BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.10.2022**

CORAM

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

W.P.(MD)No.2625 of 2017
and
WMP(MD)Nos.2178 to 2180 of 2017

S.Nagarajan ... Petitioner

vs.

1. The Managing Director,
Syndicate Bank,
Head Office, Manipal-576104,
Karnataka State.

2. The General Manager (Personnel),
Appellate Authority,
Industrial Relation Division,
Syndicate Bank, Head Office,
Manipal – 576 104,
Karnataka State.

3. The Deputy General Manager (Personnel),
Disciplinary Authority,
Industrial Relation Division,
Syndicate Bank, Head Office,
Manipal – 576 104,
Karnataka State.

4. C.Jeyaram (now retired)
   The Assistant General Manager,
   Inquiring Authority,
   Syndicate Bank Regional Office,
   69, Armenian Street, Chennai – 600 001.

5. R.Ponrajkumar,
   The Investigation Officer,
   Senior Manager (Now AGM),
   Vigilance Cell, Syndicate Bank,
   Mount Road Branch, Chennai. ... 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 on the file of the 3rd respondent impugned orders vide proceeding No.214/PD-IRD/DA-6 dated 30.06.2016 and the consequential impugned order passed by the 2nd respondent vide proceeding No.092/PD-IRD/DA--7 dated 23.12.2016 and quash the same as illegal, improper, unlawful, unconstitutional and arbitrary and consequently direct the 2nd respondent to revoke the punishment imposed upon the petitioner with all consequential benefits.

For Petitioner : Mr.R.Murugan
For Respondents : Mr.Pala.Ramasamy

O R D E R

This Writ Petition is filed for issuance of a ***Writ of Certiorarified Mandamus,*** to quash the impugned order passed by the 3rd respondent vide proceeding No.214/PD-IRD/DA-6, dated 30.06.2016 and the consequential impugned order passed by the 2nd respondent vide proceeding No.092/PD-IRD/DA--7 dated 23.12.2016 and also sought for a consequential direction to the 2nd respondent to revoke the punishment imposed upon the petitioner with all consequential benefits.

2. The brief facts as stated in the affidavit is that the petitioner has been rated as the best performer throughout his career. He was recruited as Probationary Officer in Syndicate Bank through BSRB, Southern Region, Bangalore and has joined duty on 03.12.1984 and completed 32 years of service in the Syndicate Bank and faced 22 transfers within 32 years. The petitioner has submitted a representation to retain the petitioner in Tamil Nadu, since the same was not considered, the petitioner has approached the National Commission for

SC/ST, New Delhi and Tamilnadu Unit. After considering the said representation, the Management has transferred the petitioner to Madurai.

3. The contention of the petitioner is that one Mr.Manivannan, who has joined as an Agricultural Officer and Junior to the petitioner in service, has been conferred with frequent promotions. He was not transferred to anywhere except, Madurai. He was not allowed to continue as Scale-I, Scale-III, Scale-V and on elevation to Scale-VI and he was retained in the same place. The petitioner has established the discrimination and victimization. Since the petitioner has approached the National Commission for SC/ST, the respondents in order to wreck vengeance, an investigation was conducted with oblique motive to tarnish the petitioner's reputation. The 5th respondent has deliberately instructed to find the fault against the petitioner to level charges and to impose punishment.

4. Heard Mr.R.Murugan, learned Counsel appearing for the petitioner and Mr.Pala.Ramasamy, learned Counsel appearing for the respondents. Perused the material documents available on record.

5. The respondents have issued a charge memo consisting of five charges against the petitioner, dated 25.04.2015. The petitioner has submitted a reply on 13.07.2015, denied all the charges framed against him. Thereafter, an Enquiry Officer was appointed and enquiry was conducted. The findings of the Enquiry Officer, dated 23.02.2016 held that the charges A, B and D are proved and C is partially proved and E is not proved.

6. As far as the Charge A is concerned, the claim of the petitioner is that, he was the disbursing authority for the transaction held on 10.06.2013 and 06.07.2013. Thereafter, one Mr.Kanagaraj is the disbursing authority on 31.07.2013, 29.08.2013, 24.09.2013, 28.06.2013 and 29.10.2013, but the Mr.Kanagaraj was not issued with charge memo at all. The learned counsel appearing for the respondents submitted that the petitioner has not raised such plea before the Enquiry Officer. If at all any issue was raised that would have been replied suitably. However, this Court is not inclined to accept the said plea, since from the records as well the Enquiry it is seen that the petitioner has involved not only two transactions whereby the petitioner has disbursed Rs.30 to Rs.60 Lakhs. The said Kanagaraj has disbursed more than five times and he has

also disbursed Rs.60 lakhs. It is incumbent on the employee to initiate proceedings against all the erring officials. The plea of the respondents is not acceptable. The petitioner is in advantageous position, as far as the Charge A is concerned.

7. As far as the Charge B is concerned, it is an allegation against the petitioner that the petitioner has not taken introduction for already existing customer to open a new account for one Mrs.P.Thangam. The claim of the petitioner is that the said P.Thangam is an existing customer and therefore, there is no necessity for taking introduction for subsequent period for opening a new account. The said Thangam had opened savings Bank Account in Theni Branch on 20.01.2012, wherein her husband name was mentioned as G.Thangam wife of Ganesan. On 14.09.2012, i.e., after eight months, the said Thangam has submitted a Housing Loan application for a sum of Rs. 7 lakhs, but her husband name was mentioned as P.Palanichamy. Therefore, the respondents alleges that the petitioner without verifying properly, has sanctioned the Housing loan. On further investigation, it came to the light that the said Thangam was originally married one Ganesan and thereafter one P.Palanisamy. As far as the original document is

concerned, the said Thangam and Palanichamy are the husband and wife. By placing the original gift deed before the Tamil Nadu Mercantile Bank, the said Thangam had availed loan for the purpose of brick manufacturing. Thereafter, the said Thangam and Palanichamy have placed the same document with the respondents bank. Till now, the original deed was not produced before the respondents. Therefore, the respondents have initiated action against the petitioner. The petitioner may be right in stating that the said Thangam is a regular customer for the Bank, but the petitioner failed in not demanding the original deed from the borrowers. This charge can be stated as negligent, but there is no evidence that the petitioner deliberately with intention to defraud has committed this. Therefore, this Court is of the considered opinion that the petitioner has acted in negligent way but cannot be stated that the petitioner committed with intention to defraud.

8. As far as the Charge C is concerned, the Enquiry Officer has held that the Charge C is partiality allowed. As far as Charge C is concerned, the petitioner has granted car loan to one A. Ahamed Yashmin Parvin, for purchasing brand new i20 sports DSL. While processing the loan proposal, the petitioner has

added Rs.10,000/-as agricultural income, with the monthly income, without mentioning any details. Moreover, the petitioner subsequent to the release of loan proceeds did not ensure to obtain documents like RC book, insurance policy stamp receipts, delivery note, transfer forms in favour of the Bank and copy of RC book duly marking the lien of the Bank are not obtained and kept on record and there is no record to show that the customer had taken delivery of the vehicle. Moreover, the loan account became a Non-Performing Asset without any security to fall upon. The petitioner had sanctioned the loan in gross violation of the bank guidelines and accommodated the customer at the cost of bank funds. In the enquiry report it is held that the Demand Draft was taken in the name of M/s.Sukrith Motor Cars Private Limited and the car has been properly insured with bank clause, but the other documents was not obtained and has held that the charge C is partially proved. However, the allegation is that the petitioner has failed to do follow up action thereby failed to get those documents mentioned supra. But the enquiry officer has held that the funds are available to the bank and the bank can fall upon the security. Therefore, this Court is of the considered opinion that the Charge C alleges that the petitioner has not carry out follow up action, but there is no finding that the petitioner had deliberately with intention had failed to carry on the follow up action. Unless there is specific finding to this effect, this allegation cannot be construed as misconduct. Therefore, this Court is of the considered that the allegation is not proved and the petitioner is in advantageous position.

9. As far as the Charge D is concerned, the allegation is that the petitioner in collusion with the debtor has allowed the debtor to divert the funds. The debtor had a housing loan in REPCO Home Finance and the petitioner had took over the loan account from the REPCO, thereby allowed the debtor to divert part of the loan amount. This charge alleges that the petitioner has not supervised the said account properly, since the said Rajesh has diverted the funds which was sanctioned to the said Rajesh. Certain transactions were held in the name of Sri.Senthil Kumar and S.Udhayakumari and "Theni Vaigai Flex Furniture". Moreover, the loan was released in two installments at Rs.10 Lakhs, each. The first installment was released on 25.06.2013 and the next installment on 03.07.2013. As such, housing loan proceeds were utilized for paying personal debts/payments. The housing loan was sanctioned based on the guidelines for granting housing loan, but the respondents alleges that the petitioner has not

supervised properly. The learned counsel appearing for the petitioner submitted that the transaction was carried out as per guidelines issued by the Bank. If the debtor is misusing the loan, the petitioner cannot be blamed for that. On perusal of records, it is seen that the allegations against the petitioner is that the petitioner has not supervised the said account and not monitored properly. Merely lack of supervision over an account cannot be considered as a misconduct. Therefore, this Court is of the considered opinion that the Charge D against the petitioner ought to be considered as not proved.

10. The enquiry officer had held the Charge E is not proved. Based on the above discussions, this Court is of the considered opinion that the punishment imposed on the petitioner is on the higher side. Therefore, this Court is of the considered opinion that the punishment of "reduction by two stages in time scale of pay with immediate effect for a period to two years with further direction that the petitioner will not earn increments of pay during the period of reduction and on expiry of such period, the reduction will have the effect of postponing future increments of his pay" ought to be interfered with.

11. This Court inclined to direct the respondents to consider the modification of punishment. At this juncture the learned counsel appearing for the petitioner submitted that the petitioner has already attained superannuation and he is now 61 years old and prayed to consider the same. The learned counsel appearing for the respondents submitted that the petitioner is a Union member. Therefore, this Court is of the considered opinion that, if the case is remitted back to the authorities concerned, there will be another round of litigation. Moreover, the petitioner has attained superannuation. Therefore, this Court is inclined to modify the punishment and the punishment is modified as stoppage of increment for six months alone, without cumulative effect. The respondents are directed to impose the punishment of stoppage for increment for six months above and consequently directed to disburse the pensionary benefits applicable to the petitioner, within a period of six weeks from the date of receipt of copy of the order.

12. With the above directions, this Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is also closed.

Index : Yes / No

Internet : Yes

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S.SRIMATHY, J

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