IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.18447 of 2011

D.Sudhakar ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Chief General Manager,
Local Head Office, Circle Top House,
No.6, College Lane, Chennai-600 006.

2.The General Manager
Appointing Authority,
State Bank of India, Local Head Office,
Circle Top House, No.16, College Lane,
Chennai-600 006. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the concerned records from the respondents, quash the order of the 2nd Respondent in HR:RC:3007 dated 31.12.2010 and the order of the 1st Respondent in HR/ Law/ 936 dated 29.06.2011 as illegal, arbitrary and contrary to law and consequently direct the Respondents to reinstate the petitioner in service with full back wages, continuity of servie and all other attendant benefits.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr. S.Ravindran,
Senior Advocate
for Mr.K.Chandrasekaran
Standing Counsel for SBI

ORDER

The writ petition is filed challenging the orders of the 1st and 2nd Respondents dated 31.12.2010 and 29.06.2011 whereby the petitioner was discharged from service by the Respondent Bank as being illegal and to further direct reinstatement of the petitioner with full back wages, continuity of service and other attendant benefits.

2. **Brief facts:**

i) The petitioner is a graduate in Agriculture. Pursuant to a selection process, the petitioner was appointed on contract basis as Officer - Marketing and Recovery (Rural) for a period of 2 years from 02.01.2009 to 01.11.2011 under the State Bank of India Officers Marketing and Recovery (Rural) Service and Conduct Rules (hereinafter referred to as "the Rules").

ii) The petitioner was posted at Attur Branch of the Respondent bank as Officer (Marketing and Recovery). The petitioner joined the Attur office on

19.01.2009.

iii) The petitioner was appointed in terms of Rule 4.1 of the State Bank of India Officers Marketing and Recovery (Rural) Service and Conduct Rules, which specifically provides that the appointments are contractual and for a specified period and the contract may be renewed depending on the performance and suitability of the candidate at the discretion of the Bank.

iv) A writ petition bearing W.P.No.7431 of 2010 was filed by State Bank of India Contract Officers Welfare Association, challenging an advertisement dated 30.01.2010 issued by the State Bank of India for recruitment of Probationary Officers (Rural Business) from Open Market and for a consequential direction to appoint existing officers – Marketing and Recovery (Rural) as permanent Officers. During the pendency of the said petition, the Executive Committee of the Central Board of the Respondent Bank approved the policy for Permanent absorption of Officers – Marketing and Recovery (Rural) who are in the services of the Bank as on 14.07.2010 subject to having achieved minimum 60% targets during the year 2009-10. It was also provided that Officers against whom disciplinary proceedings were contemplated will not be considered for permanent absorption and their contract will be permitted to expire without renewal. The writ petition was closed recording the same with liberty to the members of the said Association to agitate individual cases of non-absorption. It further provided that the candidates will be appointed as regular officers on a common date i.e., on 02.08.2010.

v) The Bank issued orders enclosing the list of persons absorbed and the petitioner was placed at Serial No.1725. The petitioner was assigned a permanent Provident Fund Account No.4616545. The pay slip issued to the petitioner for the months of August 2010 to January 2011 would show the date of joining as 02.08.2010.

vi) While so, the petitioner was served with an order of termination dated 31.12.2010 which only stated that the appointment was contractual in nature for a period of 2 years from 02.01.2009 to 01.01.2011 and as the contract comes to an end on 01.01.2011, the petitioner would stand discharged from the Respondent Bank and was not required to attend office from 02.01.2011.

vii) Aggrieved, the petitioner preferred an Appeal / representation challenging the above order and requested reinstatement. While the said appeal/ representation was pending consideration before the 1st Respondent, the petitioner filed a writ petition in W.P.No.6933 of 2011 for a writ of mandamus directing the 1st Respondent to consider the appeal dated 17.02.2011 and to pass orders on merits. The writ petition was disposed of vide order dated 29.03.2011 directing the 1st Respondent to consider the appeal filed by the petitioner dated 17.02.2011 and pass orders on merits and in accordance with law within a period of 8 weeks.

viii) Pursuant to the above direction, the impugned order dated 29.06.2011 came to be passed by the 1st Respondent wherein it was stated that since disciplinary proceedings were contemplated against the petitioner, he was not eligible to be appointed permanently while also stating that the petitioner had given a letter to the investigating officer admitting the lapses committed by him.

ix) The present writ petition is filed challenging the order of the 2nd Respondent dated 31.12.2010 and the order of the 1st Respondent dated 29.06.2011.

3. **<u>Case of the petitioner:</u>**

a. That the impugned orders dated 31.12.2010 and 29.06.2011 suffers from gross non-application of mind inasmuch as it proceeds on the basis that the petitioner's engagement on the date of passing of the impugned orders was contractual overlooking the fact that the petitioner was absorbed as a permanent employee in the post of Rural Marketing and Recovery Officer as on 02.08.2010 in terms of the policy decision taken by the Executive Committee of the Central Board in the meeting on 14.07.2010.

b. That the petitioner was absorbed permanently is evident from the fact that the Respondent Bank had issued orders enclosing the list of persons absorbed and the petitioner's name finds place at Sl.No.1725. That the petitioner was absorbed as a permanent employee is also evident from the fact that he was assigned a permanent Provident Fund Account No.4616545 apart from the pay slip issued to the petitioner for the months of August 2010 to January 2011 which would reflect the date of joining as 02.08.2010.

c. That the petitioner having been absorbed as a permanent employee, termination ought to be made only in accordance with the Rules regulating the service of the petitioner with the Respondent Bank.

d. That while the 2nd Respondent vide its order dated 31.12.2010 only stated that the services are being terminated as the tenure of the contract had expired, however the 1st Respondent had stated that the petitioner was terminated since disciplinary proceedings were contemplated and thus not eligible to be appointed permanently in the services of the Respondent Bank.

e. That the orders of the 1st and the 2nd Respondent suffers from violation of principles of natural justice and fair play as the Respondents had not given the petitioner even a memo making any allegation against the petitioner of any misconduct.

4. <u>Case of the Respondents:</u>

i) That the petitioner was appointed on contract basis as Officer – Marketing and Recovery (Rural) for a period of 2 years from 02.01.2009 to 01.11.2011 under the Rules.

ii) That the Executive Committee of the Central Board of State Bank of India, approved a policy for permanent absorption of Officers – Marketing and Recovery (Rural) who are in the services of the Bank as on 14.07.2010 subject to the conditions contained therein.

iii) Importantly, the policy decision also provided that the contractual employees would not be eligible for absorption as permanent employees if disciplinary proceedings are contemplated.

iv) That a complaint dated 02.08.2010 was received alleging irregularities committed by the petitioner from a borrower of the Bank namely A.K.Venkatesan. Pursuant to which an investigation was carried out which revealed that the petitioner had disbursed loans in 86 accounts to the tune of approximately Rs.73 lakhs without proper sanction by a competent authority. The petitioner had clandestinely used the identity of certain branch officials to open and disburse loans while routing the transactions through third party accounts which was subsequently withdrawn using ATM cards as would be evident from video recordings. The petitioner has also admitted to those lapses vide his letter dated 09.09.2010.

v) That the petitioner was a temporary employee and was terminated on expiry of his contractual tenure.

vi) That though the motive for the termination was the lapses and irregularities committed by the petitioner, the same did not constitute the foundation for the termination. As long as the above aspect only remains a motive and does not transform into the foundation of the order of termination, the same cannot be a ground of challenge.

5. Heard both sides. Perused the materials on record.

6. I find that there is merit in the contention of the petitioner that the impugned orders terminating the services of the petitioner is illegal and bad for the following reasons:

i) The petitioner after having been appointed on contractual basis for a period of 2 years from 02.01.2009 to 01.11.2011, was absorbed as a permanent employee pursuant to and in accordance with the policy decision taken by the Executive Committee dated 29.07.2010 as evident from the following:

a. Orders issued by the Respondent Bank enclosing the list of persons absorbed wherein the petitioner's name finds place at Sl.No.1725. The above statement of the petitioner remains untraversed and the Respondent Bank has not produced the communication dated 29.07.2010 containing the list of employees who had been absorbed permanently in terms of the policy decision dated 14.07.2010.

b. That the petitioner was absorbed as a permanent employee is also evident from the fact that he was assigned a permanent Provident Fund account No.4616545.

c. The pay slip issued to the petitioner for the months of August 2010 to

January 2011 would also reflect the date of joining as 02.08.2010 which is in terms of the policy decision dated 29.07.2010 taken by the Executive Committee of the Central Board of the Respondent Bank.

d. The above documents which are prepared by the Respondent Bank in the normal course of business would indicate that the petitioner has been absorbed as a permanent employee in the post of Officer – Marketing and Recovery (Rural). These are contemporaneous records and forms part of regular records prepared and maintained by the Respondent Bank. The attempt by the Respondents to explain during the course of argument that those entries/ documents were a result of inadvertent mistake committed by the employees of the Respondent bank is unconvincing to say the least for the Respondent Bank has not even attempted to explain the above discrepancy in its counter. The above response was raised for the first time during the course of arguments. It may be useful to take note of the position that the documents in possession of an authority / body / entity if not produced, adverse interference would be drawn even in service matters. In this regard, it may be useful to refer to the following judgments:

***i.Govt. of Gujarat (Fisheries Terminal Dept.) v. Bhikubhai Meghajibhai Chavda*, (2010) 1 SCC 47:**

> *"**7.** Per contra, the learned counsel for the respondent submitted that the workman immediately after his services were terminated by the employer, had*

approached the Conciliation Officer and on failure of the conciliation proceedings, had approached the State Government to make reference of the dispute for adjudication before the Labour Court and, therefore, it cannot be said that the workman had approached the Labour Court after a long lapse of time. It is further submitted that the workman in his evidence, categorically had made statement before the Labour Court that he had worked for more than 240 days in a preceding year and, since that evidence is not rebutted by the employer by producing the relevant oral and documentary evidence which would be in their possession, the Labour Court was justified in drawing adverse inference against the employer.

(emphasis supplied)

***ii. Sriram Industrial Enterprises Ltd. v. Mahak Singh*, (2007) 4 SCC 94**

*" **34.** Having correctly interpreted the provisions of Section 6-N of the U.P. Act, the High Court rightly drew an adverse presumption for non-production of the attendance registers and the muster rolls for the years 1991 onwards. The best evidence having been withheld, the High Court was entitled to draw such adverse inference. The views expressed by this Court on the question of burden of proof in Range Forest Officer case [(2002) 3 SCC 25 : 2002 SCC (L&S) 367] were watered down by the subsequent decision in R.M. Yellatti case [(2006) 1 SCC 106 : 2006 SCC (L&S) 1] and in our view the workmen had discharged their initial onus by production of the documents in their possession. "*

(emphasis supplied)

Applying the above judgments to the facts of the present case, failure on the part of Respondent Bank to produce documents which in normal course would be prepared, maintained and retained by the Respondent Bank would justify drawing an adverse inference against the Bank for withholding the relevant material/ evidence. It also appears improbable for the Respondent Bank which is one of the largest Bank with a robust administrative machinery to have committed the above mistake regarding the status of the petitioner on its rolls and continue to repeat the supposed mistake without realising the same for over 4 months.

ii) The Respondent Bank has attempted to justify the termination on the premise that disciplinary proceedings were contemplated on the date when employees similarly placed as the petitioner were being absorbed. The above submission also appears unconvincing for the reason that it has been stated in the counter that the contemplation of disciplinary proceedings was on the basis of an alleged complaint dated 02.08.2010 i.e., the date on which the temporary employees were absorbed and made permanent. The Respondent Bank received the alleged complaint on 02.08.2010 and it is stated that on the very same day, the Respondent Bank contemplated disciplinary proceedings. However, strangely the records maintained by the Respondent Bank in the form of Provident Fund Account and pay slip for the months of August 2010 to January 2011 would reveal that the petitioner joined service on 02.08.2010 and continued in service for 4 months thereafter. The above sequence of events is indicative of haste or lack of good faith on the part of the Respondent Bank in denying the petitioner permanency which has been extended admittedly to other temporary employees similarly placed.

iii) That the attempt by the Respondent to suggest that the petitioner was a temporary employee and does not have any right to continue or to be absorbed on completion of his tenure, overlooks the fact that the petitioner had a right to be considered for absorption as a consequence of the policy decision dated 14.07.2010 and thus exclusion of the petitioner from absorption which he was otherwise entitled to cannot be denied unless the conditions for the exclusion are shown to exist, which in the present case is alleged contemplation of disciplinary proceedings against the petitioner, which for reasons stated supra, this Court had already found to be unconvincing.

7. For all the reasons stated above, the impugned orders dated 31.12.2010 and 29.06.2011 are set aside and the Respondents are directed to reinstate the petitioner in service. Liberty is however granted to the Respondent Bank to conduct enquiry in accordance with the Service Regulations against the alleged irregularities committed by the petitioner within a period of 8 weeks from the date of receipt of a copy of this order. The question of backwages and other benefits will be decided depending on the outcome of the enquiry to be conducted by the Respondent Bank/ Competent authority.

8. With the above directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition, if any, is closed.

14.06.2023

Speaking order: Yes/No
Index: Yes/No
Neutral Citation: Yes/No
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To:

1.The Chief General Manager,
Local Head Office, Circle Top House,
No.6, College Lane, Chennai-600 006.

2.The General Manager
Appointing Authority,
State Bank of India, Local Head Office,
Circle Top House, No.16, College Lane,
Chennai-600 006.

MOHAMMED SHAFFIQ, J.

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W.P. No.18447 of 2011

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