly, we hold that the employee's heirs are entitled to



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superannuation benefits. The entire amount that the respondent is found entitled to along with interest at the rate of 6% per annum should be disbursed within 6 weeks from the date of receipt/communication of this Order.

In the result, we do not find any merit in this appeal and it is dismissed accordingly with costs of Rs.50,000/- (rupees fifty thousand) to be paid by the appellant to the respondent No. 1 along with other dues and within the time stipulated above.

.....

15. Therefore, in the light of the above decision of the Hon'ble Supreme Court as well as Clause 6(b) of Bipartite settlement, and also considering the fact that already the petitioner had attained the age of superannuation and ultimately succeeded for superannuation benefits, this court is of the view that the petitioner is certainly entitled for superannuation benefits, if he is otherwise eligible, as per the Rules and Regulations of the respondent bank. Hence, the impugned

16. Accordingly, it is ordered as follows:

i) The petitioner is entitled for superannuation benefits, if he is otherwise eligible.

ii) If the petitioner satisfies the other required conditions of the



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bank, the respondent is directed to settle the entire amount of superannuation benefits to the petitioner along with interest at the rate of 6% p.a., within a period of twelve weeks from the date of receipt of a copy of this order,

17. With the above directions, this writ petition is disposed of.

No costs.

31.01.2022

Index:Yes/No
Internet:Yes/No
mst

To

1. The Disciplinary Authority/
Deputy General Manager,
Bank of Baroda, TN Region,
82, Bank Road, III floor,
Coimbatore-18.
2. The General Manager and Appellate Authority,
Bank of baroda, No.10., C.P.Ramasamy alai,
Chennai 600 018.
3. S.Srinivasan, Sr. Manager/HR Manager,
Regional Office Bank of Baroda,



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Coimbatore.

4. Mr.Ravichandran, Branch Manager,
Bank of Baroda, Perambalur Branch,
Perambalur District.



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D. KRISHNAKUMAR, J.
mst

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