IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 26.09.2023**

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN**
**AND**
**THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.No.154 of 2023**

V.Raghavendran ... Appellant

Vs.

1.The Managing Director &
Chief Executive Officer,
Central Bank of India
Chander Mukhi, Nariman Point,
Mumbai – 400 021.

2.The Assistant General Manager,
Retiral Benefit Department,
Mumbai Main Office Building
4th Floor, M.G. Road, Fort
Mumbai – 400 023.

3.The Field General Manager,
Central Bank of India, Zonal Office,
No.48/49, Montieth Road,
Egmore, Chennai – 600 008.

4.The Senior Regional Manager,
Central Bank of India, Regional Office
3rd Floor, 14/15, Variety Hall Road,
Coimbatore – 641 001. ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 31.01.2022 passed by the learned Judge in W.P.No.2121 of 2019.

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|---|---|---|
| For Appellant | : | Mr.A.S.Palanisamy |
| For respondents | : | Mr.Anand Gopalan for M/s.T.S. Gopalan & Co. |

**JUDGMENT**

(Judgment of the Court was made by R. MAHADEVAN, J.)

This writ appeal has been filed by the appellant / writ petitioner, against the order of dismissal dated 31.01.2022 passed by the learned Judge in W.P.No.2121 of 2019.

2.The case of the appellant herein is that he was appointed as Clerk on 16.11.1970 under the first respondent and thereafter, promoted as Scale-I Officer and he retired from service on 31.12.2006 as Assistant Manager. While working as Assistant Manager in Coimbatore, by order dated 10.06.2005, he was placed under suspension with regard to the disciplinary action taken against him for the acts of misconduct. Charges were framed and charge memo was issued on 17.06.2005. Thereafter, enquiry was conducted and as per the enquiry report that the charges were held to be proved, the disciplinary authority passed the order of penalty on 07.02.2006 thereby reducing the pay of the appellant by 10 stages in the time scale of pay for a period of one year, during which period, he will not earn any increment of pay and after expiry of such period, the reduction will have the effect of postponing the future increments of his pay as per the regulations of the bank. It is to be noted that the appellant had not preferred any appeal as against the said order. Thereafter, suspension was recalled and he was allowed to retire from service on 31.12.2006. With regard to the acts of misconduct, a CBI case was also registered.

3.When things stood thus, the appellant submitted a representation on 18.08.2018 for restoration of his pay, notwithstanding the imposition of penalty of reduction in pay, which has become final. The said representation was rejected by the respondent-Bank by order dated 09.11.2018 stating that the appellant was already imposed with penalty as per Regulation 4(f) of the Central Bank of India Officer Employees' (Discipline & Appeal)

Regulations, 1976, as early as on 07.02.2006 itself and hence, there was no question of restoration of his pay or any other payment due to him.

4.Challenging the reply of the bank dated 09.11.2018, the appellant filed a writ petition in W.P.No.2121 of 2019 and the same was dismissed by the learned Judge by order dated 31.01.2022, on the premise that the appellant having not chosen to challenge the original penalty order dated 07.02.2006, cannot indirectly seek the relief by challenging the communication of the respondent-Bank dated 09.11.2018. As against the said order of the learned Judge, the writ petitioner has preferred this appeal.

5.The learned counsel for the appellant would submit that the learned Judge termed the suspension of the appellant as "misconduct", who was serving only as Assistant Manager at the time of suspension on 10.06.2005 in contemplation of disciplinary action, based on the charge memo dated 17.06.2005 issued subsequently. Adding further, the learned counsel submitted that the matter only relates to illegal loan sanction in favour of M/s.Rithik Agency, and as per the report dated 09.04.2005 by one Chellappa, Chief Manager of the Bank attached to the zonal office of the bank at Chennai, wherein, it was stated only as "certain irregularities". Further, only based on the oral orders of his superior officers, viz. one R.Pandurangan, Branch Manager, who was awarded with reduction of 5 increments for two years and K.K.Achaiah, Senior Manager, who was lowered from Scale-1 to Scale-III with 5 increments cut for a maximum period of 4 years, the appellant sanctioned credit to the clients liberally, but with adequate securities and hence, the punishment imposed on the appellant reducing his pay by 10 stages in the time scale of pay for a period of one year, for his alleged involvement in regard to sanction of credit to the said M/s.Rithik Agency is arbitrary and discriminatory and it is a malafide intention on the part of the authorities to victimise him to favour the above senior officers. The learned counsel also submitted that the action of the appellant in not filing appeal against the punishment order, was not out of fear or inconvenience, but out of financial burden faced by him, as his retirement date was fast approaching at that point of time. After returning to normalcy in the year 2017, upon amputation of his leg due to diabetics, he made representation to the bank authorities and hence, limitation / delay / laches cannot be attributed to the appellant. The learned counsel further emphasised that an Assistant Manager of the Nationalised Bank statutorily does not have any independent power in regard to sanction of bank loan to business class clients, since that power has been vested only with the Branch Manager and Senior Manager of the Branch. That apart, it is submitted that no financial loss had occurred to the bank since a sum of Rs.2,05,22,366/- has been recovered from the said client, as per the verdict of CBI Court, Coimbatore. Without properly appreciating all these factors, the bank authorities simply rejected the claim of the appellant, which was also affirmed by the learned Judge, by the order impugned herein. Therefore, the learned counsel sought to allow this appeal by quashing the order of the learned Judge.

6.The learned counsel for the respondents submitted that the learned Judge has correctly passed the impugned order laying emphasis on the point that the appellant had not challenged the punishment order, instead he challenged only the reply received for the representation made by him, that too, after several years. Therefore, the learned counsel submitted that the impugned order does not require any interference in the hands of this Court.

7.Heard the learned counsel on either side and perused the records carefully and meticulously.

8.The fact remains that by order dated 07.02.2006, the appellant was inflicted with the penalty of reduction of pay by 10 stages in the time scale of pay for a period of one year, during which period, he will not earn any increment of pay and after expiry of such period, the reduction will have the effect of postponing the future increments of his pay, in terms of Regulation 4(f) of the Central Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976. In the grounds of appeal as well as in the submissions of the learned counsel for the appellant, it was reiterated that such penalty cannot be imposed on the appellant as he had done the act in obedience of the oral orders of his superiors. The learned counsel for the appellant has also stated that granting loan sanction is not at the discretion of the appellant and he is not having any authority to do so. However, the appellant has not challenged the penalty order passed in the year 2006, but made representation to the respondent bank, that too, belatedly, in the year 2018, which was rejected on the ground of delay and laches. Taking note of the factual matrix, the learned Judge held that the learned counsel appearing for the appellant has started questioning about the imposition of penalty without challenging the penalty order; and if aggrieved, the appellant ought to have challenged the penalty order directly, that too at the relevant point of time. It was also noted by the learned Judge that the appellant has now challenged only the communication of the bank which has been received in response to the representation submitted by him. Ultimately, the learned Judge observed that the cause of action arose for the appellant as early as in 2006 and merely because, he has chosen to represent after a period of several years and the bank has responded to his representation in 2018, it will not give the appellant a fresh cause of action; and hence, he is estopped from challenging the imposition of penalty at this length of time.

9.In ***C. Jacob v Director of Geology & Mining and another [(2008) 10 SCC 115]***, the Hon'ble Supreme Court deprecated the practice of High Courts allowing Writ petitions filed by the employees seeking to quash the rejection order passed by the authorities pursuant to their representation seeking to reinstate them in service, after a lapse of long years from the date of their removal from service, by an order of punishment, without even challenging the same. It was categorically held in the said decision that the replies given to such representation cannot furnish a fresh cause of action for a stale claim. The relevant paragraphs of the same, are extracted below for ready reference:

> *"8. Let us take the hypothetical case of an employee who is terminated from service in 1980.* ***He does not challenge the termination****. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.*
>
> *9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'.* ***If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely***

***entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.***

*10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."*

10.In the instant case, the appellant was imposed with penalty of reduction of pay way back in the year 2006 and was also allowed to retire from service with effect from 31.12.2006. After a lapse of 12 long years, without challenging the order of penalty, he submitted a representation for restoration of his pay, on 18.08.2018, which came to be rejected by the respondent bank on 09.11.2018. Thus, as stated in clear terms by the Hon'ble Supreme Court in the decision cited supra, the attempt made by the appellant challenging the rejection order passed by the respondent bank to his representation, will not provide him a fresh cause of action to revive a stale claim, and hence, it is impermissible.

11.In view of the foregoing reasons, this court finds no reason much less valid reason to interfere with the order passed by the learned Judge. Therefore, the writ appeal fails and is accordingly, dismissed. No costs.

**[R.M.D,J.] [M.S.Q, J.]**
**26.09.2023**

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Speaking Order / Non-speaking Order

Internet : Yes.
Index : Yes /No

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