BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.01.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.14277 of 2013

and

M.P.(MD)No.1 of 2013

P.Jeyachandran ... Petitioner

vs.

1.Zonal Manager,
Punjab National Bank,
Royala Towers (Near TVS),
Mount Road, Chennai.

2.General Manager,
Punjab National Bank,
5, Sansad Marg,
New Delhi-110 011.

3.Chief Manager,
DAC Section,
Punjab National Bank,
Circle Office,
Punjab National Bank House,
Kailasapuram, Trichy-620 014.

4.Deputy General Manager,
Circle Office,
Punjab National Bank,
Punjab National Bank House,
Kailasapuram, Trichy-620 014.

5.N.Balasubramanian,
Senior Manager,
Punjab National Bank,
Main Branch, Salem.

6.Branch Manager,
Punjab National Bank,
Ramasamy Gounder Street,
Erode. ... 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 pertaining to the impugned orders, dated 23.01.2010, passed by the 3rd Respondent, disciplinary authority imposing upon the petitioner punishment of "Dismissal without notice" and the order, dated 23.02.2011, passed by the 4th Respondent, appellate authority rejecting the appeal and confirming the punishment of "Dismissal without notice" imposed upon the petitioner by the 3rd Respondent and to quash the same as arbitrary, illegal and unconstitutional and consequently to direct the respondents to reinstate the petitioner with all consequential benefits.

For Petitioner : Mr.Y.Krishnan
For Respondents : Mr.V.O.S.Kalaiselvam

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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 orders, dated 23.01.2010, passed by the 3rd Respondent, disciplinary authority imposing punishment of "Dismissal without notice" and the order, dated 23.02.2011, passed by the 4th Respondent, appellate authority rejecting the appeal and confirming the punishment of "Dismissal without notice" imposed upon the petitioner by the 3rd Respondent and consequently to direct the respondents to reinstate the petitioner with all consequential benefits.

2. The petitioner was initially appointed as Clerk cum Cashier in the year 1985. On 06.03.1985, the petitioner was re-designated as Computer Operator "A", vide Order, dated 12.01.2006. He was posted as Head Cashier in Branch Office, Brough Road, Erode. On 22.02.2008, the petitioner was placed under suspension and a charge sheet was issued on the same day. The charges against the petitioner were that, he had received Rs.50,000/- from Sandeep Industry on 29.11.2006, but the cash was accounted in the Books of the Bank by the other officiating Cashier, namely, Vinayaka Moorthy on 05.12.2006, thereby the petitioner committed temporary misappropriation and the petitioner has accounted in the Books of Bank after a lapse of five days. Moreover, the date mentioned in the voucher as 29.11.2006 was superimposed as 30.11.2006, by using rubber stamp to show that the cash was received only on 30.11.2006. The voucher bears the initial of both the petitioner and the Vinayaka Moorthy.

3.The second charge against the petitioner is that the petitioner has received Rs.20,000/- on 01.12.2006 in the account of Shree Rajlaxmi Fabrics as per the denomination in the voucher. The amount in words was correctly mentioned as Rs.20,000/- but the petitioner has accounted the voucher for Rs.2000/- in the Books of the Bank under Voucher No.37, instead of correcting the wrong total in the voucher. On enquiry from the party, it was found out that the balance amount of Rs.18,000/- was accounted through separate voucher in the petitioner's handwriting and under his initials without the details of the denominations. Thus, the petitioner misappropriated Rs.18,000/- from 01.12.2006 to 04.12.2006.

4.The third charge is that a customer, namely P. Rajendran remitted cash of Rs.54,500/- on 29.11.2006 in voucher and also mentioned the date as 29.11.2006, beneath his signature. But, the petitioner accounted the cash in the Books of the Bank only on

01.12.2006, under voucher No.47. The original date of the voucher was rounded off and a revised date 01.12.2006, was written by the petitioner. The petitioner has manually corrected the date in the cash receipt and stamped. This amount remitted by the customer on 29.11.2006 was brought into the Books of the Bank only on 01.12.2006. In order to conceal these facts, the petitioner has affixed cash receipt stamp in vouchers, in such a way that the date portion of the receipt is not clear. The petitioner has not signed in full on both parts of the pay in slip and some 11 such counter foils were detailed in the charge sheet.

5. The allegation against the petitioner is that the petitioner has temporarily misappropriated the Bank funds from the date of receipts till it was brought into Books of the Bank, that the petitioner had replaced the original vouchers tendered by the parties with vouchers prepared by the petitioner and some six counter foils was narrated in the charge sheet. Likewise, Charge Nos. 6, 7 and 8 were narrated.

6. The petitioner contention that the Regional Manager has power to impose punishment since he was the appointing authority, but the 3rd respondent Chief Manager has passed the order who has no jurisdiction to pass the order. The petitioner has submitted explanation stating that Erode is a dynamic fast growing textile trading center with immense competition existing between the Banks for capturing the business and at times even between the branches of the same Bank. As a matter of fact, it was necessary for running the business in Erode and the cash received after business / working hours were kept under the Bank safe custody to be accounted in the next day. The petitioner's explanation, dated 18.10.2008, was not accepted and the respondents have appointed an Enquiry Officer and Senior Manager, Mr. M. Jeganathan was appointed as a Presenting Officer. The fifth respondent conducted enquiry for three days, i.e., on 09.01.2006, 29.01.2009 and 11.04.2009.

7. The petitioner alleges that there is violation of principles of natural justice and also alleges that the enquiry was conducted violating the provisions of Bipartite Settlement and Discipline and Appeal Rules. The respondents have not produced witness and has arrived at findings that the charges are proved. The contention of the petitioner is that the respondents have not provided the list of documents to be presented before the enquiry and the list of witnesses to be examined. The Presenting Officer submitted 29 documents and had marked as exhibits but, the same was not marked by the concerned parties / customers and the documents were not confirmed by the author of the documents or signatory. No witness was produced in the enquiry proceedings by the presenting officer to speak about or confirm the contents of the exhibits 1 to 29. The Enquiry Officer has granted ten days time to verify the genuineness of the documents. The contention of the petitioner is since it is due to the work pressure alone, the petitioner has

carried out the entries in the Bank's book on a subsequent date and the allegation of temporary misappropriation is false. The respondents have not paid any subsistence allowance from the date of suspension. Therefore, the petitioner prayed to allow the writ petition and to reinstate the petitioner into service.



8.The respondents have filed a counter affidavit. The Chief Manager of the Circle Office is the appropriate authority to initiate action and to punish the petitioner as per the Bipartite Settlement, dated 10.04.2002, therefore, the allegation of jurisdiction is denied. The petitioner was granted ample opportunity to prove his case. On receipt of the charge sheet, the petitioner has submitted an explanation and the petitioner has accepted in his explanation that he has recorded on the subsequent days and has regretted for such act. The petitioner is seeking reappreciation of evidence under Article 226, which is impermissible in law as held in catena of cases. The petitioner is having efficacious alternative remedy before Industrial Tribunal. The judicial review on disciplinary proceeding is limited and hence prayed to dismiss the writ petition.

9.Heard Mr. Y. Krishnan, learned Counsel appearing for the petitioner and Mr. V.O.S. Kalaiselvam, learned Counsel appearing for the respondents.

10. The contention of the respondents that the petitioner is having efficacious alternative remedy before Industrial Tribunal and this Court concur with the submission. However, this writ petition was filed in the year 2013 and the petitioner was 55 years at the time of filing the writ petition and he is now 63 years. At this point of time it is not right in directing the petitioner to file a petition before Industrial Tribunal. If directed to file a petition before Industrial Tribunal then the public would lose faith in Judiciary. Infact while numbering the writ petition itself, such an objection ought to have been raised by the Registry, having allowed to file the petition, having allowed to number the petition, the petition is pending for more than 8 years before the High Court, therefore this Court is entertaining the writ petition. Moreover the petitioner has also raised jurisdiction question in the writ petition and therefore the writ petition is maintainable.

11. The contention of the petitioner that the Regional Manager has power to impose punishment since he was the appointing authority, but the 3rd respondent Chief Manager has passed the order who have no jurisdiction to pass the order. The respondents contended that the Chief Manager of the Circle Office is the appropriate authority to initiate action and to punish the petitioner as per the Bipartite Settlement, dated 10.04.2002, therefore, the allegation of jurisdiction is denied. The respondents have filed the HRD Division Circular No. 468 dated 26.06.2008, which was issued in partial modification to HRD Division Circular dated

14.09.2007, wherein it has been stated under the heading "Disciplinary Authorities / Appellate Authorities in case of Workmen Staff" in Schedule - I under clause (ii) "Subject to the provisions contained in Para(iii) of this Scheduele the following officers have been empowered to hold enquires to the disciplinary action and pass the original orders and to hear and dispose of the appeals in respect of the officers as mentioned below:" In the tabulation it has been stated under Officers empowered to appoint E.O. take disciplinary action and pass original order is "Circles headed by AGM - Chief Manager of the Circle Office". On perusal of the said Circular, this Court is convinced that the Chief Manager is the appropriate authority and is having jurisdiction to passed the impugned punishment order.

12. On perusal of the affidavit, counter affidavit and the typed set filed by the petitioner and the respondents, it is seen that the petitioner has received money from the customers but has not recorded the same in the books of Bank on the same day. The petitioner has received the amount on 29.11.2006, but, failed to record the same in the books of Account on the date. The said cash transaction was recorded by another Cashier, namely S.Vinayaka Moorthy on 05.12.2006. Admittedly, five days lapse is there. Moreover, the petitioner has superimposed by way of rubber stamp to show that cash was received only on 30.11.2006 and also the voucher has initials of the petitioner as well as the said Vinayaka Moorthy.

13.The petitioner has submitted an explanation that due to work pressure and due to late remitting of cash from the Company, the same could not be accounted on the same day, there were competition between Banks as well as competition between the branches of the same Banks. Hence, the petitioner has accepted and has recorded the belated entries in the books of the Bank. The relevant portion of the explanation is extracted hereunder:

> "*In the case of Selvakumar Agency, Imperial Computers, Kulhavilakkamman Finance, Palanikumar Auto Stores, S.Kalaiselvi; Saroja and other accounts, the cash was received as late and kept in the safe but not recorded as banks procedure. However, all the amounts received were accounted the next working day invariably. I regret the omission of not following the laid down procedure. We were forced to do it because of the business pressure explained above.*
>
> *A/c P Rajendran*
> *The account number mentioned in the challan was wrong and it was received very late on 29.11.2006. We wanted to trace the remitter but we could get the account number only on 01.12.2006 and we credited the account the same day.*

*A/c Sree Rajalaxmi Fabrics*

*The discrepancy in this case could not be traced because on that day there was a payment for Rs.18,000/- for which I have made double payment inadvertently and due to this compensation no excess cash was found on that day. When it was actually realized that I have missed cash I compensated the same from my our funds on 04.12.2006.*

*Summations in my account. I would like to clarify the credit summations in my account as under:*

- *We had to perform an important religious and social obligation in our family and hence funds were pooled from various resources and the same was routed through my account.*
- *In view of the above, lot of transactions took place through my account and hence the higher credit summations.*

*Henceforth, I will open a separate account for handling such transactions."*

14. As far as the cash transaction of Shree Rajalakshmi Fabrics, is concerned, the petitioner has stated in the explanation that the petitioner has made double payment inadvertently and due to this no excess cash was found on that day. When it was realized that the petitioner has missed cash and the petitioner compensated the same from his own fund on 04.12.2006. The petitioner has also stated that for the excess credited summations in his account were due to performance of an important religious and social obligation in his family and funds were pulled from various resources. The same was routed through his account. Therefore, lots of transactions took place through his account and hence, there were higher credit summations and the petitioner has undertaken to operate a separate account for handling such transactions in future. The petitioner has stated, rather accepted and has regretted for his action and prayed for his reinstatement in service.

15. The contention of the petitioner that the documents were not presented or marked through the concerned customers like the Sandeep Industry and Shri.Rajalakshmi Fabrics and the individual customer, namely, Rajendran, the documents were presented by the Presenting Officer and therefore, the documents cannot be considered as marked through the concerned person. The respondents submitted that the petitioner has not raised such objection before the Enquiry Officer, infact the petitioner has accepted that proper and effective opportunity has been granted to him and has also submitted before the Enquiry Officer that he has verified the originals and he accepted the authenticity and genuineness. But, it is seen in the

next sentence that the petitioner submitted that he has not accepted any of the documents presented by the Presenting Officer as "proved". The petitioner contended that the documents ought to be marked by the persons who are author of the documents. In the present case there are no witness and only the documents are presented by the Presenting Officer. Moreover the respondents have not served the documents to the petitioner, they have allowed the documents to be perused at the time of hearing only. Which means sufficient time was not granted to raise any defence to the petitioner. Therefore, this Court is of the considered opinion that the respondents have just placed the documents and it cannot be taken as proved.

16. On perusing the allegations in the charge sheet, it is seen that except for the transaction in Shri. Rajalakshmi Fabrics, the other transactions and the overlapping and extra stamping in the vouchers are due to pressure of work. This Court is of the considered opinion that the said explanation is convincing and acceptable. However, as far as the allegation in Shri.Rajalakshmi Fabrics is concerned, the petitioner has not deposited Rs.18,000/- in the customer account, but had deposited on a later date from his own funds. Moreover, coupled with the fact that several transactions have taken place in his own account. Therefore, based on prima facie evidence the Bank has conducted an enquiry, but the same is not proved as stated supra.

17. As far as Shri.Rajalakshmi Fabrics is concerned, because the Cashier, being an important person in Bank ought to be very vigilant and the claim that double entry was made inadvertently, the cash could not be remitted is not acceptable. Since the petitioner is dealing with public money, the excess transaction in his own account would definitely lead to a suspicious situation. The petitioner's attitude is not beyond doubtfulness. Because of these overlapping and over stamping on the same vouchers, the Bank has taken an extreme step of imposing major punishment of termination of service.

18.The contention of the petitioner is that the other person, namely the said Vinayaka Moorthy was not charge sheeted, but was refuted by the respondents stating that the action was initiated against the said Vinayaka Moorthy. Since that was not properly explained by both the parties, the said issue is not being discussed in this order.

19. Based on the discussions supra, this Court is convinced that due to work pressure the petitioner has entered the cash transaction in the books of the Bank on a later date except for the transaction of Shri.Rajalakshmi Fabrics. Even in the said transaction there is no loss to the Bank or to the customer. Therefore, this Court is of the considered opinion that the termination of service is disproportionate punishment and this Court

is modifying the punishment as compulsory retirement. It is seen from the records that the petitioner was not paid subsistence allowance from 22.08.2008 until the date of dismissal, i.e., 23.01.2010, the petitioner is entitled to subsistence allowance during this period. The petitioner has paid the difference of amount immediately. The petitioner has also accepted and regretted for the allegations. The petitioner had joined the service in the year 1985 and had received charge memo in the year 2008 for the delinquency happened in the year 2006, has put in service 23 years of service until 2008 and has attained superannuation in the year 2016. Therefore, there is no question of reinstatement to the petitioner from 2010 to 2016. The petitioner has not worked from 2010 to 2016 and therefore, the petitioner is not entitled to salary on the principles of "no work no pay", but the petitioner is entitled to continuity of service during this period for calculating the pensionable service. Since the punishment is modified as compulsory retirement, the petitioner is entitled to all terminal benefits including pension. The respondents are directed to modify the punishment and grant the terminal benefits and pensionary benefits as applicable to the petitioner.

20.With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// 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.Zonal Manager,
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4.Deputy General Manager,
Circle Office,
Punjab National Bank,
Punjab National Bank House,
Kailasapuram, Trichy-620 014.

ORDER MADE IN
W.P.(MD)No.14277 of 2013
28.01.2022

PKP/03.03.2022/9P/5C