BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2022

CORAM

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

W.P.(MD)No.23124 of 2019

and
W.M.P.(MD)No.19844 of 2019

K.Pandiyarajan ... Petitioner

Vs.

1.The Deputy General Manager,
Disciplinary Authority,
Indian Bank,
Disciplinary Action Cell (Vigilance),
HRM Department, Corporate Office,
254-260, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.

2.The General Manager (FRM),
Appellate Authority,
Indian Bank, Corporate Office,
Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.

3.The Assistant General Manager /
Zonal Manager,
Zonal Officer, Madurai – 625 001. .... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Certiorarified Mandamus***, calling for the entire records relating to the impugned final order of punishment passed by the appellate authority/2nd respondent in appeal dated 10.10.2019 confirming the order passed by the disciplinary authority/1st respondent dated 26.12.2017 pursuant to Charge Sheet No.CO:VIG:MDU:F14:CS:20108:2016-17 dated 15.07.2016 and CO:DAC:HRM:MDU:F18:CS:132:2016-17 dated 16.08.2016 and quash the same as illegal and consequently to direct the respondents to reinstate the writ petitioner in service and regularize his service with all monetary benefits.

For Petitioner : Mr.VR.Shanmuganathan

For Respondents : Mr.H.Mohammad Imran
for Mr.Pala Ramasamy

ORDER

This Writ Petition has been filed to quash the impugned order of punishment passed by the appellate authority/2nd respondent in appeal dated 10.10.2019 confirming the order passed by the disciplinary authority/1st respondent dated 26.12.2017, pursuant to Charge Sheet No.CO:VIG:MDU:F14: CS:20108:2016-17, dated 15.07.2016 and CO:DAC:HRM:MDU:F18:CS:132: 2016-17, dated 16.08.2016 and consequential direction to the respondents to reinstate the writ petitioner in service and regularize his service with all monetary benefits.

2. The brief facts as stated in the affidavit are that the petitioner was appointed as Clerk cum Sheroff in Indian Bank and joined the duty on 23.06.1982. Subsequently, he was promoted to various post, transferred to various places including Ludhiana Branch and has rendered 33 years of service in the Bank. The petitioner was suspended in December 2015, then in the year 2016 he was directed to offer an explanation on 36 loan transactions sanctioned during his tenure as Branch Manager at Kodaikanal Branch, for the period from 09.07.2012 to 31.07.2013 and Paramakudi Branch from 01.08.2013 to 06.08.2015

3. The contention of the petitioner is that the said action was initiated, after lapse of three years. It is usual practice in the Bank that whenever a Branch Manager is leaving the branch office on account of transfer or promotion or retirement, it is his duty to hand over the charge to the incoming officer to take charge in all respects. At the time of handing over the charges entire bank transactions made during the officer who is leaving the office would be reviewed/

verified. Accordingly, when, the petitioner left the said two branches and while he was handing over, the entire transactions were reviewed and verified, thereafter only the petitioner was relieved from the said post. The petitioner submitted explanation based on this and whatever the petitioner remembered. Since the respondents were not satisfied, two separate charge memos dated, 15.07.2016 & 16.08.2016 were issued.

4. The further contention of the petitioner is that in the petitioner's absence the investigation team has visited the said branches, without even verifying the records and units have recorded as if the charges are *prima facie* true and the same needs for further investigation. The said investigation is carried out without following the guidelines issued in Vigilance Manual. Hence such report cannot be relied on for framing charges. The petitioner sought permission to peruse the filed since the transactions occurred before three years, but the same was refused. Hence the petitioner submitted explanation based on his memory. Being not satisfied with the explanation. the respondents had appointed an Enquiry Officer on 15.11.2016, but the said officer expressed his non-availability, hence another officer was appointed on 29.12.2016. As per the charge memo dated 15.07.2016 relates to the Paramakudi Branch for the period between 01.08.2013 to 06.08.2015, wherein the petitioner had issued five loans to one Mr.K.Athinarayanan and his relatives. Likewise, he has given loan to various persons, without following relevant guidelines issued to this effect.

5. The further contention of the petitioner is that the petitioner participated in the preliminary enquiry and sought for certain documents, but the same was not furnished. Therefore, after getting some time from the Enquiry officer, after hectic efforts he had collected some 30 documents from the bank itself, which were alleged documents as not available in the Bank, as stated in the report submitted by the investigation team. Thereafter, the petitioner submitted detailed explanation along with the documents to the Enquiry officer to substantiate his innocence. The petitioner alleges that the enquiry officer was pressurized by the higher officials to confirm the charges. Finally, the Enquiry report was submitted and the 1st respondent has issued an order of dismissal on 26.12.2017. Against the said dismissal order, the petitioner preferred an appeal. The Appellate authority vide order dated 11.10.2019 has confirmed the original authority order. Aggrieved over the same, the present writ petition is filed.

6. The respondents have filed counter stating the charges are serious in nature. The petitioner after issuing loan to one K.Athinarayanan, has not obtained the sale deed from the said K.Athinarayanan and have not created any equitable mortgage, likewise, the petitioner has defaulted in various loan transactions and had furnished a tabulation in the counter as Annexure II and the same is extracted hereunder:

Annexure II

Grave Misconduct – Fraud case

Sl. No.	Account	Delinquency
1.	Mr.K.Athinarayanan	Rs.48,00,000/-sanctioned for purchase of house. Sale deed not obtained from Mr.K.Athinarayanan and equitable mortgage not created. MOD not registered. Hence no security. *All the bank guidelines flouted.* *Classified as "fraud account".*
2.	Mrs.Dhanalakshmi	Rs.42,00,000/-sanctioned for purchase of house. Sale deed not obtained from Mrs.Dhanalakshmi and equitable mortgage not created. MOD not registered. Hence no security. *All the bank guidelines flouted.* *Classified as "fraud account".*

3.	M/s."Athi & Co"	(i). Rs.85,00,000/-sanctioned for trading of Grey cotton textiles where there is no market in Paramakdui and in the Ramnad District itself. (ii) No firm as "M/s.Athi & Co" was in existence. (iii) Stock hypothecated were fictitious. (iv) Funds were transferred against sanction advice to his various accounts. (v) Public fund was diverted for illegal gain. *Classified as "fraud account".*
4.	M/s."Kamtchi Amman Agencies"	(i). Rs.48,50,000/-sanctioned for pharma and food product where there is no good market in Paramakudi and in the Ramnad District itself. (ii) No firm as M/s."Kamtchi Amman Agencies" was in existence. (iii) Stock hypothecated were fictitious. (iv) Funds were transferred against sanction advice to his various accounts. (v) Public fund was diverted for illegal gain.
5.	Mr.Manimuthu	Rs.32,00,000/-was sanctioned for purchase of house. Sale deed not obtained from Mr.Manimuthu and equitable mortgage not created. MOD not registered. Hence no security. *All the bank guidelines flouted.* *Classified as "fraud account".*
6.	M/s."V.V.Industries"	Rs.82,00,000/-was granted as a loan under MTL. It is an accommodative loan. Violating the norms. Mortgage was created. Without redeeming the existing mortgage in favour of "*Indian Overseas Bank*" and *"State Bank of India".* loan was granted. Beyond authority accepted 3rd party collateral security.
7.	M/s."Nenmani Group of Members"	15 loans were given violating the corporate guidelines and the builder was accommodated. It is an accommodative loan

8.	HL of Mr.Pandiaraj and Mrs.Kavitha	The property offered as security is under litigation – fraudulent mortgage. O.S.No.132/2005 was filed by Mrs.Roch Victoria and S.A.No.185 of 2005 was filed before the HC. Criminal complaint was lodged by the DCB, Ramanathapuram in FIR No.28/2010 dated 30.07.2010. The Bank money is in jeopardy.
9.	M/s."*Al-Ameen & Co.*"	Accommodative loan granted to avail interest concession. No relevant documents were obtained.
10.	M/s."*Thiruppathi Charcoal*"	Additional mortgage was not created and MOD was not registered.
11.	M/s."*SAB Charcoal*"	Loan was granted without collecting relevant documents and without proper credit appraiser. MEX – 183 will reveal the same.
12.	PMEGB Loan	EM was created with laminated colour xerox copy of the title deeds.
13.	HL-Mr.Viva Vasan and Mrs.Suriyakala	Project was promoted by writ petitioner, to develop farm house. It is 18 KMs from Kodaikonal lake, no road, no electricity, no habitation. NOC not obtained from Hill Area Conservation Authority. She was valued at Rs.1.05 lakhs by sale deed dated 20.05.2013. Valuation report dated 25.05.2013 has to be obtained for Rs.10 lakhs. No farm house was constructed. Writ Petitioner's wife Mrs.Thenmozhi is a partner in the firm was promoted the project and the Bank money was financed by the writ petitioner. Classified as "*fraud account*".

7. Therefore, the respondents claimed, the enquiry was conducted, after affording appropriate opportunity to the petitioner and the relevant documents were verified by the petitioner. Thereafter, the impugned order of dismissal was passed. Taking into gravity of the transactions and the punishment is legally sustainable and they pray to dismiss the writ petition.

8. Heard Mr.VR.Shanmuganathan, learned Counsel appearing for the petitioner and Mr.H.Mohammad Imran, learned Counsel appearing for the respondents. Perused the material documents available on record.

9. The contention of the petitioner is that the respondents have initiated action against 33 loan transactions belonging to Paramakudi Branch, of which 3 loan accounts are settled and closed, 18 NPA accounts are now regularized, 8 loan accounts are sold to Reliance Asset Reconstruction Company, 4 accounts are under NPA category and the said 4 accounts are covered under sufficient security and guarantee and there is no loss to the bank. Likewise, 3 loan transactions belonging to Kodaikonal Branch, SARFAESI proceedings are initiated and they are covered by sufficient security and guarantee and there is no financial loss caused to the Bank. The petitioner had also submitted a tabulation showing the status of each transaction and the same is given below:

PARAMAKUDI BRANCH

S.No.	Account number and name of the borrower	Loan amount and available security [in lacs]	Guarantee	Present position of the loan account
1	6321926273	85.50 – 128.50	available	Account sold to Reliance ARC
2	6311390992	48.50 - 90.00	available	Account sold to Reliance ARC
3	6336147950	48.80 – 56.60	available	NPA-Suit filed-Sufficient securities are available.
4	6336147938	42.00 – 48.30	available	NPA-Suit filed-Sufficient securities are available.
5	6342360472	82.00 – 267.52 For both accounts in Sl.No. 5 & 6	available	Account sold to Reliance ARC
6	6342367762	15.00 – Same as above	available	Account sold to Reliance ARC
7	63522112394	32.00 – 43.45	available	NPA – Suit filed – SARFESI action initiated, Possession taken, Under Sale Process – Sufficient securities are available.
8	6269509280	6.80 – 10.78	available	Account is regular- Standard
9	6269267727	6.90 – 10.42	available	Account is regular- Standard
10	6269443319	9.80 – 10.89	available	Account is regular- Standard
11	6269496434	6.90 – 10.42	available	Account is regular- Standard
12	6236605165	12.00 – 22.30	available	Account is regular- Standard
13	6267974919	6.70 – 10.42	available	Account is regular- Standard
14	6267436007	6.40 – 10.42	available	Account is regular- Standard
15	6239183126	7.00 – 20.00	available	Account is regular- Standard
16	6269823425	9.00 – 14.62	available	Account is regular- Standard

17	6238454713	8.00 – 20.00	available	Account is regular- Standard
18	6267492212	9.00 – 10.62	available	Account is regular- Standard
19	6267717113	9.50 – 14.33	available	Account is regular- Standard
20	6267858698	7.30 – 10.29	available	Account is regular- Standard
21	6267957393	7.00 – 14.33	available	Account is regular- Standard
22	6237619869	8.00 – 19.36	available	Account is regular- Standard
23	6344020364	40.00 – 52.00	available	Account is regular- Standard
24	6344017715	35.00 – 44.00	available	Account is regular- Standard
25	6321072310	60.00 – 122.00 Primary – 80.00	Available 439.00	Account sold to Reliance ARC
26	6287902361	63.00 – 78.70 Primary – 90.00	available	Account is regular- Standard
27	61973324709	30.0 – 116.00	available 350.00	Account closed
28	6343688221	13.00 – 19.00	available 25.00	Account closed
29	6243336269	23.25 – Collateral-33.30 + Subsidy – 8.57 = 41.87 + primary – 24.40	available 46.50	Account sold to Reliance ARC
30	6347238482	18.00 – Collateral 30.50 + Subsidy – 8.40 = 38.90 + primary 25.00	available 124.00	Account sold to Reliance ARC
31	6311907739	19.00 Subsidy – 7.00 = Credit Guarantee from Government of India + primary 20.00	Available Government Guarantee	Account sold to Reliance ARC
32	6331484797	30.00 – 59.00	available	Account closed
33	6188239756	20.00 – 27.00	available	NPA – Government school Teacher – Sufficient securities are available – SARFAESI – Possession taken – Under Sale process.

KODAIKANAL BRANCH

S.No.	Account number and name of the borrower	Loan amount and available security [in lacs]	Guarantee	Present position of the loan account
1	6146685676	6.01 – 10.00	available	NPA – IT employee – Sufficient securities are available – Under Sale process – Party submitted Compromise proposal
2	6148582237	5.01 – 10.00	available	NPA – Railway Employee – Sufficient securities are available – Under Sale Process – party submitted Compromise proposal
3	6142460372	30.00 – 65.40	available	NPA – Government School Teacher – Sufficient securities are available – Under sale process

10. The further contention of the petitioner is that the loans were sanctioned in the course of normal banking transactions by following the procedures prescribed thereunder. The petitioner sanctioned all loans with bonafide intention for the development of the Bank and they should not be treated as misconduct. Absolutely, there is no illegal or ulterior motive to defraud the bank. Therefore, the petitioner prays to consider the case of the petitioner, at least for modifying the punishment. To consider the plea of the petitioner this Court took the 1st charge and analyzed. The 1st charge is sanctioning loan to one

Athinarayanan and Dhanalakshmi. The allegation against the petitioner is that the petitioner had sanctioned two housing loans as if there are two dwelling houses, but it is only one unit. Moreover, the mortgage was not registered. The reply of the petitioner is that the petitioner had processed the parent document and had sanctioned the loan. After registering the document, the original ought to be submitted, then the mortgage ought to be registered. But the borrower had not submitted the original document, hence the petitioner immediately filed complaint with Sub Registrar Office and also preferred complaint to CBI and on investigation the original documents were secured from the borrower and the same is in the safe custody of the bank.

11. As far as registering the mortgage is concerned the petitioner submitted that the loan was sanctioned on 06.05.2015 and then the petitioner was transferred from that branch to Ludhiana (the petitioner was serving in the Paramakudi Branch from 01.08.2013 to 06.08.2015) and hence the registration ought to be followed up by the subsequent incumbent and if there is any lapse by the subsequent incumbent, the said lapse cannot be fastened on the petitioner. Admittedly, the respondents have not initiated any action against the subsequent incumbent. Moreover, the non-registration of MOD, within a period of one month cannot be fastened on the petitioner. Moreover, the very allegation cannot amount to misconduct. Likewise, if the borrower uses the said two dwelling houses as one unit the same cannot be considered as misconduct. The definition of misconduct in Stroud's Judicial Dictionary which runs as under:

> "Misconduct means, misconduct arising from ill motive;
>
> Acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

Since there is no intention on the part of petitioner or ill motive to defraud the bank, the said allegation cannot be termed as misconduct.

12. As far as the charge, that the petitioner has granted loan to a fictitious person is concerned, the respondents have come to the conclusion that it is the fictitious loan, because on the date of inspection, the borrower who availed loan has left the premises. The respondents alleged the petitioner has not visited them and ascertained the availability of the person. However, the petitioner submitted, as on date of the sanctioning of the loan the borrower was very much available. Even according to the respondents, the person was there for rent and later had vacated the premises, in such circumstances it cannot be stated the said borrower as fictitious person.

13. The allegation against the petitioner is that the petitioner has recklessly given loan, without following the guidelines. According to the petitioner, such allegation is a bald allegation, since all transactions would be verified by an Internal audit as well as by an External audit. There was no remark by any of the Audit team. When there was no audit objection and all the loans either collected or regularized or sold to the Asset Reconstruction Company for recovery and in some cases SARFAESI proceedings were initiated, the disciplinary proceeding is vitiated. Moreover, the management had conducted inspection in the absence of the petitioner and the petitioner had sought for the said inspection report, but the respondents had declined to furnish the same but the respondents had relied on the inspection report. Also, the respondents have declined to serve the copy of the relieving officer report and the petitioner is relying on the same. If the delinquent is intended to rely on any document, then the respondents are bound to supply the same. Hence there is violation of principles of natural justice.

14. The petitioner had relied on the Staff Accountability Guidelines communicated through Head Quarters Personnel Department Circular No. 15/1998-1999 dated 30.05.1998 and reiterated by the Bank through the Head Quarter: HRM Manual wherein it is stated as follows:

> *i. Staff Accountability is to be assessed for all omissions and commissions on the part of the Officials of the Bank. The circumstances under which the acts of omissions and commissions have taken place should be taken into consideration.*
>
> *ii. Bonafide commercial judgments of various authorities in the Bank should not be questioned later, unless malafide intention is proved. A distinction should be brought out between accountability arising out of genuine business decisions, out of negligence or out of malafide / frauds.*
>
> *iii. deficiencies which can be rectified and the irregularities which are not likely to affect the enforceability of securities may be treated as procedural lapses and decision taken on that basis*
>
> *iv. The bonafide actions and business risks taken by officials should be recognized and the officials involved in such actions should be protected and supported so that the decision making process in the Bank does not suffer for the reason of "Fear of Accountability"*

From the above guidelines it is evident that the business risks cannot be termed as misconduct. It is pertinent to mention that Staff Accountability is dealt with in Vigilance Manual also. Under clause 2.4, 2.7 and 2.9 in Chapter 10 of Vigilance Manual it is stated that deficiencies which can be rectified and the irregularities which are not likely to affect the enforceability of securities may be treated as procedural lapses.

15. Even, if it is considered as misconduct, the punishment of dismissal from service is on a higher side. It is pertinent to mention that the petitioner had put in 33½ years of service. According to the Manual of Instructions-XVII Vigilance Administration 2009, the disciplinary authority while deciding the punishment ought to be taken certain criteria, which has been stated in the manual and the same is extracted here under:

> ***12.2.*** *In deciding on the nature and quantum of punishment to be imposed on the errant employees, the Disciplinary Authority shall consider the following factors:*
>
> *(a). Gravity of the act committed by the employee.*
>
> *(b). Circumstances in which the act was committed by the employee.*

> *(c). Consequences of the act committed by the employee.*
> *(d). **The presence or absence of malafides on the part of the employee in committing the act.***
> *(e) **The past record of the employee**.*

It is seen that the respondents have not taken this guideline into consideration while imposing the punishment. Therefore, the petitioner is entitled to be considered based on the aforesaid guideline. Based on the above narration of facts read with Clause 12.2 of Manual of Instructions-XVII Vigilance Administration 2009 this Court is of the considered opinion that the past record of the employee ought to have been taken into account. The petitioner had rendered 33½ years of service and would have sanctioned more loans, but only 36 loans are questioned. As stated supra there is no malafide intention on the part of the petitioner. The respondents had alleged that the loans were disbursed by not following the guidelines. Since the amount in 22 transactions are recovered or settled and in other transactions appropriate proceedings have been initiated, there is no loss to the bank and in such circumstances the punishment is disproportionate.

16. As far as allegations in Kodaikanal Branch is concerned, the allegation is that the petitioner had disbursed the loan where the petitioner's wife is one of the partners in the partnership firm. If the petitioner's wife is not there, the said loan transaction may be a normal business transaction. But once a clout is created on the said transaction the petitioner ought to have refrained from issuing such loan. But for this, the loan disbursed is only a normal business transaction. It is seen that for the said three loans, SARFAESI proceedings are initiated.

17. As far as the allegations in Paramakudi Branch is concerned, it is seen that the petitioner being Branch Manager had acted diligently and taken steps whenever the borrower had committed any lapse. Banking business has an amount of risk and the Branch Managers are bound to take such risk in order to develop the banking business. In such process if the borrower had defaulted, the same cannot be considered as misconduct, even according to the guidelines of the respondents. To accuse a person of misconduct there must be an element of intention or ill motive. On perusing the allegations as far as the Paramakudi Branch is concerned, there is no such misconduct. At the cost of repetition, the petitioner being Branch Manager had taken the business risk and business decision that too in order to develop the bank. If the bank is not taking such risks, then the money would be safe but there will not be any banking business. From the above discussion it is evident that the petitioner had disbursed the loans and it is only normal banking business and there is no intention to defraud the bank.

18. Therefore, this Court is of the considered opinion that the punishment of dismissal from service hit the conscious of the Court since the said punishment is on the higher side. The charges memo is of the year 2016 i.e. 15.07.2016 & 16.08.2016, the petitioner was 57 years at the time of filing the writ petition in the year 2019, had attained superannuation in the year 2020 and as on date the petitioner is 60 years and after dismissal from service there is no employer-employee relationship and at this juncture if the case is remitted back to the authorities for imposing lesser punishment, it will be real hardship for the petitioner. Therefore, this Court is modifying the punishment as Compulsory Retirement as on the date of dismissal from service.

19. Accordingly, the respondents are directed to modify the punishment of Compulsory Retirement and the petitioner is entitled to the service and monetary benefits, by taking the service from 1982 to 2017. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of the order.

20. With the above directions, this Writ Petition is allowed in above terms. No Costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes
KSA

22.12.2022

S.SRIMATHY, J

KSA

Order made in
W.P.(MD)No.23124 of 2019

22.12.2022