IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No. 39570 of 2015
and
M.P.No. 1 of 2015

M.Babu .... Petitioner

Vs

1. The National Banking Zonal Manager,
Chennai Zone and Appellate Authority,
Bank of India,
Star House 2nd Floor, No.30, Old No.17,
Errabalu Street, Chennai – 600 001.

2. The Assistant General Manager,
Chennai Zone and Disciplinary Authority,
Bank of India,
Star House 2nd Floor, No.30, Old No.17,
Errabalu Street, Chennai – 600 001. .... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the 2nd respondent in Ref : ZO : IR : C-127 : 195 dated 27.08.2015 as confirmed by the 1st respondent in Ref : ZO : IR : C-127 : 362 dated 24.11.2015 and quash the same.

For Petitioner : Mr.P.Manoj Kumar

For Respondents : Mr.Swarnam J. Rajagopalan

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent dated 27.08.2015 thereby dismissed the petitioner from service and the same was confirmed by the first respondent by an order dated 24.11.2015.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

3. The petitioner had joined the respondents office during the year 1982 as a Clerk-cum-Typist. While he was working at Kodungaiyur Branch, he was served with a charge memo dated 23.04.1996. He was given opportunity to submit his explanation. Without being satisfied with the explanation submitted by the petitioner, an enquiry was ordered. On the basis of the enquiry report, he was dismissed from service by the second respondent and the same was confirmed by the first respondent in the appeal.

4. The learned counsel appearing for the petitioner submitted

that the petitioner, along with six other persons, were charged by the CBI in Crime No.RC 33 (A/93) dated 30.07.1993. As per the final report, no case has been made out by the petitioner and the same was closed by a closure report. However, the CBI recommended for disciplinary proceedings to be initiated and on enquiry, the Enquiry Officer found all the charges proved. He also pointed out that the Enquiry Officer, without stating any reason and without discussing any witnesses, had mechanically concluded that all the charges were proved.

5. According to the Presenting Officer, the cheques and the pass book of M.H.Babu had been seized from the drawer of the petitioner. However, it was not produced to prove that the petitioner only had used the said cheque leaves in order to draw money from the account of one M.Kalyana Sundaram. Though the charges levelled against the petitioner was that, on 04.10.1991, the petitioner and his wife visited the Central Bank of India, Aminjikarai Branch, in order to open an account in the name of one Sasikala, no document was produced by the Presenting Officer to prove the said charge. The said Sasikala was no way related to the petitioner. Even according to the Presenting Officer, she is a fictitious person. When it was being so, without any piece of evidence, the Enquiry Officer concluded that the petitioner only operated

the said account by issuing cheque in favour of the said Sasikala and had withdrawn the amount of Rs.2,20,000/-.

6. In fact, the person, who introduced to open account in the name of his wife in the same Bank turned hostile. There is no evidence to show that the petitioner was permitted to operate that account. Even assuming that the petitioner operated the account of his wife, there is no misappropriation or any complaint from his wife that without her permission, the petitioner operated her account.

7. The first charge related to highlighting the ledger sheet in red ink with a marking "Inoperative Account" is concerned, the omission of the same is only a procedural lapse which would not attract the extreme punishment of dismissal. It would amount to dereliction of duty. The punishment imposed for non-production of the cheque leaves is concerned, in fact, the Presenting Officer also failed to produce the cheques and pass book of the said M.H.Babu which was said to have been recovered from the drawer of the petitioner in the disciplinary enquiry.

8. A perusal of the counter filed by the respondents reveals

that the petitioner was served with the following charges :

CHARGE-I

That Shri. M.Kalyanasudaram and Mrs.V.Geetha, No.26, South Street, Madras 600 023 had opened a joint Savings Bank Account No.5067 at Thousand Lights Branch on 19-03-1988 with an initial deposit of Rs.2,40,000/-. The Account holder had withdrawn of Rs.50,000/- on 02-05-1988 and thereafter there was no transactions in the account except credit of quarterly interest Shri. Kalyanasundaram had not operated the account during the period from 02-05-1988 to October, 1991, i.e. for more than 3 years and as such it had become inoperative account. The account was transferred from old ledger No.18/130 to a new ledger No.14/40 on 01-07-1991 in Folio No.40 with a balance of Rs.2,18,917.67/-. The transfer of the account to the new ledger was made by you. While doing so, you deliberately did not highlight the ledger sheet in 'Red Ink' with a marking 'Inoperative Account' as required in the Manual of Instructions of the Bank. Since you omitted to make the remark "inoperative account" on the ledger sheet, a fraudulent cheque for Rs.2.20 Lacs received in clearing on 19-10-1991 was debited to the account without realizing that it was an "Inoperative Account".

CHARGE-II

That Shri M.H. Babu, No.6 Kutty Maistry Lane, *Madras-79 had opened a Savings Bank Account No.4381 in Thousand Lights Branch on 20-09-1986. He was issued with a cheque book consisting of 10 Leaves bearing Nos.002451 to 002460 on 28-03-1987. Shri.M.H.Babu used to take your help for carrying out his transactions in the account and hence he had kept his pass book and cheque book with you. Shri.M.H.Babu utilized two cheque leaves bearing Nos.2451 & 2452 for withdrawing money from his account and the remaining 8 cheque leaves bearing Nos.2453 to 2460 were available with you. On 04-10-1991, you visited Central Bank of India, Aminjukarai Branch at No.5 Perumal Koil Street, Aminjikarai, MAdras along with your wife Smt.Revathi Babu where you met Shri E.Vadivelu, account holder (Savings Bank Account No.2726) of Central Bank of India, Aminjikarai Branch who was at the Branch for some transactions. Your wife introduced herself as S.Sasikala to Shri. E.Vadivelu and requested him to introduce an account to be opened by her. Though Shri. Vadivelu was not personally acquainted with you and your wife, he helped your wife in filling up the account opening form and introduced the account. On16-10-1991, a cheque No.002455 dated 15-10-1991 for Rs.2,20,000/- drawn on Savings Bank Account No.5067 of Shri.M.Kalyanasundaram and V.Geetha at Bank of India, Thousand Lights Branch favouring Smt.S.Sasikala* *was deposited in the Savings Bank Account No.3958 of Smt.S.Sasikala which was opened at Central Bank of India, Aminjikarai Branch as stated in the foregoing para. This cheque was sent in clearing on 16-10-1991 and the said cheque was cleared by Bank of India on 19-10-1991. The proceeds of the cheque was credited to the account of Smt.S.Sasikala in Central Bank of India on 21-10-1991 and was later withdrawn from the account. The above mentioned cheque leaf No.002455 which was used for drawing Rs.2,20,000/- from the account of Shri. M.Kalyanasundaram and V.Geetha, was originally issued to Shri.M.H.Babu, Savings Bank Account No.4381 and the same was in your possession. The Account No.4381 mentioned in the cheque leaf was scored off with ink and the rubber stamp bearing Savings Bank Account No.50678 was affixed on the cheque. It was revealed that the signature of Shri. M.Kalyanasundaram on the cheque was false and forged. In the aforesaid manner, by misusing the cheque leaf kept in your possession by Shri.M.H.Babu, you aided and abetted your wife Smt.Revathi Babu, fradulently withdrawing Rs.2,20,000/- from the Savings Bank Account of Shri.M.Kalyanasundaram and Mrs.V.Geetha;*

CHARGE III

That you opened a Savings Bank Account

No.5243 with Bank of India, Thousand Lights Branch in the name of your wife Smt.Revathi Babu by signing yourself as Smt.Revathi Babu in the Account Opening Form and misrepresenting that the form has been signed by Smt.Revathi Babu thereafter, further operations in respect of the aforesaid account were carried on by yourself fraudulently signing as Smt.Revathy Babu.

9. The complaint lodged by one M.Kalyana Sundaram is that, he along with his wife Mrs.Geetha, had opened a joint Savings Account at Thousand Lights Branch on 19.03.1988 with an initial deposit of Rs.2,40,000/-. He had withdrawn a sum of Rs.50,000/- on 02.05.1988 and thereafter, there was no transaction in the said account. From time to time total interest was credited to the said account. The said M.Kalyana Sundaram had not operated his account during the period from 02.05.1988 to October 1991 i.e., for more than three years. Therefore, it become an inoperative account and the account was transferred from old ledger to a new ledger. However, the petitioner failed to highlight the ledger sheet in red ink with a marking “Inoperative Account”. It is mandatory as per the Manual of Instructions of the bank.

10. One M.H.Babu, along with his wife, went to the Central Bank of India, Aminjikarai Branch, opened a Savings Account in the

name of one Sasikala, by impersonating his wife as Sasikala. Further, the said M.H.Babu, had account in the Bank of India, Thousand Lights Branch, had handed over a cheque book consisting 10 cheque leaves to the petitioner. It was kept in his drawer and he used two cheque leaves bearing Cheque Nos.002451 and 002452 and issued in favour of the fictitious person viz., Sasikala, for a sum of Rs.2,20,000/- and the same was presented for collection in the Central Bank of India, Aminjikarai Branch. It was cleared by the other delinquents and subsequently, the said amount was withdrawn by the fictitious person of Sasikala viz., the petitioner's wife. Those days, there was no printing of the account holder name in the cheque book. Therefore, the petitioner forged the signature of the said M.Kalyana Sundaram, whose account had already been declared as "Inoperative Account" and issued the said cheque in favour of fictitious person of Sasikala.

11. On the complaint lodged by the said M.Kalyana Sundaram, a case was registered by the CBI in Crime No.RC 33 (A/93) dated 30.07.1993 for the offence under Sections 120B r/w.420, 419, 467, 471 & 477A of IPC and Section 13(1)(d) r/w 13(2) of Prevention of Corruption Act 1988 as against seven accused persons, alleging that the

second accused, viz., wife of the petitioner, impersonated as Sasikala, had opened an account in the Central Bank of India, Aminjikarai Branch. The first accused, i.e., the petitioner herein, had used the cheque leaves of the account holder available with him for withdrawing a sum of Rs.2,20,000/- from an inoperative account and the amount was encashed by the second accused in the name of Sasikala and that thereby caused undue loss to the bank. The other accused, viz., 3 to 7, committed misconduct and as such, they failed to properly supervise/follow the guidelines and thereby facilitated the fraud to be committed.

12. Further, the first accused had opened an account in the name of his wife in his own branch and operated the said account by forging her signature and thereby committed misconduct. On the facts of the case, investigation was completed and concluded that the Bank Officials of the Central Bank of India, Aminjikarai Branch, identified A1 & A2, who had come to the branch, opened and operated the said account in the name of Sasikala. The introducer of the said account was also identified by the second respondent as lady who had introduced the bank to open an account. Apart from the said identification, no other

conclusive piece of evidence is available to fix that A1 & A2 had committed fraud. However, the signature available in the bank instruments did not help in anyway to the accused persons. He had calculatively attended the said voucher and closely watched the hand writing filled up by the account holder and by using the third persons handwriting, they encashed the cheque in the name of a fictitious person Sasikala. There are valid reasons beyond the complicity of the first accused, i.e, the petitioner herein, which strengths the facts that he was in possession of the cheques and he is the one who had made entries pertaining to the "Inoperative Account" in the new ledger and had failed to mention it as an "Inoperative Account".

13. That apart, the pass book pertaining to the account from which the cheque leaves are issued was recovered from the drawer of the petitioner. However, those evidences can be useful for corroboration and in the absence of any substantiate piece of evidence, these are all immaterial. Therefore, the prosecution says that the CBI rightly brought the criminal into book. However, the Superintendent of Police, CBI, concluded that the available evidence is sufficient to prove the misconduct committed by the accused and the officials had to be

discharged from their duties. Therefore, they recommended for disciplinary proceedings action as against the officials.

14. Accordingly, the department had conducted enquiry and based on the evidence concluded that all the three charges were proved against the petitioner. Further, the bank officials are required to exercise higher standards of honesty and integrity, as the bank officer deals with money of the depositors and the customers. Therefore, the bank officer is required to take all possible steps to protect the interests of the bank and to discharge their duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every employee of the bank.

15. Therefore, the respondents rightly imposed the capital punishment of dismissal from service and this Court finds no infirmity or illegality in the the order passed by the second respondent dated 27.08.2015 which was confirmed by the first respondent by an order dated 24.11.2015. Thus, the writ petition is devoid of merits and is liable to be dismissed. Accordingly, this Writ Petition stands dismissed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

31.07.2023

Index:Yes/No
Internet:Yes/No
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G.K.ILANTHIRAIYAN,J.

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