



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2022

CORAM

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

W.P. (MD)No.1968 of 2016

and

W.M.P. (MD)No.1729 of 2016

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S.Senthilkumar

... Petitioner

vs.

1.The Deputy General Manager,
Canara Bank Circle Office,
City Towers, No.1, Royal Road,
Cantonment, Trichy.

2.The Senior Manager,
Canara Bank, Srirangam,
Trichy District.

3.The Commissioner of Police,
Trichy City.

... 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 order passed by the 1st respondent in his proceedings COTRY:HRMS E-9 (w) 93389 5405 2014 SVN, dated 22.12.2014 and to quash the same and consequently, to direct the 1st respondent to reinstate the petitioner in the same post of the House Keeper cum Peon at the 2nd respondent's office with continuity of service.

For Petitioner	: Mr.K.Muthumalai
For R1 and R2	: Mr.Pala Ramasamy
For R3	: Mr.S.Kameswaran
	Government Advocate (Civil side)

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order COTRY:HRMS E-9 (w) 93389 5405 2014 SVN dated 22.12.2014 and consequently, to direct the 1st respondent to reinstate the petitioner in the same post of the House Keeper cum Peon at the 2nd respondent's office with continuity of service.

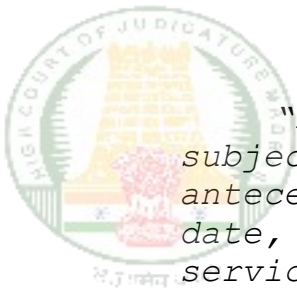
2.The brief facts of the case are that the petitioner's name was sponsored by the Assistant Director of Employment Exchange, Trichy, in the recruitment of part time employees in the first respondent Bank on 26.04.1999 and he joined the service on



21.01.2000 after selection as part time employee. The petitioner belongs to Schedule Caste. In the year 2002, the consolidated wages payable to the petitioner was increased. The petitioner was appointed as probationer part time employee with effect from 28.02.2014 and issued an appointment order, dated 26.02.2014. Later on 29.03.2014, he was converted as a full time housekeeper vide the proceedings of the first respondent, dated 29.03.2014. In the said proceedings, the petitioner was directed to perform all the duties as a part time employee and also duties of sub staff. Further, his conversion was directed to be effective from 01.04.2014. The petitioner came to know that the third respondent has sent a report, dated 28.08.2014, to the first respondent regarding the character and antecedent of the petitioner and the third respondent furnished the involvement of the petitioner in Crime No.343 of 2011, under Section 75(1)(c) of TNCP Act and in Crime No.1305 of 2012 under Section 109 on Cr.P.C. He has further stated that the first case ended up with payment of fine and the second case was disposed of before RDO. The claim of the petitioner is that both the criminal cases are related to the family disputes. Moreover, the incidents happened in the year 2011-2012, which is prior to the appointment order, dated 26.02.2014. Based upon the third respondent's report, a show cause notice, dated 30.09.2014, was issued and subsequently through proceedings, dated 13.11.2014, invoking clause 9 of the appointment order, dated 26.02.2014, read with regulation 3(2) of Chapter of XII of Canara Bank Service Rules, the petitioner's service was decided to be terminated.

3. On 16.12.2014, the petitioner submitted a representation to the third respondent through first respondent with a request to revise the report sent by the third respondent. But without taking all these into consideration, the petitioner was terminated from service. No departmental enquiry was held. The petitioner was only a probationer and therefore, the appeal remedy is not available to the petitioner, since appellate remedy is available only to confirmed employees. Hence, aggrieved over the same, the petitioner has preferred this Writ Petition.

4. The respondents 1 and 2 have filed a counter affidavit stating that with Subordinate Staff, Bank entered a settlement, dated 24.01.2014, under Section 2(P) of the Industrial Disputes Act, 1947, with a majority Workmen Union and converted the Part Time Employees (PTEs) to House Keeper cum Peon (HKP). Accordingly, the petitioner's job was also converted with effect from 01.04.2014, vide proceedings, dated 29.03.2014. The petitioner's employment in the services of the respondent Bank is subject to the terms and conditions as set out in the said appointment proceedings, dated 26.02.2014. As per the condition under Clause No.9 of the appointment proceedings, dated 26.02.2014, it has been stated as under:



"His/Her confirmation in the Bank's service will be subject to satisfactory report regarding his character and antecedents from the Police authorities. If at a later date, the Police report turns out to be adverse, the service of employee will be terminated."

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5. Since a report has been received from the police that the petitioner is involved in 2 criminal cases, a show cause notice was issued to the petitioner and the same was acknowledged by the petitioner on 07.10.2014. Under Section 109 of the Code of Criminal Procedure, it has been stated as under:

"109. Security for good behavior from suspected persons.

When an Executive Magistrate receive information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view a committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behavior for such period, not exceeding, one year, as the Magistrate thinks fit.

Similarly Section 75(1) (c) of TNCP Act provides that:

75. Penalty for drunkenness or riotous or indecent behavior in public place:-

(1) Whoever, in any public place, office, station-house or courts, or in any place of public amusement or on board any passenger boat or vessel, is :-

(a) found drunk and incapable of taking care of himself; or

(b) found drunk and under the influence of liquor or drug; or

(c) found behaving in a violent or boisterous or disorderly or riotous or indecent manner or using any threatening, abusive or insulting words which causes or is likely to cause a breach of public peace, shall be liable on conviction to imprisonment not exceeding six months or fine not exceeding one thousand rupees."

6. The contention of the respondent is that since the petitioner has paid fine in one case and in one case he has gone before RDO, his integrity is questionable. Therefore, the petitioner has no right to continue his appointment. The petitioner has not disclosed these two criminal proceedings before the authorities. Moreover, the petitioner is only a probationer and the employer has every right to terminate the petitioner.

7. Heard Mr.K.Muthumalai, learned Counsel appearing for the petitioner and Mr. M. Pala Ramasamy, learned Counsel appearing for the respondent.

<https://hcservicesonline.org.in/hcservices>



first and second respondents and Mr.S.Kameswaran, learned Government Advocate appearing for third respondent.

8. The learned Counsel appearing for the petitioner relied on the judgment rendered in **State Bank of India and others vs P.Soupramaniane**, reported in **2020-1- Writ L.R.581**, the relevant portion of the order is extracted under:

"8. There is no doubt that there is an obligation on the Management of the Bank to discontinue the services of an employee who has been convicted by a criminal court for an offence involving moral turpitude. Though every offence is a crime against the society, discontinuance from service according to the Banking Regulation Act can be only for committing an offence involving moral turpitude.

Acts which disclose depravity and wickedness of character can be categorized as offences involving moral turpitude. Whether an offence involves moral turpitude or not depends upon the facts and the circumstances of the case. Ordinarily, the tests that can be applied for judging an offence involving moral turpitude are:

a) Whether the act leading to a conviction was such as could shock the moral conscience or society in general;

b) Whether the motive which led to the act was a base one, and

c) Whether on account of the act having been committed the perpetrators could be considered 5 Sushil Kumar Singhal (supra) 6 Allahabad Bank v. Deepak Kumar Bhola 7 Pawan Kumar v. State of Haryana, (1996) 4 SCC 17 ¶12 to be of a depraved character or a person who the other important factors that are to be kept in mind to conclude that an offence involves moral turpitude are :- the person who commits the offence; the person against whom it is committed; the manner and circumstances in which it is alleged to have been committed; and the values of the society. 9 According to the National Incident - Based Reporting System (NIBRS), a crime data collection system used in the United States of America, each offence belongs to one of the three categories which are: crimes against persons, crimes against property, and crimes against society. Crimes against persons include murder, rape, and assault where the victims are always individuals. The object of crimes against property, for example, robbery and burglary is to obtain money, property, or some other benefits. Crimes against society for example gambling, prostitution, and drug violations, represent society's prohibition against engaging in certain types of



activities. Conviction of any 8 Mangali v. Chakki Lal, AIR 1963 ALL 527 9 Jorabhai Hirabhai Rabari v. District Development Officer, Mehsana, AIR 1996 Guj3. alien of a crime involving moral turpitude is a ground for deportation under the Immigration Law in the United States of America. To qualify as a crime involving moral turpitude for such purpose, it requires both reprehensible conduct and scienter, whether with specific intent, deliberateness, willfulness or recklessness.

9. There can be no manner of doubt about certain offences which can straightaway be termed as involving moral turpitude e.g. offences under the Prevention of Corruption of Act, NDPS Act, etc. The question that arises for our consideration in this case is whether an offence involving bodily injury can be categorized as a crime involving moral turpitude. In this case, we are concerned with an assault. It is very difficult to state that every assault is not an offence involving moral turpitude. A simple assault is different from an aggravated assault. All cases of assault or simple hurt cannot be categorized as crimes involving moral turpitude. On the other hand, the use of a dangerous weapon which can cause the death of the victim may may result in an offence involving moral turpitude. In the instant case, there was no motive for the Respondent to cause 10 Cristoval Silva - Trevina 241 & N Dec 687 (AG 2008) the death of the victims. The criminal courts below found that the injuries caused to the victims were simple in nature. On an overall consideration of the facts of this case, we are of the opinion that the crime committed by the Respondent does not involve moral turpitude. As the Respondent is not guilty of an offence involving moral turpitude, he is not liable to be discharged from service."

He also relied on another case in **Pawan Kumar vs State of Haryana and another** and the relevant portion of the order is extracted under:

"14. Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people through out the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost along them being traffic, municipal and other petty offences under the India; Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-



bargaining is the end of the career, future or present, as the case may be, of that young and/or in experienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine upto a certain limit, say upto Rs.2000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever."

9. The learned Counsel appearing for the respondents relied on the case of **Union of India vs Methu Meda** and the relevant portion of the order is extracted under:

"22. As discussed hereinabove, the law is wellsettled. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate. Both the Single Bench and the Division Bench of the High Court have not considered the said legal position, as discussed above in the orders impugned. Therefore, the impugned orders passed by the learned Single Judge of the High Court in Writ Petition No. 3897 of 2013 and Division Bench in Writ Appeal No. 1090 of 2013 are not sustainable in law, as discussed hereinabove."

10. On perusal of the Writ Petition and the records placed before this Court, it is seen that the petitioner was prosecuted and fined in one case and in another case, he was directed to appear before RDO. As rightly pointed out by the learned Counsel appearing for the petitioner, the petitioner is entitled to continue in the employment since it is only minor punishment. The guidelines issued by the Government of India, Ministry of Home Affairs dated 01.02.2012, where it has been stated in Minor Offences list in serial number 2 that imposition of fine in criminal case is not a bar for consideration for appointment.

11. The issue is considered by this Court in W.P. (MD) No. 15176 of 2018 dated 15.03.2022 and it has been held as under:

"5. The contention of the petitioner is that the fine is for consideration to appoint in the Government



Sector. The petitioner relied on the guidelines issued by the Government of India, Ministry of Home Affairs dated 01.02.2012, where it has been stated in Minor Offences list in serial number 2 that imposition of fine in criminal case is not a bar for consideration for appointment and the relevant portion is extracted hereunder:

Subject: Policy Guidelines for considering cases of candidates for appointment in CAPFs-pendency of criminal cases against candidates-the effect of:

2. Any offence as defined under the IPC or any other act of Central Government or State Government which is punishable only with fine without any imprisonment.

6. Therefore, this Court is of the considered view that the petitioner was imposed with punishment of fine of Rs.500/- (Rupees Five Hundred only). In fact the respondents have granted time to complete the criminal within six months, but the case could not be completed within the stipulated time inspite of hearing the case before Fast Track Court. It is not the mistake of the petitioner and delay in criminal case is quite normal in the judiciary. Therefore this Court deems it fit to direct the respondents to issue appointment order to the petitioner.

7. Hence this Court directs the respondents to issue appointment order to the petitioner and the said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed."

12. Moreover the criminal case was filed based on the family disputes and the same ought to be considered. It is also seen that the criminal case was closed long back i.e. four years before the appointment in the respondent bank. Therefore this Court is of the considered opinion that if the candidate is imposed with a punishment of fine, it is only a minor punishment and the candidate is entitled to be considered for the employment. Hence, this Court is of the considered opinion that the petitioner is entitled to continue his employment. The impugned order is set aside and the respondents are directed to confer the employment to the petitioner within a period of four weeks from the date of receipt of the order copy. The petitioner is not entitled to any back wages for the period the petitioner is out of service under the principles of "No Work No Pay". However, he is entitled to continuity of service.



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

Sd/-

Assistant Registrar (CS-II)

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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

1. The Deputy General Manager,
Canara Bank Circle Office,
City Towers, No.1, Royal Road,
Cantonment, Trichy.

2. The Senior Manager,
Canara Bank, Srirangam,
Trichy District.

3. The Commissioner of Police,
Trichy City.

+1 CC to M/s.SPL GP (SR-16310[F] dated 04/04/2022)

W.P. (MD)No.1968 of 2016

31.03.2022

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