BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.21251 of 2014
and
W.M.P.(MD).No.6396 of 2019

S.Murugesan ... Petitioner

Vs.

1.The Executive Director/
Reviewing Authority,
Indian Overseas Bank,
Central Office,
No.763, Annasalai,
Chennai – 2.

2.The General Manager/
Appellate Authority,
Indian Overseas Bank,
Central Office,
No.763, Annasalai,
Chennai – 2.

3.The Deputy General Manager/
Disciplinary Authority,
Indian Overseas Bank,
Central Office,
No.763, Annasalai,
Chennai – 2. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of punishment passed by the 3rd in

DO:DA:DGM (BPM):NON:VIG:7922:, dated 14.08.2013, confirmed by the 2nd respondent, vide his order, dated 04.12.2013 in DO: AA: GM (DSB): NON -VIG: 7922 confirmed by the 1st respondent in his order, dated 29.10.2014, in DO:RA:ED (AA): NON-VIG: F-7922 and to quash the same and consequently, to direct the respondents to restore the petitioner's service as Branch Manager Scale II and to revise the petitioner's monetary benefits and pay arrears.

For Petitioner : Mr.C.Jeganathan
For Respondents : Mr.M.P.Senthil

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O R D E R

The Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of punishment passed in DO:DA: DGM(BPM):NON:VIG:7922, dated 14.08.2013 confirmed by the 2nd respondent, vide his order, dated 04.12.2013 in DO: AA: GM (DSB): NON -VIG: 7922 confirmed by the 1st respondent in his order, dated 29.10.2014, in DO:RA:ED (AA): NON-VIG: F-7922 and consequently, to direct the respondents to restore the petitioner's service as Branch Manager Scale II and to revise the petitioner's monetary benefits and pay arrears.

2. The brief facts of the case are that the petitioner joined the Indian Overseas Bank as a clerk in the year 1979, promoted as Assistant Manager in the year 1998 and retired from service as Director, Indian Overseas Bank Rural

Self Employment Training Institute on attaining superannuation on 31.03.2014. While the petitioner was working as Director, Rural Self Employment Training Institute, Virudhunagar, a charge memo, dated 06.03.2012, was issued alleging 12 set of articles, that the petitioner without following the procedure and without obtaining prior permission from the authorities had sanctioned loan. The petitioner has sanctioned loan in favour of two self helped groups without obtaining approval from the Regional Office and sanctioned a loan of Rs. 2,00,000/- each. The total loan amount is Rs.98,00,000/- for 49 loan accounts in favour SEEDS SHG and sanctioned a loan of Rs.1,41,000/- for 47 loan accounts in favour of SAMON. The petitioner submitted an explanation stating that after getting deposit of each 1 crore from the Tamil Nadu Construction Workers Welfare Fund had sanctioned the loan amount.

3. The second charge is that without getting prior sanction from the Regional Office, the petitioner has sanctioned a sum of Rs.76,00,000/- to 38 Self Help Groups from 26.03.2010 to 15.07.2010. The petitioner submits that he being a Manager of the Bank is empowered to sanction loan upto Rs. 5,00,000/-, which is within his limit. The 3rd charge is that without considering the date of formation of Self Help Group (SHG), has sanctioned the loan amount in favour of three SHG. The petitioner submitted an explanation that

there is a typographical error in date of formation of group and the same was rectified which was informed to the Regional Office.

4. The petitioner submitted a detailed explanation to the 3rd respondent on 04.04.2012. Thereafter, the respondents appointed an enquiry officer and the enquiry officer submitted his report on 20.12.2012 saying that all the charges are proved. Thereafter, without issuing the second show cause notice, the petitioner was imposed with a punishment of "reduction in grade from scale II (MMG-II) to scale I (JMG-I) as Assistant Manager in the Bank with the basic pay of Rs.18,700/-".

5. The contention of the petitioner is he suffered double punishment, since the petitioner's grade was reduced from Scale -II to Scale - I as Assistant Manager and basic pay was fixed as Rs.18,700/ which is the basic pay to the post of fresh Assistant Manager. Aggrieved over the same, the petitioner filed an appeal before the 2nd respondent which was dismissed and preferred a revision petition before the 1st respondent and the same was dismissed. Aggrieved over the same, the present writ petition is filed.

6. The respondents have filed a counter affidavit stating that while

working as Manager in Malaipatti Branch, had committed certain irregularities in respect of sanctioning of 96 Self Help Groups loans. Therefore, a charge memo, dated 06.03.2012 was issued alleging that between 26.03.2010 to 29.09.2010, the petitioner had sanctioned loan to 96 Self Help Groups. While sanctioning these loans, the petitioner had committed grave irregularities like the petitioner had sanctioned loans without obtaining prior permission from the concerned authorities, the petitioner has no discretionary power, has committed gross violation of norms while lending loans, left blanks in loan documents in 41 accounts, etc. Because of those irregularities, the Bank had to face difficulties to recover Rs. 1,79,29,312/-. After giving due opportunity, the enquiry was conducted and the enquiry officer held that the charges leveled against the petitioner are proved. Hence, the punishment of reduction of grade pay was imposed in terms of Regulation 4(g) of Indian Overseas Bank Officer Employees' (Discipline & Appeal) Regulations 1976. Aggrieved by the punishment, the petitioner preferred an appeal and the Appellate Authority, vide order, dated 04.12.2013, rejected appeal and the Review Authority, vide order, dated 29.10.2014, dismissed the Review Petition.

7. The contention of the respondents are that the punishment was imposed based on the approved charges after detailed enquiry. The petitioner

cannot invoke Article 226 of the Constitution of India to re-appreciate the evidence. The petitioner has disbursed 96 loans to Self Help Groups sponsored by 2 Non Government Organizations (NGOs) which are not fulfilling the basic criteria fixed for NGOs to accept the sponsorship. The loans were sanctioned in gross violation. The lapses on the part of the petitioner came to light during internal investigation, dated 08.07.2011. Thereafter, a Memorandum of Allegations and Articles of Charges containing 15 allegations and 12 charges was issued. The petitioner had sanctioned 100 SHG loans during the period from 26.03.2010 to 29.09.2010, out of which 96 accounts are outstanding. Out of the 96 loans, 49 loans were sanctioned with linkage made through NGO M/s. Social Education Economical Development Society (SEEDS) and other 47 loans were sanctioned through linkage made through another NGO, M/s. Sree Annai Mahalir Service Organisation (SAMSON). The petitioner has sanctioned the loan without getting necessary approval from the Regional Office, which is required as per existing guidelines and there is no record to show whether the petitioner had verified the said two Non Governmental Organisations (NGOs), whether the said two NGOs are meeting the eligibility criteria. In order to obtain higher loan amount, the savings of the Groups sponsored by NGO M/s.Sree Annai Mahalir Service Organisation (SAMSON), was uniformly shown as Rs.78,000/- to avail maximum loan amount of Rs.3,00,000/-.

Therefore, the respondents submitted that the petitioner has not followed any of the guidelines and norms fixed by the Bank and has not scrutinized the NGO records properly and prayed to dismiss the writ petition.

8.Heard Mr.C.Jeganathan, learned Counsel for the petitioner and Mr.M.P.Senthil, learned Counsel for the respondents.

9. The contention of the petitioner is the punishment imposed is reduced from scale II to scale I and the basic was also fixed as Rs.18,700/-. This basic pay is applicable to the freshly recruited Assistant Manager which will amount to double punishment. However, the respondents submitted that the reduction of Grade from scale II to scale I and the consequential fixing of basic pay is only a consequential effect and the same will not amount to double punishment. Moreover, the respondents contended that the petitioner is eligible to be imposed for the proven charges warrant deterrent punishment but the disciplinary authority has taken a lenient view and imposed a punishment of reduction in rank. As rightly pointed out by the respondents, if there is a reduction of grade pay from scale II to scale I, then, there will be a reduction of basic pay which is only a consequential effect. Therefore, the claim of the petitioner that it amounts to double punishment is erroneous.

10. The next claim put forth by the petitioner is that before imposing the major punishment a consequent show cause notice was not issued by the Bank. There are several judgments where it states that if there is proposal to impose major punishment then, a show cause notice is mandatory. Admittedly, reduction in scale of pay is a major punishment and a show cause notice is mandatory. Therefore, this Court is of the considered opinion that non issuance of show cause notice for imposing major punishment, there is a clear violation of procedure.

11. As far as the allegations that the petitioner has not obtained any approval from the higher official before granting the loan, the submission of the petitioner is that the petitioner was serving as a Manager, he is entitled to sanction loan up to Rs.5,00,000/- and he has sanctioned the loans within his limit granted to the post of Manager. If it is within the power of the petitioner then respondents ought not to have initiated any disciplinary proceedings at all.

12. The respondents alleged that the petitioner has not scrutinized the antecedents of the said two SHGs and because of the same the Bank was put into difficulty from recovery of the loan amount. But the contention of the petitioner is until the petitioner was serving as Manager, there was no default in

recovery of the loan amount and the petitioner has properly collected the loan and he was prompt in recovery from the borrowers. The successive Manager has failed to recover properly and the fault of the successive Manager cannot be foisted against the petitioner. The contention of the petitioner is that he has taken initiative for the deposit from the Tamil Nadu Construction Workers Welfare Fund and after such deposit only the petitioner has initiated to disburse the loan to the said SHGs.

13. This Court is of the considered opinion that the petitioner was working as a Manager in the banking business and in any business there will always be a risk factor. The petitioner was in the position to take the risk which is permissible while taking business decision. In the banking business any bank cannot be in the market without lending loans especially to the Self Help Groups. The petitioner has taken sufficient steps. However, there may be some errors. As rightly pointed out by the petitioner, there was a typographical error in mentioning the date of formation of group which was subsequently informed to the regional office. By taking all these into consideration, the punishment imposed on the petitioner is disproportionate. Therefore, this Court is inclined to modify the punishment as stoppage of increment for three years without cumulative effect. Therefore, the respondents are directed to implement the

modified punishment and the consequential benefits shall be calculated and disbursed to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

14.With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No

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