IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11 / 04 / 2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.8155 OF 2015
AND
MP NO.2 OF 2015

P.Matheswaran ...Petitioner

Vs.

State Bank of India
Rep. by its Regional Manager (Region IV)
(Disciplinary Authority)
Regional II, Network 2,
Kurinji Complex, State Bank Road,
Coimbatore - 641 018.
...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the concerned records from the respondent quash the charge sheet dated 13.04.2013 bearing DIS/CON/05 issued by the respondent issued under the memorandum of Settlement dated 10.04.2002 and the second show cause issued by the respondent dated 10.03.2015 bearing RM-II/P&C-71, as illegal, arbitrary and contrary to the Memorandum of Settlement dated 10.04.2002.

For Petitioner : Mr.Balan Haridas
For Respondent : Mr.G.Chandrashekar

O R D E R

Challenging the charge memo dated 13.04.2013 and the second show cause notice dated 10.03.2015, the petitioner has preferred the above writ petition.

2.The petitioner joined the respondent Bank as a Clerk on 11.11.1982 and upgraded as Senior Assistant in the year 2001. He was posted to work as a Special Assistant at Erode Branch from 2008 to 2010. Thereafter, he was transferred to Bhavani Sagar Branch. According to him, his sister-in-law's son one

R.G.Deivasigamani, who was a non-resident Indian, applied for Housing Loan at Erode Branch, for a sum of Rs.35 Lakhs. He has given a Letter of Authority for the purpose of disbursement of loan amount into the Savings Bank account of the petitioner's wife by name V.Neelambal. According to him, the Field Officer, instead of opening of loan account in the name of R.G.Deivasigamani, opened a loan account in the name of petitioner's wife and a sum of Rs.25 Lakhs, which was disbursed towards housing loan, was credited into the Savings Bank account of the petitioner's wife V.Neelambal. The amount was withdrawn from that account and utilized for the construction work. Thereafter, on 02.09.2008, the Field Officer opened another loan account in the name of R.G.Deivasigamani. However, the loan account which was opened in the name of petitioner's wife was not closed. The said R.G.Deivasigamani repaid the loan in installments @ Rs.50,000/- every month.

3.During the inspection of the Audit party, an objection was raised in the audit report against opening of the loan account in the name of V.Neelambal, on 10.09.2009. Thereafter, the respondent Bank closed the loan account of V.Neelambal on 22.03.2011 and transferred the balance loan amount to R.G.Deivasigamani's account. On 12.03.2012, a show cause notice was issued to the petitioner calling for his explanation. The petitioner submitted his explanation on 16.04.2012 clarifying the situation. However, without considering the explanation, the respondent has issued the impugned charge memo dated 13.04.2013 and ordered for an enquiry on 24.05.2013.

4.The petitioner, by his representation dated 30.04.2013, requested permission to pursue the records pertaining to the period between 2008 and 2010. Though permission was granted, he was not permitted to see certain vouchers and documents, which were required for submitting his defense. He submitted his interim explanation on 31.05.2013 reserving his right to give a detailed explanation after seeing the vouchers and documents. Again, he made a request on 01.06.2013. However, the Enquiry Officer proceeded to fix a hearing date on 17.07.2013. In spite of his several representations, the vouchers and documents were not produced for perusal of the petitioner. He made a detailed representation on 19.09.2013 requesting 58 vouchers, which were allegedly prepared or transferred or handled by the petitioner and 7 documents from Erode Branch and 8 documents from Erode Commercial Branch in order to show that there had been no irregularity in the sanctioning of loan.

5.Since the vouchers and documents were not furnished to the petitioner, he filed a writ petition in W.P.No.29172 of 2013. This Court, by its order dated 30.10.2013, directed the Enquiry Officer to dispose of the petitioner's representation dated 19.09.2013 and till such time, directed not to proceed with the enquiry.

6.On 29.11.2013, the respondent issued a reply that the vouchers are not available and furnished copies of documents mentioned in Sl.Nos.2,6,7 and 8 and document Nos.3,4 and 5 were declined on the ground that they are privileged documents, as it pertains to internal communication. Serial No.1 was not relevant to the loan.

7.Again, the petitioner filed a writ petition in W.P.No.34052 of 2013 for a direction to furnish documents, which was dismissed by this Court on 07.02.2014 and the writ appeal in W.A.No.351 of 2014 was also withdrawn by him on 05.08.2014.

8.Thereafter, the respondent Bank examined two witnesses on 11.10.2013, who have produced documents and no evidence was let in and thereafter, on 07.02.2014, one another witness was produced for marking certain documents. On 18.02.2014, witness was again produced for marking of documents without statement. Thereafter, no opportunity was given to the petitioner to cross examine those witnesses. On 22.02.2014, the petitioner produced documents and the Enquiry Officer without giving opportunity to the petitioner to produce defense witnesses, hurriedly closed the enquiry on 06.03.2014. Again, he made a representation on the same day against the closure of enquiry and the Enquiry Officer sent a reply dated 15.03.2014. Again the petitioner sent another letter to the Enquiry Officer on 24.03.2014. Without considering the letter, the Enquiry Officer directed him to submit his defense brief by his letter dated 02.04.2014. Immediately, the petitioner made a representation on 04.04.2014 for reopening the enquiry. Since it was not reopened, he submitted his defense brief on 12.04.2014 and the Enquiry Officer held the charges in charge Nos.1, 2, 3 and 6 are proved and charge Nos.4 and 5 are not proved, by his representation dated 30.04.2014. The respondent forwarded the enquiry report by letter dated 05.05.2014 and called for his comments. He submitted his comments on 20.05.2014 and thereafter, on 14.06.2014, a second show cause notice was issued proposing the punishment of discharge and called the petitioner for a personal hearing.

9.The petitioner challenged the second show cause notice by way of a writ petition in W.P.No.18163 of 2014. This Court, by its order dated 11.07.2014 set aside the second show cause notice and directed the Enquiry Officer to reopen the enquiry and to permit the petitioner to examine his witnesses within a period of four weeks from 21.07.2014.

10.Thereafter, the petitioner produced witnesses on his side and an enquiry report was filed on 20.08.2014. On 21.08.2014, the report was forwarded to the petitioner, wherein, charge Nos.1 to 4 and 6 were held proved and 5 as not proved. The petitioner submitted his reply to the enquiry report on 05.09.2014 and the respondent has issued second show cause notice proposing the punishment of dismissal from service, in its proceedings dated 10.03.2015 and called the petitioner for personal hearing fixed on 14.03.2015. This notice was served by affixture on the door on 12.03.2015.

11.According to the petitioner, as per Clause 5(j) of the Memorandum of Settlement dated 10.04.2002, the charges framed are fall under minor misconduct and not major misconduct and therefore, the framing of the charges for the proposition of the major punishment is illegal and that the second show cause notice was issued with predetermination to impose penalty which is not contemplated as per the Memorandum of Settlement.

12.The respondent denied all the allegations and contended that the petitioner at every stage attempted to protract the proceedings. On 09.05.2013, he was permitted to pursue the documents and in spite of pursuing the documents, he has not submitted his defense brief. During the enquiry proceedings, he refused to cross examine the departmental witnesses and failed to cooperate in the enquiry. Therefore, the enquiry was closed. However, when a writ petition was filed by the petitioner in W.P.No.18163 of 2014, he had not pressed the prayer with regard to cross examination of the four Management witnesses and sought permission only to examine two defense witnesses and production of certain documents. This Court permitted the petitioner to pursue 46 available vouchers out of 58 vouchers and also permitted the petitioner to examine himself, his wife and R.G.Deivasigamani, within a period of four weeks from 21.07.2014. The writ petition was disposed of on 11.07.2014. Thereafter, the second show cause notice dated 10.03.2015 was issued as per Clause 6(a) of the Settlement dated 10.04.2002. The respondent Bank has followed the procedure laid down by law in conformity with principles of natural justice and issued second show cause notice after furnishing the enquiry report to the petitioner. The procedure is not violated and in the departmental as well as appeal proceedings, the Court under Article 226 of the Constitution of India shall not interfere and leave the matter to the fact finding authorities to pass orders. Therefore, an employee of the Bank is expected to maintain absolute integrity and conduct himself beyond any suspicion as he is dealing with public money. The petitioner's conduct in indulging in the misconduct is rightly dealt with and as per Clause 5(j) of the Memorandum of Settlement dated 10.04.2002 doing any act against the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss shall be seriously viewed and therefore, the punishment imposed also proportionate to the misconduct. Therefore, the writ petition is liable to be dismissed.

13.Heard the submissions made on either side and perused the materials available on record.

14.From the perusal of the materials placed before this Court and the oral submissions made, it is noted that the impugned charge memo dated 13.04.2013 was issued on the following charges:-

> (i) The petitioner failed to bring the fact that the loan account was opened in the name of his wife to the notice of the official concerned for rectification and suppressed the information and acted prejudicial to the interest of the Bank.
>
> (ii) Passed entries in the system without mandate from the customers.
>
> (iii) Entered into financial dealings with the Bank's customer contrary to the Bank's instructions.
>
> (iv) Non-home transactions were not recorded in the "Cheques referred and returned Register" as required, for obtaining approval from the authorized official.
>
> (v) Contrary to Bank's instructions, maintained two Staff Savings Bank Account without approval of the Appropriate Authority.
>
> (vi) Obtained Housing Loan in his name and Home Plus loan in the name of his spouse without administrative clearance from the controllers and that acted, prejudicial and detrimental to the interest of the Bank.

15.From the sequence of the events, it is seen that show cause notice was issued and his explanation was called for and not being satisfied with his explanation, the charge memo was issued and the enquiry proceedings were conducted. The petitioner was given opportunity to appear and defend in conformity with the principles of natural justice. In the order passed in W.P.No.29172 of 2013, this Court has given a direction to dispose of his representation dated 19.09.2013 seeking relevant vouchers and documents. Accordingly, on 29.11.2013, the documents were furnished. Again he approached this Court by way of a writ petition in W.P.No.34052 of 2013, for furnishing of documents, wherein this Court has passed the following order:

> "5.The only ground raised by the learned counsel appearing for the petitioner is that the vouchers and documents sought for by the petitioner on his representations, which are required to defend himself in the enquiry were not furnished by the respondents. Therefore, a direction has to be given to the respondents to furnish those documents. But, I find that pursuant to the order passed by this Court in W.P.No.29172 of 2013 dated 30.10.2013, the respondent Bank has furnished what are all documents available with them. So far as the other documents are concerned, the respondent Bank has clearly stated in their impugned order that the documents are not available with them. When the respondent Bank has stated that the documents are not available with them, this Court cannot give any mandamus directing the respondents to furnish the said documents. As contended by the learned counsel appearing for the respondent Bank, this writ petition has been filed only to protract the proceedings under some pretext or other. Except a bald statement in the affidavit, the petitioner has not pointed out in the affidavit that as to how the non-supply of certain documents would cause prejudice to him. Moreover, when the respondents say that the said documents are not available with them, this Court cannot compel them to furnish those documents. Therefore, I do not find any merits in this writ petition and the same is liable to be dismissed."

16.It is observed by this Court that the petitioner has not raised any point due to non supply of certain documents and it was also observed that the writ petition was filed with an ulterior motive to protract the proceedings. Against the order in W.P.No.34052 of 2013 dated 07.02.2014, the petitioner has preferred the writ appeal and the same was withdrawn on 05.08.2014. It is contended by the respondent that the petitioner had failed to cooperate in the enquiry proceedings and refused to cross examine the departmental witnesses and therefore, the enquiry was closed and he was directed to submit his defense brief. After submitting the defense brief, it was found that charge Nos.1, 2, 3 and 6 were proved and charge nos.4 and 5 were not proved. At this stage, a second show cause notice was issued proposing the punishment of dismissal from service and personal hearing was also provided.

17.The petitioner has challenged the second show cause notice by way of writ petition in W.P.No.18163 of 2014 on the ground of denial of opportunity and to conduct the enquiry afresh. When that matter was taken up for hearing, the learned counsel for the petitioner submitted that he is not pressing the prayer with regard to cross examination of four witnesses of the Management side, but sought permission to examine himself and two other witnesses on his side and to produce certain documents. Recording his submissions, the second show cause notice was set aside and the petitioner was permitted to examine three witnesses namely, the delinquent - the petitioner herein, V.Neelambal, his wife and R.G.Deivasigamani, his sister-in-law's son, the borrower within a period of four weeks from 21.07.2014 and he was permitted to pursue the documents, which were available in the respondent Bank.

18.Again, an enquiry report was submitted by the Enquiry Officer on 20.08.2014 and it was forwarded to the petitioner on 21.08.2014, wherein charge nos.1 to 4 and 6 were held proved and charge no.5 was not proved. On 05.09.2014, the petitioner submitted his objections and on 10.03.2015, the impugned second show cause notice was issued proposing the punishment of dismissal from service and a personal hearing on 14.03.2015 was also fixed.

19.Now that from the sequence of events, it can be seen that the procedure contemplated for conducting the domestic enquiry has been properly followed. In BOLORAM BORDOLOI VS. LAKHIMI GAOLIA BANK AND OTHERS [2021 SCC ONLINE SC 65] the Hon'ble Supreme Court has held as under:

> "7.........Merely because a show cause notice is issued by indicating the proposed punishment it cannot be said that disciplinary

authority has taken a decision. A perusal of the show cause notice dated 30.07.2005 itself makes it clear that along with the show cause notice itself enquiry report was also enclosed. As such, it cannot be said that the procedure prescribed under the rules was not followed by respondent bank. We are of the view that the judgment of this Court in the case of Managing Director, ECIL, Hyderabad (supra) is not helpful to the case of the appellant. Further, it is well settled that if the disciplinary authority accepts the findings recorded by the Enquiry Officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no further C.A.No.4394 of 2010 elaborate reasons are required to be given by the disciplinary authority. As the departmental appeal was considered by the Board of Directors in the meeting held on 10.12.2005, the Board’s decision is communicated vide order dated 21.12.2005 in Ref. No.LGB/I&V/Appeal/31/02/2005-06. In that view of the matter, we do not find any merit in the submission of the learned counsel for the appellant that orders impugned are devoid of reasons. "

20.From a perusal of the impugned second show cause notice, it is noted that the disciplinary authority after applying its mind independently and dispassionately and considering the gravity of charges, proposed to impose the punishment of dismissal from service in terms of Clause 6(a) of the Memorandum of Settlement dated 10.04.2002. As per Clause 6 (a) of the Memorandum of Settlement, an employee found guilty of gross misconduct may be dismissed from service without notice.

21.In the instant case, the gravity of misconduct is that while he was working in Erode Branch of the respondent Bank between 2008 and 2010, a loan account was opened in the name of his wife, for the housing loan availed by his sister-in-law's son and a sum of Rs.25 Lakhs was disbursed and credited in his wife's account. From the loan account of his wife, it was transferred to the Savings Bank account of his wife. The money was withdrawn and spent towards construction of the house. The petitioner cannot feign ignorance of the fact that the money was disbursed to the loan account of his wife and it was transferred to her Savings Bank account and that money was withdrawn by the petitioner or his wife or any other family member.

22.The fact remains that admittedly, his sister-in-law's son R.G.Deivasigamani was a Non-Resident Indian. The further charge is that accounts were opened and operated and handled without mandate of the customer and that the petitioner had active role or atleast knowledge of the irregularities. This allegation whether falls under the expression "gross misconduct" is correct or not ? is to be analysed.

23.The learned counsel appearing for the petitioner would rely on a judgment of this Court in S.GUNASEKAR VS. STATE BANK OF INDIA AND OTHERS [W.P.NOS.13601 AND 23060 OF 2014 DATED 25.11.2014]. In that case, the employee, who was an Office Bearer of the Welfare Association as well as Trade Union went out of the Branch after signing the attendance and without getting prior permission personally distributed hand bills to the general public and several members. For that, the charge under Clause 5(j) of the Memorandum of Settlement was issued. Clause 5(j) of the Memorandum of Settlement reads as under:

> "5.(j) doing any act prejudicial to the interest of the bank or gross negligence involving or likely to involve the bank in serious loss."

24.This Court found that the misconduct committed by the petitioner therein will not fall within the expression made in Clause 5(j) of the Memorandum of Settlement and therefore, set aside the charge memo under that provision and permitted the respondent / Bank to proceed with the other charges framed under appropriate Clauses of the Memorandum of Settlement dated 10.04.2002.

25.In the instant case, as observed in the previous paragraphs, opening of loan account in the name of the petitioner's wife and transferring the money to another Savings Bank account using Letter of Authority given by his sister-in-law's son, cannot be taken lightly, more particularly, when the borrower is a Non-Resident Indian and submitted application online as averred by the petitioner in the affidavit filed in support of the writ petitioner. In such cases, the judgment relied on by the learned counsel for the petitioner in

S.GUNASEKAR VS. STATE BANK OF INDIA AND OTHERS [W.P.NOS.13601 AND 23060 OF 2014 DATED 25.11.2014] will not apply to the case on hand. The misconduct will fall within Clause 5(j) of the Memorandum of Settlement dated 10.04.2002.

26.The learned counsel for the petitioner would also rely on a judgment of the Hon'ble Supreme Court in GLAXO LABORATORIES (I) LIMITED VS. LABOUR COURT, MEERUT AND OTHERS [CIVIL APPEAL NO.2911 (NL) OF 1981 DATED 06.10.1983] wherein Their Lordships' have observed that some misconduct neither defined nor enumerated which may be believed by the employer to be misconduct ex post facto would expose the workman to a penalty. Any condition of service if inconsistent with certified standing orders, the same would not prevail and the certified standing orders would have precedence over all such agreements.

27.As such, according to the learned counsel for the petitioner, the charge memo will not amount to gross misconduct and that the loan account was known to more than 70 staff members during the period from 2008-2010 and therefore, for the suppression of misconduct committed by others and for want of action against the other officials shall not be construed as gross misconduct. But the charge memo for the minor penalty should have been imposed. I am unable to accept the contention of the learned counsel for the petitioner.

28.As discussed above, the charge reveals serious misconduct and as such, the respondent Bank has rightly initiated proceedings under Clause 5(j) of the Memorandum of Settlement dated 10.04.2002. In view of the judgment of the Hon'ble Supreme Court in BOLORAM's case (cited supra) the second show cause notice cannot be considered as pre-determination and that issuance of charge memo for major penalty proceedings cannot be construed as illegal. Hence, I do not find any merits in this writ petition.

29.Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

TK

To

The Regional Manager (Region IV)
(Disciplinary Authority)
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+1cc to Mr.Balan Haridas, Advocate, S.R.No.24966

WP NO.8155 OF 2015

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NSK/24/05/2022