



W.P.No.21571 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:05.06.2023

Delivered on: 09.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.21571 of 2019

&

W.M.P.No.20770 of 2019

R.Nalayani

... Petitioner

Vs.

1.The Managing Director & CEO/
Review Authority,
Canara Bank
Industrial Relations Section
Human Resources Wing,
No.112, J.C.Road
Head Office
Bangalore-560 002

2.The Deputy General Manager/
Appellate Authority
IR Section
Canara Bank
Head Office
Bangalore-560 002

3.The Assistant General Manager
Disciplinary Authority

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HRM Section
Circle Office
No.524, Anna Salai
Teynampet
Chennai-600 018

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent pertaining to his order of dismissal of the petitioner from service made in REF:CNC DAC E-37 1535 2017 VS-ODA dated 05.12.2017, the order of 2nd respondent rejecting the appeal of the petitioner made in No. NIL dated 29.11.2018, the order of the 3rd respondent forfeiting the gratuity amount made in Ref:NC HRMS 767 E-113 (i) 2018 GMK dated 21.04.2018 and the order of 1st respondent made in No. NIL dated 31.07.2017 which has been communicated to the petitioner by the 3rd respondent vide REF:CNC HRMS DAC 979 E-113 (i) VST dated 01.08.2019 and quash the same consequent to direct the respondents to reinstate the petitioner into service with all attendant benefits.

For Petitioner : Mr.R.Malaichamy

For Respondents : Mr.P.Raghunathan
for
M/s. T.S.Gopalan & Co for R3



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ORDER

The Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for records on the file of the 3rd respondent pertaining to the order of dismissal of the Writ Petitioner from service and also order of the 2nd respondent rejecting the appeal of the petitioner vide proceedings dated 29.11.2018 and also the order of the 3rd respondent forfeiting the gratuity amount payable to the petitioner and to quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits.

2. The petitioner's case is that she has worked as a clerk with the respondent's bank for over 25 years with unblemished service. She was promoted as officer and manager and she worked in several branches and she discharged her duties with due diligence and without negligence.

3. It is the case of the petitioner that while she was working at Thirukadaiyur branch she was issued with a charge sheet dated 25.07.2017



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by the 3rd respondent, under Regulation 6 of the Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 on the ground that she has committed irregularities in granting loan in various capacities to the customers of the bank and also granted gold loan to the customers by violating norms of the bank. According to the petitioner she has not committed any irregularity and despite the same she accepted moral responsibility and made good to the loss caused to the bank because of the transactions entered into by her.

4. In so far as the disciplinary proceedings initiated against her the petitioner states that she was not given a reasonable opportunity and the 3rd respondent has come to an erroneous conclusion. The petitioner submitted her detailed reply on 13.10.2017 to the show cause notice and the very tenor of the charge sheet indicated that the respondents have already come to a conclusion and the proceedings were only an eyewash. The enquiry officer imposed the punishment of dismissal from service by order dated 05.12.2017. The appeal preferred by the petitioner on 03.01.2018 to the 2nd respondent



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was also rejected on 29.11.2018. The revision petition filed on 21.02.2019 is pending on the file of the 1st respondent. In such circumstances, the petitioner having no other alternate remedy has approached this Court seeking by way of the above Writ Petition.

5. The main grounds of challenge taken in the Writ Petition are that the petitioner was not afforded reasonable opportunity to disprove the allegations; the enquiry officer has not offered sufficient opportunity to the petitioner to cross examine witnesses; no loss was caused because of the acts of the petitioner; the depositors and customers of the bank were not examined to prove the charges levelled against the petitioner.

6. The respondents have filed a detailed counter affidavit stating that being in Bank's service the petitioner conduct has become unworthy and has failed to inspire public confidence. The acts and omissions on the part of the petitioner would clearly prove misconduct and that too for personal gain. There is absolutely no rhyme or reason to interfere with the order passed by



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the disciplinary authority and the respondents sought for the dismissal of the Writ Petition.

7. Heard Mr.R.Malaichamy, learned counsel appearing for the petitioner and Mr.P.Raghunathan for M/s. T.S.Gopalan & Co for the 3rd respondent.

8. Banks deal with public money. Therefore, it is very incumbent on the part of the bank and its employees to act in such a manner that the public who deposit their hard earned savings and monies in the respective banks are assured of the fact that such money will be safe in the hands of the banks. If the employees of the banks are allowed to play with public money, that too for personal gain, then the general public will lose faith in the banking sector itself. This is one such case where the Writ Petitioner has played with the jewels and money available in the bank.

9. Learned counsel for the petitioner stressed on the point that the bank



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customers were never examined to prove the charges and that in any event the petitioner has ensured that the jewellery is still available in the custody of the bank. The punishment in any event imposed on her was disproportionate to the charges levelled against her.

10. Per contra, Mr.P.Raghunathan for M/s. T.S.Gopalan & Co contended that this is a classic case where absolutely no indulgence can be shown to the Writ Petitioner and the disciplinary authorities, considering the gravity of the offences committed by the petitioner were wholly justified in terminating the petitioner from service and denying her all monetary benefits.

11. Learned counsel for the petitioner relied on the following judgments:

1. Civil Appeal No.8251 of 2018, ***Union Bank of India Vs. C.G.Ajay Babu and another*** dated 14.08.2018 and order of this Court in W.P.No.18133 of 2016, ***Balagovinda Rao vs. Chief Engineer, Chennai Port Trust.***



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12. In *Union Bank of India's* case, the Hon'ble Supreme Court held that when there is no conviction from the respondent involving moral turpitude, there would be no justification of forfeiture of gratuity. The Hon'ble Supreme Court further held that the requirement of the statute is not proof of misconduct of acts involving moral turpitude but the acts should constitute an offence involving moral turpitude and that such offence should be duly established in a Court of law. Finally, the Apex Court held that forfeiture of gratuity is not automatic on dismissal from service and it is subject to sub-Sections (5) and (6) of section 4 of the Payment of Gratuity Act, 1972.

13. In W.PNo.18133 of 2016, this Court held that the reliance placed by the enquiry officer without examining the witnesses would stand vitiated.

14. Per contra, learned counsel for the 3rd respondent relied on the following judgments:

1. In *Tamil Nadu Civil Supplies Corporation Ltd Vs. Paramasivam*



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and another, reported in *1987 I LLN 255*, the Division Bench of this Court held that it is permissible and essential to positively indicate the allegations on which the charge is framed and to give notice to the delinquent of the exact facts on which the disciplinary authority relies in support of the charge and which facts will be proved against the delinquent at the enquiry. The Division Bench further held such an approach would not amount to prejudging the issue at the hands of the disciplinary authority.

2. In *Peerless General Finance and Investment Company Ltd Vs. Harkrishna Althal*, reported in *2007 SCC Online Kar 740*, the Karnataka High Court dealing with an admission of misconduct held that in the absence of even a suggestion about any act of coercion, burden establishing coercion would be only on the delinquent. In this context it is relevant to refer to the admissions of the Writ Petitioner herself in her reply dated 13.02.2017, wherein she has categorically admitted that she needed Rs.25,00,000/- and since nobody was coming forward to help her and only under such circumstances she had acted irregularly and even sought for apology. Even in so far as the jewels were concerned, the petitioner admitted to have played



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mischievous with the jewels pledged by the customers. In the backdrop of the ratio laid down by the Karnataka High Court and applying the same to the facts of the present case it is clear that the petitioner has categorically admitted to have committed several irregularities. Such candid admission has to be taken against the petitioner especially, when it is not the case of the petitioner that she was forced or coerced to make such admissions against her interest.

3. In *State of Haryana and another Vs. Rattan Singh*, reported in *1977 2 SCC 491*, the Hon'ble Supreme Court has held that strict and sophisticated rules of evidence contemplated under Indian Evidence Act cannot be applied to domestic enquiries. Infact, the Hon'ble Supreme Court has observed that there is no allegory to hearsay evidence as long as it has reasonable nexus and credibility in cases of domestic enquiries.

4. In *Tara Chand Vyas Vs. Chairman and Disciplinary Authority and Ors*, reported in *1997 4 SCC 565*, the Hon'ble Supreme Court disagreed with the contentions that the entire enquiry was vitiated for not examining witnesses.



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5. In *State Bank of India Vs. Tarun Kumar Banerjee and Ors*, reported in **2000 8 SCC 12**, the Hon'ble Supreme Court held that a customer of the bank was not required to be involved in the domestic enquiry as it will not be in the interest of the bank.

6. In *General Manager (P), Punjab and Sind Bank and Ors Vs. Daya Singh*, reported in **2010 11 SCC 233**, the Hon'ble Supreme Court has held that the bank officer cannot be expected to pass an order like a judicial officer. It is sufficient if the order is clear and contain reasons for the conclusions arrived at.

7. In *Disciplinary Authority cum Regional Manager and Ors Vs. Nikunja Bihari Patnaik*, reported in **1996 9 SCC 69**, the Hon'ble Supreme Court has held that the officer of the bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesses and that any indiscipline on the part of the officer/employee cannot be condoned when the bank employee acts beyond authority involving innumerable instances, it would clearly amount to misconduct and held that it was not even necessary to show that such acts got profit or not and concluded that there being no loss



or profit was wholly irrelevant in such cases.

15. As already observed herein above, considering the gravity of the offences committed by the Writ Petitioner and also the candid admissions made by her wherein she had categorically accepted the charges levelled against her but had chosen only to plead that she has taken bonafide and diligence steps to set right the irregularities, it would not entitle her to challenge the well reasoned orders passed by the authorities below.

16. The contention of the Writ Petitioner is that the witnesses were not examined and details regarding the actual amounts lost by the bank have not been specifically set out are all not relevant in a case of this nature. The Writ Petitioner has chosen and used her employer viz., the bank to tide over her personal financial crisis. If such acts of employees are permitted and condoned then the very banking system itself would collapse and the public would think more that once before choosing to deposit their monies with public banks and financial institutions. The disciplinary authority was wholly



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justified in terminating the services of the Writ Petitioner and infact in the opinion of the Court, had no other option other than that.

In fine, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.06.2023.

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

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Pre-delivery order in
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