BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 21.04.2022

DELIVERED ON: 21.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.2311 of 2012
and
M.P.(MD).No.1 of 2012

A.Radhakrishnan ... Petitioner

Vs.

1.The Chief General Manager,
State Bank of India,
HR Department, Local Head Office,
Circle Top House, Post Box No.737,
Aparna Complex, No.16 College Lane,
Chennai.

2.The General Manager (AP),
Net work 2, Local Head Office,
Circle Top House,
Aparna Complex,
No.16, College Lane,
Chennai – 6.

3.The Deputy General Manager and Disciplinary Authority,
State Bank of India,
Disciplinary Proceeding Cell,
Net work 2, Administrative Unit,
MC Donals Road,
Trichy.

4.The Deputy General Manager,
SBI Zonal Office,
Kurunji Complex,
State Bank Road,
Coimbatore-18.

5.The Deputy General Manager (Operation),
Legal Office,
Circle Top House,
Aparna Complex,
16, College Lane,
Chennai – 600 006.

6.The Branch Manager,
State Bank of India,
Sirkalai, Nagai District – 609 110.

7.The Chief Manager,
State Bank of India,
Villupuram. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders dated 01.02.2011 passed by the second respondent and served to the petitioner by the fifth respondent vide its proceedings VIG/SNR/231 dated 02.02.2011 and the order dated 30.06.2011 passed by appellate authority the first respondent herein and quash the same as arbitrary, illegal and unconstitutional and consequently direct the respondents to reinstate the petitioner with all consequential benefits.

For Petitioner : Mr.A.Muthukaruppan

For Respondents : Mr.M.Ponniah

ORDER

This Writ Petition is filed to quash the impugned order dated 01.02.2011 and the appellate authority's order dated 30.06.2011 and consequently to direct the respondents to reinstate the petitioner with all consequential benefits.

2. The brief facts of the case are that the petitioner was initially appointed as Clerk cum Cashier at Perambalur Branch of State Bank of India and later promoted as Senior Assistant in the year 2003, Assistant Manager in the year 2006 and has put in 25 years of service. While the petitioner was working as Assistant Manager at Sirkali Branch from 20.12.2006, disciplinary proceedings was initiated against the petitioner. The petitioner was placed under suspension vide order dated 07.03.2009 under Rule No.68(A)(i)(a) of State Bank of India Officer's Service Rules, 1992. Based on the above suspension order, the fourth respondent, who is not having any administrative power issued charge sheet dated 20.07.2009 in the official letter head of the third respondent for major penalty proceedings under Rule 68(1)(i) of the said Rules framing 6 charges.

3. The first charge is that the petitioner used the password of one Mr.N.Sivashanmugam, Deputy Manager (Cash) with fraudulent intention for authorizing the enhancement made in the DP/Limit of his current account overdraft, without any adequate security. The second charge is that the petitioner unauthorizedly debited the crop loan insurance settled account and credited his current account overdraft availed against NSCs with Rs.4,79,495/-. The third charge is that the petitioner fraudulently used Mr.N.Sivashanmugam's password for authorizing the transactions of Rs.4,79,495/-. The fourth charge is that on 41 occasions, the petitioner unauthorizedly overdrew his NSC current account overdraft for exceeding the drawing power/limit. The fifth charge is that the petitioner appraised and sanctioned two agricultural gold loans to his wife, R.Sendamarai, at concessional rate of interest, though she was not an agriculturalist, without obtaining administrative clearance from the appropriate authority. The sixth charge is that the petitioner appraised and sanctioned two agricultural loans to Mr.P.Baskar at concessional rate of interest, though the said P.Baskar is the bank's retainer taxi driver, who does not have any agricultural activity.

4. The third respondent appointed the seventh respondent as enquiry officer to conduct the enquiry into the charges contained in the charge memo. The contention of the petitioner is that without following the provisions of the said Rules, enquiry was conducted and enquiry report was submitted to the fifth respondent, who is not at all the disciplinary authority, holding that the charges are proved and it is specifically submitted that as per Rule No.68(2)(xxi)(b) of the said Rules, the enquiry authority should have submitted his enquiry report only to the disciplinary authority for further action and not to any other authority.

5. It is obvious from the documents related to disciplinary proceedings that three authorities namely the third, fourth and fifth respondents have played the role of disciplinary authority in the case of the petitioner. The third respondent has placed the petitioner under suspension and has appointed the enquiry authority to conduct the enquiry. The fourth respondent has issued charge memo in the official letter head of the third respondent. The enquiry authority has submitted his enquiry report to the fifth respondent and the fifth respondent has served the copy of the enquiry report to the petitioner and he

has also forwarded the recommendation for imposition of penalty to the second respondent.

6. As per Rule 68(3)(iii) and 68(3)(i) of the said Rules, only the disciplinary authority has got authority to impose penalty on the charge sheeted officer and if the disciplinary authority is of the opinion that the penalty to be imposed is any of the major penalties specified in clauses (e), (f), (g) and (h) of Rule 67 and if it is lower in rank to the appointing authority in respect of the category of officers to which the officer belongs, it shall submit to the appointing authority the records of the enquiry together with its recommendation regarding its penalty. It is the contention of the petitioner that these provisions were not followed by the respondents. The enquiry authority after closing the evidence should question the delinquent officer on the circumstances appearing against him in the evidence for the purpose of enabling the delinquent officer to explain any circumstances. However, the said provision was not complied with, which is against the principles of natural justice and it has seriously prejudiced the petitioner.

7. According to the petitioner, the prosecution side has marked 14 documents as exhibits and out of the 14 exhibits, only 6 documents were listed in the Annexure III of the charge memo and the remaining 8 documents were all of a sudden allowed to be introduced in the enquiry through PW1 without furnishing the copies of those documents to the petitioner. In exhibits 9,10 and 12, the petitioner is the author of the documents. In exhibit 9, along with the petitioner, one Mr.Rajan has signed the documents, but the documents were marked without confirmation by the author of the documents.

8. As far as charge Nos.5 and 6 are concerned, it is alleged that the petitioner's wife and one Mr.P.Baskar were sanctioned each two agricultural gold loans. But during the enquiry proceedings, these two witnesses were not examined and the contents of the document Exhibit 14 were not confirmed. But the enquiry authority has placed reliance upon the document in arriving at a conclusion. As far as exhibits 9, 10 and 12 are concerned, there is no acknowledgement affixed by the sixth respondent for having received the documents. All the documents were marked without examining the author of the documents. In this case, despite the fact that in the exhibits 1 to 13, PW1 is

neither the author nor the signatory of the documents, these documents were marked through him and consequently, the enquiry officer has placed reliance upon the deposition of PW1 in arriving at his decision.

9. It is stated that the originals of the documents were not produced during the enquiry proceedings. According to the petitioner, there was absolutely no evidence in support of the charges framed against the petitioner and the entire findings recorded by the enquiry officer were vitiated by reasons of the fact that they are not supported by any evidence and are wholly perverse. The enquiry authority and the disciplinary authority have acted partially and with closed mind. Hence, the enquiry is initiated by non-application of mind and the punishment of dismissal from service is disproportionate. Hence, the petitioner prayed to allow the Writ Petition.

10. The respondents have filed a counter stating that six charges were framed against the petitioner. It is stated that the petitioner has enhanced the DP limit by using the password of one Mr.N.Sivashanmugam, Deputy Manager (Cash). The said enhancement was not backed by the appropriate authority and the fact that these transactions have been put in through the system by the

petitioner with his User ID made clear that the intention of the petitioner was fraudulent. The authorization of the transactions was not the routine work of Mr.N.Sivashanmugam. During the enquiry proceedings, the said Mr. N.Sivashanmugam pleaded ignorance of authorization of transaction under his ID and denied having authorized the transaction and he submitted that he suspected the petitioner for the said authorization by misusing his ID. The petitioner transferred a sum of Rs.10,000/- from this account on the same day of authorization of the limit thereby exhibiting his knowledge about the new limit. All these indicated that the petitioner has himself authorized the transactions using the ID and password of Mr.N.Sivashanmugam. The said Mr.N.Sivashanmugam has deposed before the enquiry officer and during cross examination, he submitted that he used to seek help from the petitioner for certain technical works, during which time he used to feed his password in the system in the presence of the petitioner. Hence, it is highly probable for the petitioner to know the password of the said Mr.N.Sivashanmugam and he would have authorized the transaction himself.

11. It is further stated that the composite voucher for transfer of Rs.4,79,495/- from the Insurance Settled Account to the account of the

petitioner bears the signature and the ID stamp of the petitioner as Passing Officer. Therefore, it is clear that the petitioner has misused his official capacity and with fraudulent intention, the petitioner has made the alleged illegal transaction. The petitioner has overdrawn his account on 41 occasions in excess of the sanctioned limit. Repayment of the amount overdrawn does not in any way vitiate the charges. The petitioner has sanctioned huge jewel loan accounts, one in the name of his wife and the other in the name of the retainer taxi driver of the branch. On scrutiny, it is revealed that the gold loans were sanctioned by the petitioner in his official capacity as F.O. under his discretionary powers in the absence of the land records and any evidence of undertaking agricultural activities. The closure of the loan accounts availed by P.Baskar by applying public rate of interest will not vitiate the lapse. The petitioner committed serious violation of Bank's systems and procedures and the petitioner has done transaction with fraudulent intent. Hence, the respondents prayed to dismiss the Writ Petition.

12. Heard Mr.A.Muthukaruppan, the learned Counsel for the petitioner and Mr.M.Ponniah, the learned Counsel for the respondents and perused the records.

13. The respondents have circulated the Delegation of Administrative Powers SBI Officers' Service Rules, 1992 vide circular dated 19.07.2005 and 20.08.2008, wherein, it has been stated that for Scale I and II officers for the disciplinary proceedings, the disciplinary authority is DGM (NCM) and the appellate authority for minor penalty is GM, for major penalty is CGM and the reviewing authority for minor penalty is CGM, for major penalty is RC. On perusal of the delegation of powers, it is seen that the fourth and fifth respondents are not having any power as rightly pointed out by the petitioner. The third respondent/the Deputy General Manager and Disciplinary Authority has placed the petitioner under suspension. The fourth respondent/the Deputy General Manager has issued a charge memo in the official letter head of the third respondent. The enquiry report was submitted to the fifth respondent, who is the Deputy General Manager (Operation). On perusal of the above circular, it is stated that DGM(NCM) is the disciplinary authority for both minor and major penalties. Therefore, this Court is of the considered opinion that the appropriate authority DGM(NCM) has not placed the petitioner under suspension and has not initiated the disciplinary action and he is not the appointing authority.

14. However, the charges framed against the petitioner are absolutely serious. The petitioner has misused the password of Mr.N.Sivashanmugam, Deputy Manager(Cash) and the said Mr.N.Sivashanmugam has deposed before the enquiry officer that he has not authorized the petitioner to use his password and ID. But the said Mr.N.Sivashanmugam has submitted before the Enquiry Officer that he suspects the petitioner for the said authorization by misusing his ID and has submitted that it is highly probable for the petitioner to know the password of the said Mr.N.Sivashanmugam. From this, it is evident that the said Mr.N.Sivashanmugam has not conclusively stated that the petitioner has carried out the said act, but only states that it is probable that the petitioner has committed the act. The contention of the petitioner is that even though he has overdrawn under the NSC current account, all the amounts were subsequently remitted back and there is no loss to the Bank. Even the driver, who was sanctioned gold loan, has repaid the entire amount and the same will vitiate the disciplinary proceedings, because the intention of the petitioner is to grant loan to ineligible persons by using his capacity.

15. From the records, it is seen that the petitioner has attained superannuation. Therefore, if the case is remitted back, the same will not serve any purpose. Therefore, this Court is inclined to modify the punishment of dismissal from service to compulsory retirement. Accordingly, the respondents are directed to implement the modified punishment and the consequential reliefs shall be granted to the petitioner within a period of six (6) weeks from the date of receipt of a copy of this order.

16. With the above modification, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

21.07.2022

Index : Yes / No
Internet : Yes/ No
Lm

S.SRIMATHY, J.

Lm

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