BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2022

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No. 3202 of 2018
and
WMP (MD) Nos. 3360 and 3361 of 2018

S. Rathinam ...Petitioner

Vs

1. Canara Bank,
Represented by its Managing Director,
Human Resources Wing
Head Office
112 J C Road, Bangalore – 560002.

2. The Deputy General Manager,
(Appellate Authority)
Canara Bank
Human Resource Wing
Head Office, 112 J C Road
Bangalore - 560002

3. The Assistant General Manager,
(Disciplinary Authority)
Human Resources Section,
Circle Office, East Veli Street,
Madurai - 625 001.

4. The Branch Manager,
Canara Bank,
Kulasekaram Branch,
Kanyakumari District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of certiorarified mandamus, to call for the records pertaining to the impugned order in Ref.MUDC HRM 4311/2016 dated 28.10.2016 on the file of Respondent No.3 and the impugned order dated 08.08.2017 of respondent No.2 confirming the order passed by respondent No.3, and quash the same as illegal and consequently to direct the respondents to reinstate petitioner into service and award all consequential service benefits from 29.10.2016, within the time stipulated by this Court and pass orders.

For Petitioner : M/s. T. Lajapathi Roy
Mr.S.Rajasekar

For Respondents : Mr. N. Dilip Kumar
Standing Counsel for R3 and R4
R1 and R2- No appearance

ORDER

The petitioner challenges orders passed by R3 on 28.10.2016 and confirmed by R2 on 08.08.2017 and seeks a consequential direction for reinstatement in service with all benefits within a time frame to be fixed by the Court.

2. The petitioner had joined the Canara Bank (in short, hereinafter referred to as 'Bank') as a daily wager in 1976. According to him, the Bank was functioning out of a building owned by his family, in the initial period of its operation. He was absorbed in service as a peon from 06.03.1979 and has been promoted through the ranks to the position of a Clerk in the year 2002.

3. Transferred over the years to several branches, he was ultimately posted in Nattalam and claims to have been instrumental in developing the business of the branch there as well as in Chinnathurai thereafter. In the course of his service while working in the Kuzhithurai branch of the bank, he admits to have, under pressure of work, committed certain grave lapses in duty.

4. In 2015 since he was in need of funds for his daughter's wedding, he had sought loans from some of the bank customers. Such loans, according to him, were in the form of cash that had been brought by four customers for deposit into their gold savings accounts. Though he had issued challans for receipt of the cash from the customers, the amounts were retained by him and he maintains that the retention was only with their consent. Subsequently, upon complaints filed by the customers, the amounts were repaid.

5. The customers had brought the factum of embezzlement by the petitioner to the notice of the bank contrary to the petitioner's averment that the retention of the cash was with their knowledge. The bank immediately initiated action for misappropriation, framed charges on 06.06.2016 and conducted an enquiry culminating in an order of dismissal without notice. This order has been confirmed in appeal as against which the petitioner is before this court.

6. The allegations concern misconduct, gross negligence, wilful damage to the property of the bank and its customers and engagement in acts that are prejudicial to the interests of the bank. The argument putforth revolves around Clause 11 of Chapter XI of Circular No.333 of 2007 relating to disciplinary action which requires that while awarding punishment, the previous record of the employee and any other aggravating or extenuating circumstance must be taken into account.

7. Thus, according to the petitioner, since he has been in service of the bank from 1976, his long service must be taken note of and a humanitarian view be taken of the allegations that have been foisted on him. The petitioner relies upon a decision of a

learned Single Judge of this court in *Somarajan and Others vs Management of A.R.C Engineering* [(1981) IILLJ 25Mad]

8. Per contra, learned counsel for the bank would submit that the impugned orders reveal clearly the falsity in the averments of the petitioner to the effect that the retention of the cash was with the consent of the account holders. He points out that the transactions were entirely fraudulent and made with the clear intention of deceiving the customers.

9. It was only when the customers complained to the bank that the petitioner immediately deposited the amounts into their accounts. The fact that the petitioner has repaid the amounts has no bearing upon the matter and upon the decision of the bank to dismiss him from service, which warrants no interference.

10. He relies upon two judgments of the Supreme court in the cases of *Ram Chander vs Union of India & Others* [1986 SCC (4)12] and *Diwan Singh vs Life Insurance Corporation of India* and Others [(2015) 2 SCC 341].

11. When the matter came up first before me, at insistence of the learned counsel for the petitioner and bearing in mind the lengthy duration of the petitioner's service, I had asked if the bank would consider his reinstatement. The Bank is however not so inclined, bearing in mind the gravity of the offences committed.

12. On the merits, the trajectory of the events as portrayed by the petitioner contrast with the findings in the impugned orders. The petitioner would attempt to state that the retention of the amounts was with the consent of the customers. This is rejected straightaway as had it been so, there was no occasion for the customers to have filed complaints.

13. The falsity in this averment is crystal clear and evident. That apart, the petitioner has been calculating in his choice of victims and has identified four women perhaps believing that they would be more susceptible to his fraud. The modus operandi is that when the women approached the counter with cash to be credited in their gold savings accounts, the petitioner received the amounts and issued counter foils. He however neither deposited/credited the amount to their accounts nor accounted for the remittances on that day.

14. He has not reported excess cash upon the closure of cash transactions on that day. The aforesaid identical modus operandi has been carried out in all four cases. The design to misappropriate the amounts deposited by the customers is apparent.

15. There is hardly any defence or contra material that is placed on record by the petitioner to disprove the version of the events in the impugned orders, and as recorded above. The argument that past conduct should be taken into account can hardly be invoked in a situation such as the present since the design and the loss of reputation to the bank is more than clear.

16. The responsibility cast upon the petitioner who is working in a nationalised bank and dealing with public funds is enormous to say the least and the decision of the respondents to terminate his

service is, in my considered view, well taken. The reliance of the petitioner upon the case of *Ram Chander* is misplaced. In that case, an employee had assaulted his superiors and had been dismissed from service.

17. The order of dismissal was set aside directing the railway board to hear and dispose the appeal filed by that employee. Reliance on the decision in the case of *Somarajan* is also misplaced. The Madras High Court dealt with orders of dismissal passed in the case of workmen for certain acts of misconduct during a period of strike.

18. While deciding the issue and allowing the case of those workmen by setting aside the matter to be decided by the Labour Court, this Court states at paragraph 29 that the past record of the workmen had not been taken into account by the management. The respondent counsel had justified the orders on the ground that the gravity of misconduct was so severe that even, had the management taken into account the past record, it would not have changed the punishment awarded.

19. However, Rule 17(5) of the Model Standing Order applicable in that case had provided that in awarding punishment the employer must take into account the gravity of the offence and any extenuating or aggravating circumstances.

20. Therefore, the learned Single Judge was of the view that the management must take specific note of the previous record of the employee as well as other extenuating circumstances that might exist. Petitioner counsel placed great reliance upon his decision though in my view it is misplaced.

21. While considering a hostile scenario such as a strike or agitation, it is inevitable that there will be some acts that might be considered as misconduct. Then again the assault of a superior, while to be condemned, could well have been provoked or triggered by flaring tempers in the heat of the moment.

22. However, the actions that this court is concerned with now are not impulsive acts, triggered by impetuousness or by an instant rage but a scheme which has been carefully designed and consciously implemented to defraud customers. The selection of the customers has been careful and even before this Court, the petitioner continues to state that the cash was retained with the consent of the customers, when all evidence points to the contrary. Thus leaves me in no doubt that the respondents have taken the right decision and the past conduct of the petitioner is of no relevance in a calculated attempt to deceive as in the present case.

23. In *Diwan Singh*, the Supreme Court considered the dismissal of a cashier who was employed with the Life Insurance Corporation of India, who had misappropriated an amount of Rs. 533 that had been deposited by a policy holder towards half yearly insurance premium.

24. On a very similar factual matrix as in this case wherein the employee had been dismissed, the order of dismissal was confirmed by the Supreme Court stating that sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount in question was of no consequence and what is relevant is the

act of misappropriation by a public servant.

25. The fact that Diwan Singh had earlier been awarded a minor punishment and his dismissal was a subsequent punishment would in my view, not be relevant bearing in mind the offence committed by the petitioner in this case and the sequence of facts as noticed above. Writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed

Sd/-
Assistant Registrar

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

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
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Canara Bank,
Human Resources Wing
Head Office
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Bangalore - 560002

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(Appellate Authority)
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4. The Branch Manager,
   Canara Bank,
   Kulasekaram Branch,
   Kanyakumari District.

+1. C.C. to Mr.T.Lajapathi Roy. Advocate SR.No.3836.

+1. C.C. to Mr.N.Dhilip Kumar, Advocate SR.No.3856.

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