BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 15.12.2021
Pronounced on : 31.01.2022
CORAM
THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P.(MD)No.12817 of 2013
and
M.P.(MD)No.1 of 2013

S.Paramasivan ... Petitioner

vs.

1.The Chairman,
Disciplinary authority,
Pandyan Grama Bank,
Administrative Office,
Collectorate Complex,
Virudhunagar.

2.Board of Directors,
Pandyan Grama Bank,
Administrative Office,
Collectorate Complex,
Virudhunagar. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent, dated 19.11.2012, issued in his reference Audit, Inspection and Vigilance Department AIVD/V/356/12-13 and the impugned order of the second respondent, dated 17.06.2013, issued in his reference Audit, Inspection and Vigilance Department AVID/V/380/2013-14 and to quash the same and to direct the respondents to pay all the terminal benefits and other monetary benefits payable to the petitioner on account of his retirement on superannuation together with 12% interest.

For Petitioner : Mr. C. Masilamani
For R1 : Mr. K. Srinivasa Murthy

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O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of the first respondent, dated 19.11.2012, issued in his reference Audit, Inspection and Vigilance Department AIVD/V/356/12-13 and the impugned order of the second respondent, dated 17.06.2013, issued in his reference Audit, Inspection and Vigilance Department AVID/V/380/2013-14 and to direct the respondents to pay all the terminal benefits and other monetary benefits payable to the petitioner on account of his retirement on superannuation together with 12% interest.

2. The brief facts of the case as narrated by the petitioner in the affidavit is that the petitioner joined the respondent Bank as Accountant in the year 1977 and served as Senior Manager when he retired from service on 31.01.2011. When the petitioner was working at Tirunelveli Town, the petitioner was transferred and posted in Melapalayam Branch from 12.09.2005. Prior to joining the Melapalayam Branch, there were other complaints regarding jewel loans stating that spurious ornaments were pledged making it appear that they are gold. In this account, Rs.65,00,000/- (Rupees Sixty Five Lakh only) was disbursed by way of jewel loan. In order to rectify this, the petitioner was posted with the object of recovering the loan amount disbursed in jewel loans. The petitioner collected only Rs.57,00,000/- (Rupees Fifty Seven Lakhs only) from the borrowers. In the beginning, the outstanding amount was Rs.65,00,000/- (Rupees Sixty Five Lakh only) and the management decided to file a complaint with the Police. Because of the efforts of the petitioner, Rs.57,00,000/- (Rupees Fifty Seven Lakh only) were collected and the petitioner was taking efforts to collect the balance amount.

3.In the meanwhile, another inspection was carried out and it was noticed that eight more jewel loans were of spurious metals. The amount sanctioned as jewel loan for these loan applications were to the extent of Rs.3,46,425/- (Rupees Three Lakh Forty Six Thousand Four Hundred and Twenty Five only), which includes interest also. Since the Bank was merged with the Indian Overseas Bank, the management thought that it fit not to report to the Board, if not then the name of the bank would be at peril. Hence, the management issued instructions and based on the instructions the petitioner sanctioned demand loan to the appraiser, who deposited Rs.3,00,000/- (Rupees Three Lakh only), by way of caution deposit and sanctioned loan in the name of the appraiser and the loan amount shall be credited towards the jewel loan outstanding of Rs.3,46,425/- (Rupees Three Lakh Forty Six Thousand Four Hundred and Twenty Five only). Accordingly, the demand loan was sanctioned to the appraiser and the said amount was utilized to close the said eight more jewel loans. Taking all these into consideration, the Board closed the file in the year 2007.

4. However, a charge memo dated 20.01.2011 was issued, which is ten days before the petitioner's retirement. The allegation in the charge memo is that without getting prior permission, the demand loan was raised in the appraiser's account and the said amount was utilized for ulterior motive. The second charge is that the jewels of the jewel loan were delivered to the unauthorized persons and next charge is that the petitioner has not followed up the Police complaint. An enquiry was conducted, the contention of the petitioner that principles of natural justice was not followed.

Ultimately, the charges were held proved and the first respondent passed an order to recover the said amount of Rs.8,25,000/- (Rupees Eight Lakh Twenty Five Thousand only) on the account that without permission the demand loan was raised. The petitioner preferred an appeal and the same was dismissed by an order, dated 17.06.2013. Aggrieved over the same, the present Writ Petition is filed.

5.The respondents have filed a detailed counter affidavit. The petitioner had joined the Melapalayam Branch on 12.09.2005. For the serious lapses, the petitioner was charged sheeted on 20.01.2011, containing four charges. The petitioner during his tenure, as Senior Manager in Melapalayam Branch, has sanctioned two demand loans against security deposit of the jewel appraiser, namely G.Maraiappan. The jewel appraisers are engaged by the Bank through contract and in the terms of engagement order, it has been strictly stated as follows:

> *"the Branch is strictly advised not be granted any loan against this deposit receipt, since it has been obtained as security deposit"*

In spite of clear bar, the petitioner had sanctioned demand loans and the proceeds were credited to eight irrelevant accounts sanctioned against spurious jewels. The respondents have stated that the petitioner claims the said act was done as per the advice of the higher official, but the petitioner has not produced any evidence to substantiate the contention. The petitioner had mis-utilized the proceeds of the aforesaid demand to close the Agricultural Jewel Loan Accounts No.1)12185/2004, 2)11248/2004, 3) 12426/2004, 4)16653/2005, 5)24119/2005, 6)24157/2005, 7)22431/2005 and 8)12883/2004 and the petitioner had delivered the sanctioned jewels on their closure to unauthorized persons instead of the jewel loan holders. The petitioner had failed to follow up the Police complaint lodged with the police in connection with the pledging of spurious jewels in the Branch, in spite of repeated reminders, by the General Manager of the Bank. On the other hand, the petitioner had requested the Police authorities to delay further action like registering FIR and thus, disobeyed the instructions of the Administrative Officer. The charges were proved. The disciplinary authority had taken a lenient view by imposing a punishment of recovery of loss of Rs.8,25,000/- (Rupees Eight Lakh Twenty Five Thousand only). The Appellate authority considering the entire fact, had rejected the appeal.

6.Heard Mr.C.Masilamani, learned Counsel appearing for the petitioner and Mr.Srinivasa Murthy, learned Counsel appearing for the first respondent.

7. The contention of the petitioner is that he joined the Melapalayam Branch on 12.09.2005 and he was specifically assigned

the duty of collecting Rs.65,00,000/-, which is the loan amount sanctioned against the spurious ornaments and the petitioner had collected Rs.57,00,000/- and the said collection Rs.57,00,000/- was not denied by the respondents. In the process, some eight more spurious jewel loans were found on further inspection and the collection of 8 loans is the issue in this writ petition.

8. The first contention of the petitioner is that these spurious loans were not issued by him and it was issued by previous incumbent and it is admitted by the respondents also. However, the allegation is that the petitioner has not followed the rules while collecting the amount. The respondent's contention is that the petitioner had not obtained any prior permission from the higher officials to set right the eight spurious jewel loans, he had used the deposit of the appraiser to rectify the spurious jewel loan to the tune of Rs.8,25,000/- (Rupees Eight Lakh Twenty Five Thousand only). When the petitioner had collected Rs.57,00,000/- (Rupees Fifty Seven Lakh only) out of Rs.65,00,000/- (Rupees Sixty Five Lakh only) and there is a permission to rectify all these spurious jewel loans from the higher officials, this Court is not able to understand why the said plea is taken by the respondents that prior permission was not taken by petitioner from the higher officials for rectifying the 8 jewel loans. Infact the statement of the petitioner that he had collected Rs.57,00,000/- out of the outstanding amount of Rs.65,00,000/- is not denied by the respondents. This Court holds if there is prior permission for collecting Rs.65,00,000/-, then there is prior permission for the said 8 loans as well.

9. The contention of the respondents that there is a bar to use the security deposit of the appraiser in the "engagement of jewel appraiser" letter dated 24.12.2005, wherein under Clause 6, it has been stated that the branch is strictly advised not to grant any loan against the deposit receipt, since it has been obtained as security deposit. The petitioner contention is that the said 8 spurious jewel loans were subsequently discovered, the higher officials stated the same cannot be openly state to the merger bank namely Indian Overseas Bank and therefore had directed to rectify the same with the help of appraiser deposit. The petitioner submitted that in order to save the name of the Pandyan Grama Bank, the petitioner has used the appraiser's security deposit. This is an extraordinary circumstance, where the name of the Bank is at stake. In fact, the Bank was merged with the Indian Overseas Bank and the said eight loans were unearthed, after subsequent inspection. Since it is an extraordinary circumstance, the petitioner submitted he had utilized the deposit of the appraiser and solved the entire issue. On perusing the examination of the appraiser the entire issue has been stated and the respondents have cross examined the appraiser and has not elicited anything as alleged by the respondents. Infact there is a clear admission by the appraiser that the money was used to redeem the spurious jewels. This Court concurs with the petitioner and is of the considered opinion that in the normal

circumstances, the appraiser's security deposit cannot be used, since there was an extraordinary circumstance and in order to save the name of the bank the petitioner has used the amount to rectify the mistake done by the previous incumbent. Moreover, the bar to sanction loan against the security deposit is a bar to sanction to the appraiser for his personal use. In other words it is meant to bar the appraiser from seeking loan on this security deposit through the contract executed by the appraiser. Here the appraiser has given it for the bank to rectify the spurious loan. Therefore this Court is of the considered opinion there is no violation of the condition as alleged by the respondents and the argument of the respondents are rejected.

10. The next charge against the petitioner is that he had handed over the jewels to the unauthorized/unconnected persons. The contention of the petitioner is that in the entire process, he was not alone. A team consisting of four persons was working to set right the mistake. The jewels in the eight loans were handed over to the persons, who were identified by the petitioner's colleague namely Mr. I. Subramanian, (during the enquiry was working as Manager, Devarkulam) and he was assigned to identify the correct person. Based on his identification, the said jewels were handed over to the persons. As rightly stated by the petitioner, the said Colleague Mr. I. Subramanian was not charge sheeted at all. When the petitioner has specifically taken a stand that particular person had identified the owner of the jewels, this Court is not appreciating the contention of the respondents that the petitioner alone is responsible. As rightly pointed out, it is a team work and when four or five persons are involved in executing an assignment, all the persons are responsible and it is unknown why the respondents have not even charge sheeted the other persons. Interestingly, one person namely Mr. Balasubramanian was appreciated for the said work carried out and the appreciation letter is culled out hereunder:

"Pandyan Grama Bank
Administrative Office Virudhunagar
Appreciation Letter
Efforts taken for recovery of amount involved in pledge of low quality gold ornaments at Melapalayam, Melaseval & Reddiarpatti Branches

Dear S. Balasubramanian,

I hereby express my appreciation for the efforts taken by you in recovering the amount involved in "Pledge of low quality gold ornaments" at Melapalayam, Melaseval & Reddiarpatti Branches

Because of the enormous efforts taken by you the Bank *could recover major portion of the amount involved in these branches*

I am sure that you will be furthering your efforts not only to recover the remaining amount but also in development of our Bank

With best wishes for success in all your endeavours

Signed
N. Subramanian
Chairman

To
Mr. S. Balasubramanian
Clerk
Roll No. 280, Pandyan Grama Bank
Area Officer, Tirunelveli "

It is seen from the records that there are no complaints from the original 8 persons who had kept the spurious jewel and obtained loan. Therefore, this Court is of the considered opinion that the petitioner is not responsible for identifying the said 8 persons and the charge is erroneous.

11. As far as the charge of Police complaint is concerned, the petitioner contention is that he had preferred a police complaint and was following it up. The learned Counsel appearing for the petitioner submitted that the petitioner is an upright person and he has completed the entire task based on the instructions of the then Chairman and the Chairman has appreciated the entire task. On perusing the deposition of the appraiser, it is seen that the appraiser has deposed that the police complaint was followed up regularly with the police. On seeing the records, it is seen that the petitioner has stated in his letter dated 25.08.2006 as under:

"Since the recovery in spurious jewel A/c's is encouraging in our branch we have requested the Police Dept. not to file the IFR immediately. We hope that we will try to recover the balance amount before the end of Sep. 2006. We may be permitted to file FIR in the first week of Oct. 2006"

12.On seeing this letter this Court is of the opinion that the petitioner had preferred police complaint and has simultaneously tried to collect the amount from the debtors and was successful in collecting. Therefore he has requested the police not to register the FIR immediately and has sought permission from the higher officials to file the FIR in the first week of October 2006 since the petitioner was confident in collecting the balance amount before the end of September 2006. Even the records also states that the petitioner was able to recover Rs.57,00,000/- (Rupees Fifty Seven Lakh only) through his efforts. Therefore this Court is of the considered opinion that the petitioner has not disobeyed the direction of the higher officials but has sought permission to file the FIR in the first week of October 2006 since the recovery is encouraging and the charge is erroneous.

13. The petitioner contended that because of an anonymous letter from an unknown person, the entire issue was taken up for enquiry. It is against the circular of Central Vigilance Commission and the petitioner relied on the Central Vigilance Commission's circular, dated 29.06.1999, where it has been stated that no action should be taken on anonymous and pseudonymous complaints. The contention of the petitioner is that based on such anonymous letter, the entire enquiry was conducted and he has relied on a communication from the Bank, dated 06.04.2010, where it has been stated as follows:

> *"we enclosed the xerox copy of petition containing certain allegations against Shri.S.Paramasivam, Roll No.139, Senior Manager, Melapalayam during his tenure at Melapalayam and Surandai.*
>
> You are advised to conduct a detailed investigation into allegations and submit the report".

In the allegation letter, it has been stated as follows:

> *"Mariappan one who come for appraiser post in Pandiyan Grame Bank, has 8 lakh Fixed deposit, which was treated as caution deposit. Now this Mariappan want to resign the job so he want to close the fixed deposit of Rs.8,00,000/- But manager Paramasivan and one of the staff Balasubramanian clerk pandian Grama Bank Melapalayam Branch who was a financer refuse to give the deposit amount because they take demand loan against Mariappan fixed deposit. In caution deposit demand loan was not permitted. In this matter chairman of Pandiyan Grama Bank tried to safe guard the manager Paramasivan and Balasubramanian against bank rules.*
>
> *Now Paramasivan in surandai Branch give consumner loan to salaried person which is against rules and regulation. Pandiyan Grama Bank Chairman Sundar Rajan safe guard Paramasivan instead of punished. Chairman punished all other for small matter. But did not take any action against Paramasivan and he encourage and give support to him.*

Chairman Sundar Rajan punished the managers for simple matters and suspends many managers. But in case of Paramasivan, Balasubramanian Chairman keeps quiet.

So I request the Hon'ble Government to conduct inspection in Surandai Branch and Melapalayam Branch. So that the hidden things and crimes come to surface. So once again I request you to conduct high level enquiries to save Government bank. Chairman Sundar Rajan, Melapalayam Manager Paramasivan and Clerk Balasubramanian these three persons robbery Pandiyan Grama Bank money and diwal the Pandiyan Grama Bank and history of Pandiyan Grama Bank come to end."

14.In the letter it has been clearly stated that the Chairman, who is very strict and has taken action against everyone, has not taken action against the petitioner. This Court could see the vengeance attitude of the anonymous letter writer. The letter further states that the Chairman of the Bank namely, Sundar Rajan safeguards Paramasivan, i.e., the petitioner herein and the Balasubramanian. If the action is wrong then action should have been taken against the Chairman also. It is seen that no action was taken against the said Chairman, namely, Sundar Rajan. Interestingly an appreciation letter was issued to the said Balasubramanian. Only, the petitioner was taken for task and he was removed from service. This Court is of the considered opinion that the entire enquiry is vitiated since the action has been taken based on the anonymous letter and the same is against the circular of the DVC. Moreover no action was taken against the said Chairman Sunder Rajan and the said Balasubramanian. It was specifically mentioned by the writ petitioner that one Mr. V. Karthikeyan prepare voucher and delivery of jewels and the said Mr. I. Subramanian were in-charge of identifying the persons. No action was taken against the said Mr. V. Karthikeyan and Mr. I. Subramanian. Therefore this Court is of the considered opinion that the enquiry is against the DVC circular and the enquiry is vitiated and targeted against the petitioner alone. Also the enquiry was initiated to satisfy the anonymous letter writer, thereby stopping further anonymous letters in this regard, so that the respondents are not put to further trouble. But unfortunately the petitioner alone was targeted and punished.

15. The alleged delinquency had happened during 2007 and the charge sheet dated 20.01.2011 was issued just 10 days before the superannuation 31.01.2011, by taking note of anonymous letter, wherein the anonymous letter spits vengeance against the Ex-Chairman, the petitioner and the said Balasubramanian. The action was taken based on the anonymous letter which is against the DVC circular. The petitioner has saved the bank by collecting Rs.57,00,000/- and has saved the name of the bank by rectifying the

8 more spurious jewel loans. The bank has appreciated one of the person namely Mr. Balasubramanian and the bank has not taken action against the Ex-Chairman Mr. Sundar Rajan, Mr. V. Karthikeyan and Mr. I. Subramanian. Taking all these into consideration, this Court could see the vindictive attitude of the bank against the petitioner and therefore this Court is setting aside the impugned order of punishment and directs the respondents to pay the terminal benefits to the petitioner within a period of six weeks.

16. Before closing, this Court opine the respondents bank, now merged with Indian Overseas Bank, ought to treat the employees properly especially the employee who has contributed to rectify the spurious jewel loans should not have been punished. If bank do not have mind the appreciate, at least the bank should not have initiated disciplinary proceedings. Ironically the bank has not initiated proceedings against the employees who have given loans on the spurious jewels, but has initiated proceedings who has rectified the spurious jewel loans by recovering the amount.

17.Therefore, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

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.

To:

1.The Chairman,
Disciplinary authority,
Pandyan Grama Bank,
Administrative Office,
Collectorate Complex,
Virudhunagar.

2.Board of Directors,
Pandyan Grama Bank,
Administrative Office,
Collectorate Complex,
Virudhunagar.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-3069[F] dated 31/01/2022)

Order made in
W.P.(MD)No.12817 of 2013
31.01.2022

nsn(CO)
GC(22.02.2022) 10P 4C