BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.17212 of 2017
and
W.M.P.(MD).No.13779 of 2017

Sakthivel ... Petitioner

Vs.

1.The General Manager/Appellate Authority,
Industrial Relation Division,
Syndicate Bank,
Head Office, Manipal,
Karnataka – 576 104.

2.The Assistant General Manager,
Industrial Relation Division,
Syndicate Bank,
Head Office, Manipal,
Karnataka – 576 104.

3.The Manager,
HR/IR, NIRC,
Syndicate Bank,
Regional Office, 1st Floor,
Leelavathy Building,
Armenian Street,
Chennai – 600 001.

4.The Manager,
Syndicate Bank,
Regional Office,
Madurai. ... 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 pertaining to the impugned order passed by the second respondent vide his proceedings vide Ref.No.064/PD:IRD/DA-6 dated 12.02.2016 and the consequential impugned order issued by the first respondent vide proceedings No.112/PD:IRD/DA-7 dated 26.12.2016, confirming the penalty awarded by the Disciplinary Authority, "REMOVED FROM THE SERVICE OF THE BANK WITH IMMEDIATE EFFECT WITHOUT DISQUALIFICATION FOR FUTURE EMPLOYMENT" and quash the same as illegal, unlawful, unconstitutional and arbitrary and consequently direct the first and second respondents to reinstate the petitioner with full back wages and all the consequential benefits without break in seniority.

For Petitioner : Mr.R.Murugan

For Respondents : Mr.Pala Ramasamy

ORDER

This Writ Petition has been filed challenging the punishment order dated 12.02.2016 and the consequential order dated 26.12.2016 wherein the petitioner was imposed with punishment of removing from service of the Bank with immediate effect without disqualification for future employment.

2. The brief facts of the case are that the petitioner was appointed as a Probationary Officer in the respondent Bank on 06.08.2012 in Coimbatore. He was transferred to Kuzhithurai branch from 05.11.2012 to 08.03.2014. From 10.03.2014 onwards, he was working in Regional Office, Madurai. The petitioner was placed under suspension on 11.09.2014 for the alleged act of misconduct while he was working in the fourth respondent office. A memo dated 27.02.2015 was issued and the preliminary enquiry was conducted on 03.06.2015 wherein the petitioner denied all charges. Then the regular enquiry was conducted on 07.07.2015 and 08.07.2015. The petitioner demanded the copy of the report of the investigating officer and the same was denied. The alleged imputations of misconduct are that the petitioner was opening the Terms Deposit Accounts with back dated value date. The petitioner contended that the he opened such accounts for the purpose of acquiring knowledge about the opening under Code No.401, 405, 406 etc., on experiment basis and not with an intention of making any unlawful gain. The further contention of the petitioner is no interest was earned or gained by him and there was no loss caused to the Bank and no amount was withdrawn towards interest on the back dated value date term deposits.

3. The next allegation against the petitioner is he has opened Synd Samanya Savings Bank Account in his name without any necessity. The allegation against the petitioner is that he is already having an account in the respondent Bank and there is no necessity to open the special account which is meant for disadvantages section of the Society. The claim of the petitioner is that there is no bar to open the said Synd Samanya Savings Bank Account.

4. The next allegation against the petitioner is he has opened agricultural jewel loan account No.6185.825.44852 in the name of Smt. Velammal without proof of agricultural land like the land records, land revenue receipts, transfer deed or land possession certificate. The contention of the petitioner is the said Velammal was a cultivating tenant under oral lease by way of an unregistered authorization letter by the land owner and the same was produced to the Bank.

5. The next charge is that the petitioner has given his personal password as a Bank employee to another employee which is against the Bank rules. The contention of the petitioner is since there was less number of staffs, when the other staff is not available, it became necessary to share the password to complete the day-to-day transaction before locking the premises.

6. The Management has marked the exhibits 1 to 106. The contention of the petitioner is that the Management has not produced the investigation report. The management did not allow to cross examination with regard to Management exhibit 22. After the enquiry, the impugned order has been passed removing the petitioner from service. The petitioner preferred an appeal on 27.04.2016 and the same was confirmed by vide proceedings dated 26.12.2016. By challenging both the orders, the present Writ Petition has been filed.

7. The respondents have filed a detailed counter stating that while the petitioner was working as Probationary Assistant Manager during the period between 05.11.2012 and 08.03.2014, the petitioner had opened the deposits in the name of his mother Mrs. Velammal by back dating the deposits and routing the funds through parking GL account so as to derive undue benefit of additional interest at the cost of the Bank. The petitioner has also sanctioned Agricultural Jewel Loan of Rs.1,80,000/- to his mother without producing proof of possession of land. The petitioner failed to maintain the secrecy of his password and has also used the password of the Branch Head Office to authorize fraudulent transactions without his knowledge. In the process, he perpetuated the fraud on the Bank to derive undue pecuniary benefit which is detrimental to the interest of the Bank. The counter also states the following irregularities were observed on the part of the petitioner:

(i) The petitioner had opened term deposit accounts in the name of his mother by giving back dates in a fraudulent manner much earlier to the date of deposit which has no relevance and derived pecuniary benefit by way of additional interest at the cost of the Bank.

(ii) The petitioner had misused the password of the Branch Manager Mr.Rajasekaran to put through the fraudulent transactions of opening of deposit accounts with back dates.

(iii) The petitioner's account with ICICI Bank revealed that, there were unusual and high value transactions which are disproportionate to his known source of income.

(iv) The petitioner had knowingly opened "Synd Samanya" account in his name against extant guidelines and used the account for routing all the deposit transactions through this account.

(v) The petitioner had unauthorizedly sanctioned agricultural jewel loan of Rs.1,80,000/- to Mrs.Vellammal, his mother, while the petitioner was on joining time from 18.03.2013 to 23.03.2013,without any proof of agricultural land holding and when the regular Branch Manager was very much present in the Branch. This shows that his act is not bonafide in nature.

(vi) The petitioner shared his password with other staff members enabling them to make use of the same when he was not on duty and availing joining time.

8. The contention of the petitioner is preliminary enquiry report was not produced to the petitioner. The respondents relied on judgment rendered in Krishna Chand Tandon Vs. Union of India, AIR 1974 SC 1589. The relevant portion is extracted hereunder:

> *"The position of the investigation report or preliminary enquiry report which formed the basis for initiation of departmental enquiry, is somewhat different. The documents of the nature is of an inter departmental communication, primarily to the holding of enquiry and have no importance unless the enquiry officer wants to rely on them for his own conclusion. Therefore, the charge-sheeted officer is not entitled to the copies of investigation reports based on which the charges were framed, unless the enquiry officer relied upon those reports."*

Since the petitioner's action is detrimental to the Bank, the petitioner was imposed to the punishment by taking into consideration of his age. Hence the respondents prayed to dismiss the Writ Petition.

9. Heard Mr.R.Murugan, learned counsel for the petitioner and Mr.Pala Ramasamy, learned counsel for the respondents.

10. The allegations against the petitioner is he has opened five new Termed Deposit Accounts with back dated value date. The nature of the said transaction was explained by the respondents. The petitioner would create a fictious account as if fixed "term deposit" is there and interest has accrued. The said interest would be credited in his account, the petitioner would enjoy the interest. The contention of the petitioner is such transactions were dealt with in a training session and the petitioner in order to experiment the same has opened such accounts. The contention of the petitioner is he has opened such accounts and the interest would be accruing after some one or two years, for which the petitioner relied on the cross examination of one D.V.Subrahmanyam is as follows:-

DQ4: Please refer to MEX 22 and inform the forum what has been written over there regarding payment of interest apart from the standard columns?
Ans: On MEX 22, apart from the standard columns, it has been written as follows - "Value dated to 02.12.2013 with the calculation of interest compounding factor only interest from 31.01.2014 to pre closure date interest to be paid"
DQ5: Please refer to MEX 41 and inform the forum what has been written over there regarding payment of interest apart from the standard columns?
Ans: On MEX 41, apart from the standard columns, the following is also found written on the certificate - "only Interest from 03.02.2014 till closure to be paid. Excess interest to be recredited".
DQ6: Please refer to MEX 57 and inform the forum what has been written over there regarding payment of interest apart from the standard columns?
Ans: On MEX 57, apart from the standard columns, the following is also found written on the certificate - "only Interest from 08.02.2014 till closure to be paid. Excess to be recredited".
DQ7: Please refer to MEX 66 and inform the forum what has been written over there regarding payment of interest apart from the standard columns?
Ans: On MEX 66, apart from the standard columns, the following is also found written on the certificate - "Interest from 13.12.14 to 2.3.14 to be paid. Excess to be recredited to the IOD GL".

11. By relying on this, the petitioner submitted that he has not taken any interest at all, because in the said transaction, the compounding interest would accrued from 30.01.2014 since there was no interest accrued as on date, the petitioner has not taking any amount in the name of interest. Hence there was no loss to the

Bank. However, the contention of the respondents is that in two such transactions, the petitioner has earned Rs.9190/- and that is loss to the Bank. On scrutinizing all the records it is seen that the enquiry officer has observed that any ST 101 transaction journal reflecting transaction on 11.03.2014 with sequence No.5100 and 5101 for Rs.4064.59/-being an additional amount of interest paid on the term deposit opened wrongly by the delinquent recovered by debiting in savings account number 220/46127 which belongs to Mrs.Vellammal and credit to the suspense account after the enquiry has taken place at the Branch. Likewise, the exhibits 12 and 13, the suspense account of Rs.5125.72 was debited and that interest was credited to his account. Therefore, the enquiry officer has come to the conclusion the petitioner has received 9190/- as interest.

12. This Court is of the considered opinion that such transaction is a serious malpractice. The contention of the petitioner is it is only for experiment basis which was dealt a training camp and the same was carried out. This Court is of the considered opinion that if the petitioner is allowed to continue in service, the petitioner would further indulge in further experiment and would be detrimental to the interest of the Bank. The contention of the Bank is that the petitioner has opened Synd Samaniya account. But the petitioner contended that there is no guidelines barring a staff member from opening such account. This contention was refused by the respondents stating as per RBI directives, such accounts are to be opened for promoting financial inclusion of the disadvantageous sections of the Society. When the petitioner was having an account for the purpose of crediting his salary, there is no necessity to open one more account that too under Synd Samania category, that too without placing on records, relevant account opening forms and without bringing the same to the notice of the Branch Manager. The petitioner is also having an account in ICICI Bank which revealed there were unusual and high value transactions which are disproportionate to his known source of income. Moreover, the petitioner has unauthorizedly sanctioned Agricultural Jewel Loan of Rs.1,80,000/- to his mother without any proper proof of agricultural land holding. The petitioner has misused the password of Branch Manager and he has shared his password to the other staff members enabling them to make use of the same when he was not on duty.

13. By considering all these actions of the petitioner, this Court is of the considered view that the punishment of removal from service of the Bank with immediate effect without disqualification of future employment is absolutely proportionate. The petitioner is 32 years old at the time of filing of the Writ Petition. Hence the Bank is taken consideration of his age and is imposed without disqualification of future employment, the Bank has dealt with the case compassionately. There is no infirmity in the order. Therefore, this Court is not inclined to interfere with the impugned order. Hence the Writ Petition is dismissed.

14. For the reasons stated above, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

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 General Manager/Appellate Authority,
Industrial Relation Division,
Syndicate Bank,
Head Office,
Manipal, Karnataka - 576 104.

2.The Assistant General Manager,
Industrial Relation Division,
Syndicate Bank,
Head Office,
Manipal, Karnataka - 576 104.

3.The Manager,
HR/IR, NIRC,
Syndicate Bank,
Regional Office, 1st Floor,
Leelavathy Building,
Armenian Street, Chennai - 600 001.

4.The Manager,
Syndicate Bank,
Regional Office, Madurai.

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RD(31.03.2022) 7P 5C