BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 04.04.2022
DELIVERED ON : 14.06.2022
CORAM
THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P.(MD)No.12312 of 2018

V.Rajapandian ... Petitioner

vs

1. The Indian Bank,
represented by its Chairman Cum Managing Director,
254-260, Avvai Shanmugam Salai,
Royapettah, Chennai - 600 014.

2. The Executive Director
(Reviewing Authority),
Indian Bank,
254-260, Avvai Shanmugam Salai,
Royapettah, Chennai -600 014.

3. The General Manager
(Appellate Authority),
Indian Bank,
254-260, Avvai Shanmugam Salai,
Royapettah, Chennai -600 014.

4. Deputy Zonal Manager,
(Assistant General) Manager/ Disciplinary Authority,
Indian Bank, Circle Office,
East Avani, Moola Street, Madurai – 1. ... 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 from the Respondents, the proceedings of the fourth respondent relating to the order dated 30.05.2017 imposing the punishment of compulsory retirements against the petitioner and the proceedings of the third respondent relating to the Appeal petition rejected order dated 10.05.2018 and quash the same as illegal, arbitrary, vindictive, without jurisdiction and contrary to the principles of Natural justice and consequently direct the respondents to reinstate the petitioner back in service with effect from the date of Compulsory Retirement dated 23.03.2002 and also treat the period of suspension as one spent on duty, together with backwages and all other attendant benefits together with due seniority.

For Petitioner : Mr.R.Murugan
For Respondents : Mr.S.Suresh
for Mr.Aiyor & Dolia

O R D E R

This Writ Petition is filed to quash the impugned order dated 30.05.2017 imposing the punishment of compulsory retirement against the petitioner and the proceedings of the third respondent, dated 10.05.2018 and consequently, direct respondents to reinstate the petitioner into service and treat the period of suspension as one spent on duty, together with backwages.

2. The brief facts of the case are that the petitioner joined the respondent Bank in the year 1984 as Clerk. In 1988, the petitioner was promoted as Officer in the Junior Management Grade Scale -I, Office through the fast track. The petitioner cleared his examination in the first attempt and was posted as Assistant Manager in Chandigarh, then transferred to various places. On 12.06.2000 the petitioner was posted to Rajdhani Branch in Theni District as in-charge of the Branch. The Branch was a loss making branch and the petitioner has taken steps to bring the branch as a profit making branch and he was appreciated for his performance in January 2001 in the meeting of the Branch Managers. When the petitioner joined in the Rajdhani branch, the staff strength was one Manager, one Accountant and two Clerks against the sanctioned strength of one Manager, one Accountant and three Clerks. Since there was a shortage of one Clerk, the petitioner had to work the shortage of staffs, inspite of this, the petitioner has held recovery camps and recovered several loans which was declared as Non-Performing assets. In February 2001, the only one Accountant of the Branch was also transferred. Therefore, the petitioner was attending his regular woks apart from the other works. Due to pressure of work, the petitioner could not apportion the amounts and make the entries under the respective heads.

3. The contention of the petitioner is that he was concentrating on the core activities like recovery, advance, deposits etc. On 27.03.2001, when the Rural Development Officer visited the Branch, he found that the petitioner had not remitted the amounts in the respective accounts though the petitioner had issued receipts and the amounts with the challans in the draw. The petitioner explained that due to shortage of staff and pressure of work he could not make any entries in the ledger and he was totally handicapped without the Accountant. Since the said Officer took exception, the petitioner immediately posted the same in the ledger by postponing the other work. Based on this, the petitioner was placed under suspension on 29.03.2001 and a Memo was issued on 20.06.2001. The petitioner submitted his reply on 04.07.2001,

stating that posting to Rajdhani Branch was the first exposure as Branch Manager. Due to shortage of staff and the only Accountant of the Branch had been transferred, there is no substitute to the post and the petitioner could not make entries in the ledger. Thereafter, on 04.08.2001, a charge sheet was issued to the petitioner and the petitioner submitted his reply on 16.08.2001. On 18.08.2001 an enquiry was ordered. On 07.01.2002, the enquiry officer submitted his findings holding that charges A1 and A2 had been proved and B1 had been partly proved. The petitioner submitted his comments for the enquiry report's findings on 15.01.2002. Thereafter, the fourth respondent who is the disciplinary authority had proposed the punishment of reduction to pay by five stages. Pending the proposal, the respondent sought second stage advice from the General Manager, Vigilance Department who was his superior and the Vigilance Department had advised the fourth respondent not to be content with imposing a punishment of reduction in pay by five stages, but to impose the punishment of compulsory retirement. The recommendation of the vigilance was taken and the compulsory retirement was imposed on 23.03.2002. The petitioner's superannuation date is February 2019. The contention of the petitioner is that there is no necessity for the respondent to seek advice of the Vigilance. Even if there is any recommendation from the Vigilance, the disciplinary authority ought to have taken an independent decision, after taking the advice from the Vigilance Department. But in the present case, the respondents have not independently considered for imposing the punishment. Aggrieved over the punishment the present writ petition is filed.

4. The respondents have filed counter affidavit stating that the duty of the Branch Manager is to run the Branch in a profitable manner and those who had achieved the targets will be appreciated and these are all part and parcel of their Job. However, the same does not mean that the Branch Manager can violate their code of conduct and do acts detrimental to the interest of the Bank. The persons who are working in Banks are custodian of public money and they should act with utmost integrity. The fact remains that the petitioner had kept the money collected from the borrower more than a period of one month and the same is unethical and unacceptable while discharging the banking duties. While the petitioner was working as a Branch Manager of Rajdhani Branch had not credited the money received on different dates from loan borrowers to the respective loan accounts. On 01.02.2001, a sum of Rs.9000/- was received and the same was not credited to the loan account, likewise a sum of Rs.1,74,900/- received from 43 borrowers, counter foils were signed and issued to the borrowers without crediting the money into their respective loan accounts then and there and thereby misappropriated the monies. The petitioner has also allowed 53 number of loan documents to get time barred. The petitioner collected Rs.1,72,550/- from various borrowers on various dates

between 02.01.2001 to 08.03.2001 and the amount was remitted in sundry deposit account by a single voucher without challans enclosed therein. Thus the petitioner has not accounted the monies received then and there to the respective loan account of borrowers income account. The above fact by the Rural Development Officer during his inspection conducted on the Branch on 27.03.2001. Hence the petitioner was placed under suspension and the charges were framed against the petitioner. An enquiry officer was appointed and based on the enquiry report an explanation was called for from the petitioner. Based on the enquiry report and the final explanation of the petitioner, the disciplinary authority originally has suggested the lesser punishment of reduction of pay by five stages. However, the disciplinary authority did not impose any punishment but sought second stage of advice from the Vigilance Department, wherein, the Vigilance has recommended to impose "Compulsory Retirement".

5. On perusal of the impugned order, it is seen that the respondents have not passed any speaking order as to why the respondents are imposing the compulsory retirement and deviating from the original proposed punishment of reduction by five stages and the relevant portion is extracted hereunder:

> *"Reply dated 16.08.2001 to the charge sheet received from CSO and departmental inquiry ordered vide my letter dated 18.08.2001 appointing Mr.S.Asokan, Senior Manager, town Hall Road Branch, as the inquiry Authority and Mr.O.S.Gnanasekaran, Manager, Circle Officer, Madurai as the Presenting Officer.*
>
> *The departmental inquiry commenced on 19.09.2001 and concluded on 20.10.2001. The inquiring Authority has submitted his findings dated 07.01.2002 along with the proceedings of inquiry the written brief by PO dated 10.11.2001, and the written brief by Defence Assistant dated 26.12.2001m, CSO has submitted his comments dated 15.01.2002 on IA's findings.*
>
> *The Inquiring Authority, in his findings dated 07.01.2002 held that the charges A1, A2 and B2 in the charge sheet are clearly proved and the charge B1 as partially proved. I concur with the findings of Inquiring Authority for the reasons stated in his findings. The comments of CSO on the findings of IA are not acceptable to me and I hold the CSO guilty of the charges under A1 and A2 of the charge sheet. As the charges under A1 and A2, proved in the inquiry are of a serious nature and warrants imposition of severest punishment, I impose major penalty of Compulsory Retirement with immediate effect in terms of 4(h) of Indian Bank Officer Employees (Discipline &*

Appeal) Regulations 1976. The period of suspension will be treated as one on suspension only."

6. Since the respondents have not recorded any reasons from deviating from the proposed punishment of compulsory retirement to that of dismissal from service, wherein the proposal of punishment is for cut in increment for five stages. Therefore this Court is of the considered opinion that the disciplinary authority after taking the second stage advice from the vigilance had not applied his mind independently and passed an order.

7. Therefore, this Court is inclined to set aside the impugned order and modify the punishment. Hence the following orders are passed:

i.The original proposed punishment of reduction by five stages is imposed.
ii.The petitioner is entitled to service benefits, but the petitioner is not entitled to any backwages on the principle of "no work and no pay".

iii.The suspension period shall be regularized as duty period.

iv. The respondents are directed to implement the order within a period of six weeks from the date of receipt of a copy of this order.

8. With the above direction, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

/06/2022
Sub Assistant Registrar(CS)

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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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+1 CC to M/s.R. MURUGAN, Advocate (SR-25551[F] dated 14/06/2022)

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NSN(CO)
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