



W.A.No. 1542 of 2019 & WP No.32469 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 03.03.2023	Delivered on 23.03.2023
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

Writ Appeal No.1542 of 2019
and WP No.32469 of 2013

WA No.1542 of 2019

V. Ramesh

... Appellant/ Petitioner

Vs.

1. The General Manager,
(Personal Services)
Appellate Authority,
UCO Bank, 3 & 4 DD Block (Sector-1)
Salt Lake, Kolkatta – 700 064.

2. The Deputy General Manager,
(Disciplinary Authority)
UCO Bank,
328 Thambu Chetty Street,
Chennai 600 001.

.. Respondents/ Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court dated 02.04.2019 passed in W.P. No.27965 of 2011.



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For Appellant : Mr.T.K.Kulasekaran

For Respondents : Mr.Srinath Sridevan

WP No.32469 of 2013

V. Ramesh

..Petitioner

Vs.

1. The General Manager,
(Personal Services)
UCO Bank, Salt Lake,
Kolkatta – 700 064.

2. The Deputy General Manager,
UCO Bank,
328 Thambu Chetty Street,
Chennai 600 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus, directing the respondent herein to consider the promotion of the petitioner from Scale-III to Scale IV effective from 2014 based on the respondent's bank's appraiser's report from 2014 upto 2018 thereby deleting the adverse entry made in the petitioner's APAR-2011 as “doubtful integrity”

Prayer amended vide order dated 12.04.2019, made in
WMP No.10405/2019 in WP No.32469/13 by VPNJ.



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For Petitioner : Mr.T.K.Kulasekaran

For Respondents : Mr.Srinath Sridevan

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Challenge in the Writ Appeal is to the order of the Writ Court made in WP No.27965 of 2011, wherein the Writ Court had dismissed the Writ Petition filed by the appellant seeking a Writ of Certiorarified Mandamus to quash the order of the respondent Bank imposing a punishment for certain delinquencies.

2. The appellant who was working as a Branch Manager was issued a charged Memorandum on 23.01.2018, charging him with certain delinquencies which according to the Bank resulted in a certain financial loss to the Bank. He was also accused of unbecoming conduct and of insubordination, inasmuch as he had ignored the circulars and directions of the higher officials and sanctioned loans without reference to the prohibition imposed on him. The appellant sent a reply to the charges in which he would claim that he had sanctioned those loans after the Central Office had



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circulated the letter dated 05.04.2007 because they were loans under the Government Schemes and they had to be sanctioned without further delay.

3. On the conclusion that the delinquencies are proved, the Disciplinary Authority imposed a punishment of reduction of basic pay by one stage for a period of two years and also reduction of increments. For the second charge, the punishment imposed was reduction of basic pay by one stage in the time scale of pay for a period of two years and also cut in increments. These punishments were imposed by the order of the Disciplinary Authority dated 15.12.2008.

4. As against the said order an Appeal was preferred by the appellant before the General Manager, Personal Services who is the Appellate Authority. The Appellate Authority in fact took a lenient view and reduced the punishment to reduction of basic pay for a period of one year instead of two years and also cut in increments. Aggrieved, the appellant had filed the above Writ Petition.

5. Before the Writ Court it was contended that the monthly



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statements (CMRs) were dispatched without any delay and the letter suspending his lending powers was not at all received by him. Reliance was placed on the evidence of M.W.1 and M.W.2 in cross-examination where they had deposed that they did not see the letter dated 05.04.2007 prior to the inspection by the Assistant General Manager. The Writ Court rejected the said contention on the ground that the appellant had specifically admitted in his explanation to the charges that the loans were disbursed because they were Government Schemes and the Bank is dependent on Government Schemes for its survival. The Writ Court therefore found that the explanation offered by the appellant is wholly unsatisfactory and the claim of non-receipt of the letter dated 05.04.2007 is an afterthought. The Writ Court also referred to its limited jurisdiction in the Disciplinary Enquiry matters and concluded that it cannot interfere with the quantum of punishment. Aggrieved the appellant is on Appeal.

6. Mr.T.K.Kulasekaran, learned counsel appearing for the appellant would by and large reiterate the submissions made by him before the Writ Court to contend that the order of the Writ Court is flawed. The learned counsel would again draw our attention to the evidence of M.W.1



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and M.W.2, wherein they had said that they have not seen the letter earlier.

It cannot be said that said evidence by itself would not be sufficient to conclude that the letter did not reach the Branch or the Appellant. It was in answer to a specific question M.W.1 who is the Assistant Manager of the Branch had said that he had not seen the letter prior to the suspension of the Branch Manager. Similarly M.W.2, who is the Probationary Officer of the Branch has also said that he had not seen the letter before the suspension of the appellant.

7. The letter dated 05.04.2007 is addressed to the appellant in his capacity as a Manager. He did not take a specific plea that he did not receive the letter dated 05.04.2007 in his explanation to the show cause notice or at any time during the disciplinary enquiry. He had for the first time claimed that he did not receive the letter only before the Appellate Authority after extracting the above uncertain admissions from M.W.1 and M.W.2. This is clearly an afterthought. In fact while submitting his explanation to the show cause notice, the appellant has not stated that he was not in receipt of the letter dated 05.04.2007, he would, on the other hand claim that the loans were granted to various persons as they were



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Government Schemes and they cannot be delayed.

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8. We are therefore convinced that the claim of the appellant that he did not receive the letter dated 05.04.2007 is an afterthought, raised for the first time in the Appeal. The Writ Court had gone into the question and found that the appellant had not raised the issue of non-receipt of the letter dated 05.04.2007, during the Disciplinary proceedings and therefore, the same cannot be countenanced. However, in view of the persistent effort of the learned counsel for the appellant, we had ourselves gone through the deposition of the witnesses. As rightly pointed out by the Writ Court, we are unable to come to the conclusion that the witnesses have admitted non-receipt of the letter dated 05.04.2007. All that they have said is that they have not seen the letter prior to the suspension of the appellant.

9. On the other charges also the non-sending of the monthly report namely CMRs, the documents produced by the Bank clearly demonstrate that the petitioner had not sent the CMRS regularly. We therefore do not see any reason to interfere with the findings of the Writ Court with reference to the charges and the punishment imposed. The Writ Court had observed that



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the Bank has been very lenient in imposing a very minor punishment considering the delinquencies. We therefore see no reason to interfere with the order of the Writ Court. The Writ Appeal stands **dismissed**.

10. The prayer in the Writ Petition is for a Mandamus directing the Bank to delete the entry in the petitioner's Service Register as an officer of doubtful integrity. The learned counsel for the petitioner would vehemently contend that this entry itself has been made only because the petitioner took proceedings against the Bank and since an order was passed by this Court in the Contempt Petition Nos.1147 of 2010 and 354 of 2004. The respondent Bank had introduced the entry stating that he is an officer of doubtful integrity only with a view to deny him promotion. He would also contend that making of such entry behind his back and using the said entry to deny promotion is against well settled position of law.

11. In support of his submission Mr.T.K.Kulasekaran, learned counsel appearing for the petitioner would rely upon the judgment of the Hon'ble Supreme Court in *Dev Dutt v. Union of India & Ors.* reported in *2008 (4) LW 941*, wherein it was held that non-communication of entries in



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the Annual Confidential Report to a public servant has civil consequences as it may affect the chances of promotion. He would also rely upon the judgment of the Hon'ble Supreme Court in ***Gurdial Singh Fijji v. State of Punjab and others***, reported in ***AIR 1979 SC 1622***, wherein again it was held that non-communication of the adverse entries and non-inclusion in the select list would amount to violation of the rights of a Civil servant.

12. Reliance is also placed upon the judgment of this Court in ***The State of Tamil Nadu v. R.Ramarajan and others***, reported in ***2009 (3) TLNJ 132 (Civil)***, wherein again it was held that delay in disciplinary proceedings cannot be a ground to deny promotion. The learned counsel would also invite our attention to the judgment of this Court in ***S.Paramasivam v. The Chief Security Officer Railway Protection Force, Southern Railway***, reported in ***1999 (1) MLJ 645***, to contend that denial of promotional opportunities on the ground of adverse remarks without them being communicated would be bad in law.

13. Contending contra Mr.Srinath Sridevan, learned Senior Counsel appearing for the respondent Bank would submit that those adverse



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remarks were made only based on the punishment imposed on the petitioner and the promotions of the petitioner were not denied or delayed due to such adverse entries. The petitioner was not promoted because of his poor performance in the interview and the tests conducted. Claiming that promotion is not automatic, the learned Senior Counsel would submit that the entry relating to the character of the petitioner as an officer of doubtful integrity was in force for only one year and the same was deleted and it no longer exist. Therefore, according to the learned Senior Counsel, the Mandamus as sought for has become infructuous, in view of the fact that the entry itself has now been removed.

14. The learned counsel appearing for the petitioner would contend that his promotions have been unduly delayed because of such entries. In order to dispel the doubts that were created by the learned counsel for the petitioner, we had called upon the Bank to furnish the details regarding the promotion policy of the Bank as well as the promotions granted to the petitioner. The learned counsel appearing for the respondent Bank had filed the Memorandum which discloses that as far as the promotion policy is concerned, there are four stages, viz. (i) the eligibility as



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per the appraisal report; (ii) Application for promotion; (iii) a written test or IBPS test; and (iv) an Interview. The details of the marks obtained by the petitioner in IBPS test as well as in the interviews have been given by the Bank which shows that the petitioner failed in IBPS test conducted in the year 2019-2020, in the other years though he qualified in IBPS test, he was not found eligible as he failed in the interview.

15. Therefore, it is clear that the entries in the Appraisal Reports/APAR, have not been made the basis for denying promotions to the petitioner. In any event, the prayer for Mandamus does not survive as of today as the entries have already been deleted and they are no longer exist. We therefore do not see any merit in the Writ Petition also, the Writ Petition fails and it is accordingly dismissed. There shall be no order as to costs.

(R.SUBRAMANIAN, J.) (K.GOVINDARAJAN THILAKAVADI, J.)

23.03.2023

jv

Index: Yes

Internet: Yes

Speaking Order

Neutral Citation: Yes



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To

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R.SUBRAMANIAN, J.

and

K.GOVINDARAJAN THILAKAVADI, J.

(jv)

Pre Delivery Judgment in
Writ Appeal No.1542 of 2019
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23.03.2023