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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.584 of 2014
and
WMP.No.15500 of 2018

A.Raju

...Petitioner

Vs

1. The Appellate Authority,
[Deputy General Manager],
State Bank of India,
Disciplinary Proceedings Section,
Zonal Office, "Kurinji Complex",
State Bank Road,
Coimbatore - 641 018.

2. The Disciplinary Authority,
[Assistant General Manager - Operations],
State Bank of India,
Disciplinary Proceedings Section,
Zonal Office, "Kurinji Complex",
State Bank Road,
Coimbatore - 641 018.

...Respondents

PRAYER:Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in his proceedings in DIS/CON/273 dated 20.06.2008 and HR/BR/No.1762 dated 13.07.2013 confirming the order passed by the second respondent in his proceedings in DIS/CON/600 dated 26.02.2008 and quash the same and direct the respondents to reinstate the petitioner with all monetary and service benefits.

For Petitioner : Mr.R.Singaravelan
Senior Counsel
for Mr.M.Rajamani

For Respondents : Mrs.Malarvizhi Udayakumar

O R D E R

The order of punishment of dismissal from service confirmed by the Appellate Authority is under challenge in the present writ petition.



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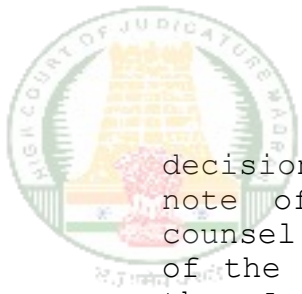
2. The writ petitioner was appointed to the post of Messenger and joined in service on 26.06.1986. The Departmental disciplinary proceedings were initiated against the writ petitioner and the following charge was framed:

CHARGE:

"The CSE, while working as Head Messenger at Rasipuram Branch has stealthily removed 10 sections of Rs.500/- denomination currency notes and replaced with that of fake currency notes on 10.02.2005. However, it was found that the bundle was short by 22 pieces and 2 notes were found to be genuine. Hence, the CSE had cheated the Branch to the extent of Rs.49,000/-."

3. A criminal case was registered simultaneously and pending criminal proceedings, the Departmental disciplinary proceedings were concluded. The petitioner defended the allegations and an Enquiry Officer was appointed, who in turn conducted an enquiry and based on the report submitted by the Enquiry Officer, the disciplinary authority imposed the punishment of dismissal without notice. The petitioner preferred an appeal which was also rejected.

4. The learned senior counsel appearing on behalf of the writ petitioner mainly contended that the confession statement recorded by the competent authorities were obtained by force and it was not voluntary. Thus the said confession statement cannot be relied upon for the purpose of imposing major penalty of dismissal from service. The order of the Appellate Authority is cryptic in nature and the grounds raised by the writ petitioner were not considered. In view of the fact that the petitioner raised an objection with reference to the forced circumstances, the said grounds raised are not considered both by the disciplinary authority and by the Appellate Authority. The learned senior counsel admitted that there was a delay in approaching this Court, however the allegations raised by the petitioner need not be confined with him as the issue relating to fake currency are generally found in many circumstances in public domain. The petitioner alone is penalised for such allegation despite the fact that the currency in Banks are dealt with by many other officials and the petitioner being a Messenger cannot be held responsible for such serious offences. The learned senior counsel drew the attention of this Court with reference to the findings of the Criminal Court of law, which would reveal that it may not be possible for a Messenger to commit such an offence. Drawing factual inferences, in such circumstances, the Criminal Court of law arrived at a conclusion and accordingly acquitted the writ petitioner from the criminal charges. Though the order of acquittal was passed on the ground of benefit of doubt, the entire circumstances through which the



decision was arrived by the Criminal Court are also to be taken note of. Relying on the said finding, the learned senior counsel urged that the petitioner in this case became a victim of the circumstances and further the appeal filed by him before the Appellate Authority raising several grounds were not considered. Thus the writ petition is to be allowed.

5.The learned counsel appearing on behalf of the respondent State Bank of India objected the said contention by stating that the writ petition is liable to be dismissed in limine on the ground of laches. The order of dismissal was issued by the disciplinary authority on 26.02.2008 and the Appellate order was passed on 20.06.2008. The writ petition was filed in the year 2014 after a lapse of about six years and the petitioner has chosen to file the writ petition only after the disposal of the criminal case and based on the acquittal granted. The learned counsel for the petitioner reiterated that acquittal in a criminal case, more so on the ground of benefit of doubt is not a ground to exonerate the writ petitioner from the departmental disciplinary proceedings. There is no infirmity in respect of the procedures followed and the opportunity as contemplated was also granted to the writ petitioner to defend his case. No doubt the confession statement made by the petitioner was taken into consideration apart from the fact that the charge also has been proved. Thus, there is no infirmity as such and the learned counsel for the respondent relied on the judgment of the Hon'ble Supreme Court in the case of State Bank of India and another vs. K.S.Vishwanath in Civil Appeal No.3490 of 2022 dated 20.05.2022, wherein the Apex Court held that the findings by the criminal court will have no effect on the previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him.

6.The learned counsel for the respondent relying on the said judgment made a submission that the facts and the principles laid down squarely applies to the case on hand and therefore, the writ petition is to be rejected.

7.Considering the arguments as advanced by the learned senior counsel for the petitioner and the learned counsel for the respondents, this Court is of the opinion that admittedly there was a long delay in filing the writ petition by the writ petitioner. The petitioner had not chosen to file the writ petition during the relevant point of time, when the order of dismissal and the appellate order was passed. Thus, the unexplained delay of six years cannot be condoned as the petitioner has slept over his right.



8. Perusal of the charges, no doubt it is serious in nature. The findings of the enquiry report reveals that the petitioner has confessed the charges. The statements made by the petitioner before the authority was relied upon for the purpose of arriving the conclusion that the charge against the petitioner was held proved. Further, the Enquiry Officer made a finding that even before the Criminal Court of law, the petitioner had not disputed the statements of confession. However, subsequently the writ petitioner has raised an objection stating that the confession was obtained by coercion and during the enquiry he has stated so. The delay in denying the confession statement is a vital ground to be held against the writ petitioner.

9. A prudent man in such circumstances will forcefully defend the truth during the relevant point of time. If at all a confession statement is obtained by coercion, fraud or forcibly, then it will be a natural attempt of a normal man to defend it immediately or atleast before the appropriate authority. In the event of failure on the part of the employee in defending the allegation of coercion, force or fraud in time, an inference has to be drawn that he himself is doubtful about the defense. Further the Courts have to form an opinion that the charged official has not chosen to defend despite the fact that he had several opportunities to defend the confession statement either immediately after the confession statement or atleast within a reasonable time. However, in the present case the petitioner had not responded immediately in respect of the confession statement. However, the belated response or the counter statement defending the confession statement cannot be trusted upon for the purpose of granting the relief in this writ petition which is filed belatedly and after a lapse of six years from the date of passing the final order of dismissal from service.

10. The judgment relied on by the learned counsel for the respondents would be more relevant with reference to the facts and circumstances of the case on hand. The Hon'ble Supreme Court on several occasions held that mere acquittal in a criminal case is not a bar for initiation of departmental disciplinary proceedings and for its conclusion. The standard of proof required to convict a person under the criminal law is strict in nature. However, such strict nature of proof is not required to punish an employee under the disciplinary rules. Preponderance of probabilities are enough to punish an employee under the disciplinary rules. Even in respect of simultaneous proceedings, the Courts have settled the principles that in the event of availability of documents with the disciplinary authority, such authority is empowered to continue the departmental disciplinary proceedings even during the pendency



of the criminal case. The nature of the allegations and the misconducts are the relevant factors to be considered by the authorities for the continuance of the departmental disciplinary proceedings during the pendency of the criminal case. In the present case, the respondents have done the same and based on the materials available and accepting the findings of the Enquiry Officer issued the final order of punishment dismissing the writ petitioner from service, which was subsequently confirmed by the Appellate Authority.

11. Therefore, the principles laid down that the findings of the Criminal Court will have no effect on the previously concluded domestic enquiry squarely applies in the present case. That apart, the petitioner has approached this Court belatedly, more so after a lapse of six years and based on the order of acquittal passed by the Criminal Court of law. As stated above, acquittal on benefit of doubt cannot be a ground for exoneration from the departmental disciplinary proceedings. In the present case, the competent disciplinary authority have independently considered the nature of proved allegations and based on the materials available on record the competent authority imposed the punishment of dismissal of service and this being the factum established, this Court do not find any infirmity or perversity in respect of the decision arrived.

12. The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the processes through which the decision is taken by the competent authorities in consonance with the statutes and rules in force but not the decision itself. That being the principles, this Court is not inclined to interfere with.

13. The learned senior counsel for the petitioner made a serious concern about the observations made by the Criminal Court in the case of the petitioner. The Criminal Court of law formed an opinion, it may not be humanly possible for a Messenger to insert such huge volume of fake currencies by replacing the original currencies.

14. The doubt raised by the Criminal Court is to be looked into by the competent authorities of the State Bank of India and the Reserve Bank of India. No doubt the issue relating to fake currencies are the serious concern in public domain and it has got national level repercussion. Therefore the authorities are expected to be vigilant in dealing with the fake currencies, more so in ATM Centres as well as in Banks while dealing with the cash. The concern of the learned senior counsel is that the Bank administration has not taken steps adequately to prevent fake currencies atleast at their level in ATM Centres and inside the bank premises. That being the case, some serious actions



against the responsible officials, who all are paving way or not performing their duties vigilantly and prudently are required. The issue in this regard are bound to be looked into by the respondents and they are expected to initiate all necessary actions to minimize such incidents in future.

15. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Appellate Authority,
[Deputy General Manager],
State Bank of India,
Disciplinary Proceedings Section,
Zonal Office, "Kurinji Complex",
State Bank Road,
Coimbatore - 641 018.
2. The Disciplinary Authority,
[Assistant General Manager - Operations],
State Bank of India,
Disciplinary Proceedings Section,
Zonal Office, "Kurinji Complex",
State Bank Road,
Coimbatore - 641 018.

+1cc to M/s.M.Srividhya, Advocate, S.R.No.35753

+1cc to M/s.Malarvizhi Udayakumar, Advocate, S.R.No.36389

W.P.No.584 of 2014

PM(CO)
RGA(07/07/2022)