THE HONOURABLE SMT. JUSTICE P. MADHAVI DEVI

I.A.NOS.2 AND 3 OF 2021 IN W.P.NO.20347 OF 2014

AND

WRIT PETITION NO.20347 OF 2014

AND

WRIT PETITION NO.23403 OF 2016

COMMON ORDER

W.P.No.20347 of 2014:

W.P.No.20347 of 2014 has been filed seeking a Writ more particularly one in the nature Writ of Mandamus declaring the proceedings bearing Ref.No.665/PD:IRD/DA-6, dt.16.08.2012 imposing the penalty of dismissal from the service, as illegal and arbitrary and consequently to set aside the orders bearing Ref.No.126/PD:IRD/DA-7 passed by the appellate authority confirming the penalty imposed by the disciplinary authority and to direct the respondents to restore the petitioner into the service of the bank with immediate effect and also to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. Brief facts leading to the filing of W.P.No.20347 of 2014 are that the petitioner was a post-graduate and joined the respondent bank as a Clerk on 16.07.1981. He was promoted as an officer to Junior Management Grade (JMG-1) in the bank with effect from 06.06.2006 after successfully clearing the written examination. Subsequently, the petitioner was posted at different places and was transferred to Borabanda Branch in the year 2007. It is stated by the petitioner that he had put in 32 years of service in the bank and was never issued a memo until he was suddenly suspended in December, 2010 for certain alleged acts of misconduct/impropriety. The suspension of the petitioner was followed with charge sheet bearing Ref.No.283/PD:IRD/DA-3, dt.27.07.2011 alleging certain irregularities committed by the petitioner in various accounts involving petty amounts and that the petitioner had debited various amounts to the accounts of various customers without their permission. The petitioner denied the charges and in order to verify the veracity of the same, the bank initiated an enquiry by appointing Mr. K. Vijaya Mohan, Senior Manager as enquiry officer. The enquiry officer conducted the enquiry and held all the charges as proved against the petitioner. It is the case of the petitioner that the enquiry officer conducted the enquiry without giving him a fair opportunity to explain his defence nor did he give weightage to the documents produced by the petitioner by treating the documents as obtained subsequent to issuance of the charge sheet. It is the case of the petitioner that these documents were obtained by the petitioner from the customers whose accounts have been debited stating that the said debits were made on their oral instructions only. Since the enquiry officer did not consider the same, it is the case of the petitioner that principles of natural justice were violated by the enquiry officer. It is submitted that when the petitioner wanted to or proposed to bring the said customers as his defence witnesses, he was informed that they were not required. After considering the enquiry report, the disciplinary authority passed the order of dismissal from service. Thereafter, the petitioner preferred an appeal and the appeal was also dismissed. The respondents have adjusted the petitioner’s PF balance of Rs.9,43,618/- towards his overdraft account (Rs.4,40,423.26 ps.), housing loan A/c. (Rs.1,24,696/-), car loan A/c. (Rs.62,977.25 ps.) and his daughters’ education loan A/cs. (Rs.58,150.77 ps. and Rs.2,50,000/-). It is the case of the petitioner that these recoveries are illegal and unauthorised, without permission and such an action of the respondent bank has thrown the petitioner into penury and the petitioner has been put to great difficulties.

3. It is submitted that in the routine banking operations in the branch, the concept of maker and checker exists meaning thereby that in every transaction, there are two persons involved. When an entry is made by a maker, it is supervised and confirmed by the checker. The petitioner was maker in some and checker in some other transactions. It is submitted that as many as 7 more officers were charge-sheeted for the very same transactions, but they were all let off with a minor penalty of stoppage of one increment, whereas the petitioner was singled out for the harsh and disproportionate punishment. It is the case of the petitioner that either a common enquiry should have been held with the persons involved or they should have been produced as witnesses and thus the whole process of enquiry and imposition of punishment is vitiated by prejudice and discriminatory treatment for the same cause of action. It is also submitted that the petitioner was left with only two years of service and the punishment of dismissal at that stage has thrown the petitioner and his family into turmoil and therefore, he sought setting aside the punishment order and consequently to restore the petitioner into service.

4. Along with the Writ Petition, the petitioner has filed W.P.M.P.No.25525 of 2014 seeking interim relief. However, there was no interim relief granted. Thereafter, the petitioner filed I.A.No.1 of 2021 to expedite the hearing and the same was allowed.

5. I.A.No.2 of 2021 was filed for seeking amendment of the prayer. It is submitted in the accompanying affidavit filed in support of the said I.A., that after filing of the Writ Petition, the petitioner has attained the age of superannuation on 30.06.2015 and therefore, he sought to amend the prayer by setting aside the punishment order as well as the appellate order and also to treat the writ petitioner as in service for the period from the date of his dismissal till the date of superannuation, i.e., 30.06.2015 and pay him all consequential financial/service benefits including promotion, full salary, revised salary, leave encashment, gratuity, pension and commuted pension, medical benefits and all other financial benefits he is entitled to, had he continued in service but for the illegal dismissal order, along with interest at 15% per annum from the date of his superannuation till the date of payment. This aspect would have to be considered in the main Writ Petition. I.A.No.2 of 2021 is accordingly allowed.

6. I.A.No.3 of 2021 is filed seeking amendment in the name of the respondents in the cause title consequent on merger of Canara Bank into Syndicate Bank with effect from 01.04.2021 with all their assets and liabilities taken over by Syndicate Bank. This I.A.No.3 of 2021 is accordingly allowed.

7. Learned counsel for the petitioner, Sri K. Lakshminarayana, while reiterating the averments mentioned in the affidavit, submitted that routine mistakes, rectifiable mistakes which are common in any banking industry have been sought to be projected as malafide and fraudulent acts in the case of the petitioner herein. He submitted that without taking into consideration the petitioner’s unblemished record of 32 years and that the balance of service is only 5 years, the disciplinary authority has imposed harsh punishment of dismissal from service merely on the assumption that the bank was exposed to huge financial losses. He submitted that the bank authorities are not even aware of the losses, if any, caused to the bank. He has drawn the attention of this Court to the stand taken by the bank before different authorities. Before the Controlling Authority for gratuity, the bank had stated the loss to be Rs.2,04,695/-, whereas in the FIR filed before the police, the loss was stated to be at Rs.14,91,000/- and the bank could not even prove the losses before any of the authorities. Therefore, the allegation that the bank has suffered huge financial loss is incorrect and baseless.

8. The learned counsel for the petitioner further submitted that the customers had given in writing that the debits done by the petitioner as a maker or checker were at their instance, but these documents were not considered by the Investigation Officer and he has, in fact, brushed them aside stating that they are scrap because they were obtained after issuance of the charge-sheet. He submitted that the appellate authority has entirely depended on the evidence of the Investigation Officer, but did not care to examine the officer who prepared and entered vouchers and the Chief Manager who authorised those vouchers. As regards the collection of excess service charges, it is stated that they were authorised by the Chief Manager but were treated as revenue loss to the bank and further that when the appellate authority directed the branch to rectify those clerical mistakes, the branch did not do it till date. Therefore, the allegation of wrong debits without preparing vouchers is not correct. The learned counsel for the petitioner further reiterated that the police complaint given against the petitioner for cheating and fraudulent transactions has been closed and the bank did not appeal against the said closure in spite of lapse of more than 5 years and therefore, according to him, the bank has not incurred any loss at all. He also brought to the notice of this Court that the house property which is worth of Rs.30,00,000/- and was under mortgage to the bank had been released to the petitioner in the year 2017 and if the bank had incurred loss, the bank would have exercised general lien over the said property for recovery of its losses. He further submitted that with regard to the transactions of his close relatives, the auditors of the bank have examined all the transactions and have never raised any objections to the same and therefore, there is no case of any irregularity or illegality committed by the petitioner and therefore, he accordingly prayed for setting aside of the punishment order basing on the enquiry report which is in violation of principles of natural justice and to allow the petitioner all the consequential benefits by treating him as in-service from the date of his removal till the date he attained the age of superannuation. In support of his contentions, the learned counsel for the petitioner has filed copies of final report of the police for closure of the case and also the relevant documents on which he placed reliance upon, to say that the bank was not sure of the financial losses, if any, caused to the bank due to the alleged irregularities committed by the petitioner.

9. Learned counsel for the respondent bank, on the other hand, supported the orders of the authorities and submitted that the enquiry officer had held that all the charges have been proved against the petitioner, but the disciplinary authority has held that except for charges 4 and 7, all the other charges have been proved and therefore, the disciplinary authority has applied its mind in proper perspective and appreciated the evidence filed by the parties and has taken a considered stand and therefore, the order needs no interference. He submitted that under judicial review, this Court cannot re-appreciate the evidence and since the petitioner could not point out any perversity in the enquiry conducted by the bank or in the orders passed by the authorities, no interference is called for. He further submitted that the bank being the custodian of public money and the bank officers holding a position of trust while conducting the bank transactions, they are expected to discharge their duties within delegated powers as per the bank guidelines. Since the petitioner herein has been found to have misutilized his official position, the award of punishment of dismissal is justified. As regards the scope of judicial review, he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **B.C.Chaturvedi Vs. Union of India**[1]. He also placed reliance upon the following judgments for the proposition that where there is loss of confidence in the employee by the bank, then the order of dismissal is justified.

(i) **Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G. Vittal**[2]**.**

(ii) **State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya**[3]**.**

(iii) **Divisional Controller, KSRTC Vs. A.T. Mane**[4]**.**

(iv) **APSRTC Vs. Raghuda Siva Sankar Prasad**[5]

Copies of the above judgments relied upon by the learned counsel for the respondents and also a copy of Syndicate Bank Officer Employees' (Conduct) Regulations, 1976 are also filed before this Court.

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[1] (1995) 6 SCC 749
[2] (2012) 1 SCC 442
[3] (2011) 4 SCC 584
[4] (2005) 3 SCC 254
[5] (2007) 1 SCC 222

10. Having regard to the rival contentions and the material on record, it is noticed that the preliminary objection of the learned counsel for the respondent bank is that under judicial review under Article 226 of the Constitution of India, the High Court cannot go into adequacy of evidence or reliability of the evidence and re-appreciate the evidence because judicial review is not an appeal from a decision but it is a review of the manner in which the decision is made. For this proposition, he placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **B.C.Chaturvedi Vs. Union of India** (1 supra), wherein the Hon'ble Supreme Court has held as under:

> "*Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority*

accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

In view thereof, this Court can only go into whether the enquiry has been properly conducted and whether the disciplinary authority has power to pass the order of dismissal. All the grounds raised by the petitioner are with regard to the method of conducting the enquiry by the enquiry officer. The enquiry officer has followed the procedure as laid down under the Regulations of the bank. However, with regard to the evidence produced by the petitioner, i.e., the statements of the customers, they have been considered by the Investigation Officer but have been held to be not admissible since they have been obtained after filing of the charge sheet. This finding of the Investigation Officer cannot be found fault with.

11. Another objection taken by the petitioner with regard to the enquiry is that though all the transactions have been approved by the Chief Manager or checked by another staff member, the customers thereof have not been examined as witnesses and though the departmental enquiry was conducted against all of them, they have been let off with minor penalty of stoppage of one increment without cumulative effect. This contention of the petitioner has not been rebutted by the respondent bank in its counter. Therefore, there appears to be differential treatment between the petitioner and other employees as far as the transactions are concerned. The disciplinary authority also has not considered that the petitioner had put in 32 years unblemished service while awarding punishment of dismissal. If the bank had lost confidence in the employee, it could not have continued the petitioner in service, but instead of dismissal, it could have awarded the punishment of compulsory retirement. It appears to this Court, that the punishment awarded to the petitioner for the alleged irregularities is excessive particularly since the bank has not suffered any pecuniary losses because of the alleged irregularities committed by the petitioner.

12. In view thereof, this Court deems it fit and proper to modify the punishment of dismissal from service to the punishment of stoppage of one increment with cumulative effect. The petitioner has attained the age of superannuation on 30.06.2015. Therefore, the petitioner shall be treated to be notionally in service from the date of dismissal till the date of superannuation only for the purpose of retirement/consequential benefits, but shall not be entitled for any back wages for the said period.

13. W.P.No.20347 of 2014 is accordingly partly allowed. No order as to costs.

<u>WRIT PETITION NO.23403 OF 2016:</u>

14. W.P.No.23403 of 2016 has been filed by Syndicate bank challenging the order of the 3rd respondent (Appellate Authority under Payment of Gratuity Act) dt.01.03.2016 dismissing the appeal in Appeal No.36/9/2015-E1 and confirming the order dt.20.12.2014 in PG Application No.48/22 of 2014 passed by the 2nd respondent (Controlling

Authority under Payment of Gratuity Act) and quash or set aside the same by declaring it as illegal and arbitrary.

15. The main ground of the writ petitioner in W.P.No.23403 of 2016 is that the 1st respondent employee has been dismissed from service and therefore, as per the bank Regulations, he was not eligible for payment of gratuity. It is submitted that both the Controlling Authority as well as the Appellate Authority have disregarded this Regulation and have allowed the application of the 1st respondent employee in directing the bank to pay the gratuity.

16. However, in view of the judgment of this Court of even date in W.P.No.20347 of 2014 modifying the order of punishment of dismissal to stoppage of one increment with cumulative effect and further holding that there was no pecuniary loss caused to the bank, this Court does not see any reason to interfere with the order of the Appellate Authority under Payment of Gratuity Act dismissing the appeal of the bank.

17. W.P.No.23403 of 2016 is accordingly dismissed. No order as to costs.

18. In the result,

(i) I.A.No.2 of 2021 in W.P.No.20347 of 2014 is allowed;

(ii) I.A.No.3 of 2021 in W.P.No.20347 of 2014 is allowed;

(iii) W.P.No.20347 of 2014 is partly allowed.

(iv) W.P.No.23403 of 2016 is dismissed.

19. Pending miscellaneous petitions, if any, in these Writ Petitions shall stand closed. No order as to costs in both these Writ Petitions.

JUSTICE P. MADHAVI DEVI

Date: 19.07.2022

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