IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.08.2023

Pronounced on : 14.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.20893 of 2017
and
W.M.P.Nos.29847 & 29848 of 2017

The Management of Citi Bank, N.A.
Through its Branch Manager (Now at Present),
Acropolis, 7th Floor,
148, Dr.Radhakrishnan Salai,
Mylapore, Chennai – 4.
& res. at 1st Floor, No.2,
Club House Road,
Chennai – 600 002. ... Petitioner

Vs.

1.Special Deputy Commissioner of Labour,
Commissionerate of Labour,
Chennai – 600 006.

2.N.K.Ramprasad ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records connected with the order of Respondent No.1 made in T.S.E.1/5/ 2014 dated 22.06.2017 and quash the same.

For Petitioner : Mr.H.Karthik Seshadri
for M/s.Iyer & Thomas

For Respondents : Mr.V.Ravi
Special Government Pleader [R1]
Mr.Nirajan Rajagopalan
for M/s.G.R.Associates [R2]

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ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records connected with the order of the first respondent made in T.S.E.1/5/2014 dated 22.06.2017 and quash the same.

2. The case of the petitioner is that, the second respondent joined the service of the petitioner Bank on 25.07.1997 as Assistant Manager and was confirmed as Assistant Manager on 25.05.1998 and was subsequently, promoted as Manager in the year 1999, Assistant Vice President in the year 2004 and Vice President in the year 2008 and he served in the same position till his termination. Whileso, a complaint was received as against the second respondent from one whistle-blower, namely Arjun Chowdhry, who was the then Director & Officiating Country Business Manager of the petitioner Bank. The sum and

substance of the said complaint as against the second respondent is that, conflict of interest, favoritism, collusion and kickback, bribery and corruption and violation of Citi Code of Conduct of the petitioner Bank. Immediately, thereafter, the second respondent was placed under suspension on 23.01.2014, pending the investigation conducted by City Security and Investigative Services (in short 'CSIS').

2.1. On 31.01.2014, an internal enquiry was conducted by the CSIS, wherein, the second respondent was interviewed. During the interview, the second respondent, in respect of several issues which were identified, the same was accepted by the second respondent and he admitted that he had not followed the procedure laid down by the petitioner Bank. After interview, the CSIS submitted its report and based on the findings of the CSIS, a charge sheet dated 30.05.2014 was issued to the second respondent and a letter dated 30.05.2014 stopping the payment of entire salary was also issued to the second respondent. Upon receipt of the same, the second respondent submitted his explanation on 06.06.2014, pursuant to which, the petitioner Bank issued an amended charge sheet on 27.06.2014 and the second respondent submitted his explanation on 05.07.2014 to the amended charge sheet. Thereafter, a termination order was passed on 14.07.2014. Assailing the termination order, the second respondent filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 (in short 'the Act') before the first respondent on 28.07.2014.

2.2. Before the first respondent, Ex.R1 to Ex.R13 were marked on behalf of the petitioner Bank and Ex.A1 to Ex.A10 were marked on behalf of the second respondent. The first respondent, after adjudication, set aside the termination order passed by the petitioner Bank. Challenging the same, the above writ petition has been filed.

3. The learned counsel for the petitioner Bank submits that, the second respondent joined the petitioner Bank in the year 1997 as Assistant Manager and he served as Vice President from the year 2008 to till the date of termination. On 24.12.2013, a complaint was received from a whistle-blower against the second respondent, in which, 15 allegations such as conflict of interest, favoritism, collusion and kickback, bribery and corruption and also possession of disproportionate

assets were alleged. Thereafter, the CSIS conducted an investigation with the second respondent on 31.01.2014 and submitted a report dated 13.03.2014 in respect of some of the aspects under investigation and a supplementary report dated 16.04.2014 in regard to the aspects not covered by the first report. During the interview, the second respondent admitted that he had not followed the procedures of the petitioner Bank. Based on the findings of the CSIS, the petitioner Bank issued a charge sheet dated 30.05.2014, pursuant to which, the second respondent submitted his reply dated 06.06.2014. Thereafter, the petitioner Bank issued another letter dated 27.06.2014 with amended charges and the second respondent submitted his explanation on 05.07.2014. Based on the admission of the second respondent during the interview conducted by the CSIS, the order of termination dated 14.07.2014 was passed by the petitioner Bank.

4. Further, he submits that, during the interview conducted by the CSIS, the second respondent himself admitted that, he wined and dined with the Director of M/s.V & M Prints Pvt. Ltd., who is the vendor of the petitioner Bank. Since the second respondent himself admitted the

charges levelled by the petitioner Bank, the question of conducting domestic enquiry does not arise. As per clause 4.2 of Citi Disciplinary Guidelines, there may be circumstances where it is appropriate to skip one or more of the levels of disciplinary action. By following the said clause, the petitioner Bank terminated the second respondent from service on the basis of the report submitted by the CSIS, which by itself is sustainable.

5. It is further contended that, the first respondent/Labour Court has perversely made a finding that the second respondent was terminated for misconduct. Section 41 of the Act clearly recognized misconduct as distinct and different from reasonable cause of loss of confidence. As per Section 41 of the Act, a detailed enquiry procedure is necessary, when an employee is terminated for misconduct. However, in the present case, the second respondent was terminated for loss of confidence due to his dealings, conflict of interest with the petitioner Bank's vendor and he has also admitted his guilt during the interview conducted by the CSIS, thereby, the petitioner Bank terminated the second respondent.

6. Further, he submits that, though the domestic enquiry was not conducted as against the second respondent and only CSIS conducted an interview, however, the said interview itself is sufficient to hold that all the charges are proved as against the second respondent and all those questions were answered and the second respondent admitted the relationship between himself and the Proprietors of M/s.Coronet Designs Pvt. Ltd. and the same was not disclosed to the petitioner Bank. The second respondent admitted his role and responsibility as a Vice President that he has to identify from the pool vendor and forward the procurement for them to enable onboarding after e-auction/ price discussion. In the present case, M/s.V & M Prints Pvt. Ltd., who is the vendor of the petitioner Bank, transferred monetary benefits and sub contracts to M/s.Coronet Designs Pvt. Ltd., in which, the second respondent's wife and brother-in-law are the proprietor. When the second respondent himself admitted his guilt during his summary proceedings, there is no need for conducting full-fledged enquiry and based on the second respondent's admission, the termination order was passed, which cannot be interfered with. However, the first respondent interfered with the order of termination, which is not sustainable and the same is

perverse. In support of his contention, he relied upon the judgments in the case of ***State Bank of India & Anr. Vs. Bela Bagchi & Ors.*** reported in ***(2005) 7 SCC 435*** and ***Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G. Vittal Rao*** reported in ***(2012) 1 SCC 442***. Accordingly, he prays for allowing the writ petition.

7. Per contra, the learned counsel appearing for the second respondent submits that, the specific allegations in the charge memo issued by the petitioner Bank is that, as if the company of the second respondent's wife and brother-in-law had a contract with the petitioner's vendor, namely M/s.V & M Prints Pvt. Ltd., for which, there was a money transaction in between them, which was held against the second respondent as if the second respondent had not disclosed the relationship with the petitioner Bank. However, the second respondent did not award any logistics contract to his wife company, since already the decision was taken to award logistics contract to M/s.V & M Prints Pvt. Ltd. and subsequently, there was a transaction in between M/s.V & M Prints Pvt. Ltd. and the second respondent's wife company, for which the second

respondent cannot be held responsible. He also submits that, mere non-disclosure of the money transaction between the petitioner's wife and the vendor to the petitioner Bank is not a major misconduct. Even if it is assumed that the said act of the second respondent is a misconduct, it will only attracts written warnings in terms of Disciplinary Procedure Guidelines. As per Annexure A – Disciplinary Matrix, the Citi Code of Conduct reveals that, any financial transaction with vendor or business associate will attract only written warning and the same does not attract termination from service. However, contrary to the same, the petitioner Bank terminated the second respondent without any reason or justification, which is not sustainable, thereby, the first respondent set aside the order of termination, which cannot be interfered with.

8. It is further contended that, no witness was examined by the petitioner Bank as no enquiry was conducted, thereby, the second respondent could not establish his innocence in cross examination. Further, the non-conduct of the enquiry did not give the second respondent an opportunity to let in evidence and that the termination order passed by the petitioner Bank is arbitrary.

9. As per clause 6 of the said guidelines, dismissal of an employee for misconduct shall be only pursuant to a proper disciplinary process and only for gross misconduct or negligence. As per the clause 6.2, the petitioner Bank ought to have followed the procedure contemplated under clause 6.2 and after conducting detailed enquiry by providing opportunity to the second respondent, punishment can be imposed. However, in the present case, without following the procedure contemplated under clause 6.2, the petitioner Bank passed the order of termination, which is a clear violation of principles of natural justice and the same is contrary to their own guidelines. The first respondent, by considering above said aspects, passed an order setting aside the termination order passed by the petitioner Bank. Fairly it is submitted that, though this Court can interfere with the order of the first respondent on the ground of perversity, however, the impugned order passed by the first respondent does not suffer from any perversity, and, therefore, this Court shall not interfere with the same.

10. Further, he contended that, the first respondent/Labour Court has rightly interpreted Section 41(1) of the Act which stipulates that no

employer can dispense with the services of the persons employed without a reasonable cause and without giving an opportunity to be heard. The Labour Court has rightly pointed out the fact that the mere allegations on the second respondent based on the CSIS report will not certainly be a substitute for enquiry. It has also rightfully held that the stand of the petitioner Bank that the admission of guilt by the second respondent during investigation was enough to not proceed with the enquiry cannot be a justifiable and an acceptable ground in accordance with the principles laid down in law, especially, when the second respondent has contended that the same are not confessions of guilt and has given a detailed reply that they do not constitute violation of the Citi Code of Conduct. Accordingly, he prays for dismissal of the writ petition.

11. Heard the learned counsel for the parties and perused the materials available on record.

12. Admittedly, in the year 1997, the second respondent was employed as an Assistant Manager in the petitioner Bank and was lastly employed as Vice President from the year 2008 till his date of

termination. In the year 2013, a complaint was made against the second respondent as if he acted upon conflict of the interest of the petitioner Bank and extended undue favoritism in favour of the petitioner Bank's vendor, namely M/s.V & M Prints Pvt. Ltd., they in turn, extended monetary benefits to the company of the second respondent's wife and brother-in-law, namely M/s.Coronet Designs Pvt. Ltd. Further allegation made against the second respondent is that, collusion, kickback, bribery which is in violation of Citi Code of Conduct resulting in the second respondent being placed under suspension. Subsequently, an interview was conducted by CSIS on 31.04.2014. Thereafter, pursuant to the report submitted by the CSIS submitted on 30.05.2014, an additional charge memo was issued and upon receipt of explanation, the second respondent was terminated from service.

13. The first issue which has to be decided in this writ petition is whether the CSIS report is sufficient to hold that the charges are proved against the second respondent without conducting any disciplinary proceedings as contemplated under clause 6.1 of the Citi Disciplinary Procedure Guidelines; and secondly whether the punishment imposed by

the petitioner Bank was in terms of Annexure A of the Disciplinary Procedure Guidelines or not. For better appreciation, the relevant clauses are as follow :-

4. Disciplinary Actions

4.1 The CDC will decide on the levels of disciplinary action depending on the findings of the investigation report, submission of the employee and recommendations of the HRG and ERCM. Usually the level of disciplinary action will increase on an incremental basis as follows:

(a) No Action: Where the misconduct is not conclusively proved or the misconduct is very minor/trivial in nature and does not warrant any disciplinary action.
(b) Counselling: Where the misconduct is commined by an employee without any wrong motive or due to lack of awareness/ training;
(c) Verbal Warning: This will usually be given in the case of a first misconduct despite awareness and training.
(d) Written Warning:This will usually be given where the employee has repeated the misconduct and/ or where the misconduct is sufficiently serious to warrant a written warning even where there are no other active written warnings on file; or
(e) Dismissal: Except in cases of gross misconduct, gross negligence and/ or gross incompetence, dismissal should not normally be the first level of disciplinary action. Dismissal should normally only occur after warnings have been issued and the employee has repeated the act(s) of misconduct, or carried out further misconduct.

4.2. There may be circumstances where it is appropriate to skip one or more of the levels of disciplinary action. These include:

(a) Where the actual or potential consequences of the employee's actions are more serious, there it may be

appropriate to proceed either directly to a final written warning or to dismissal;
(b) For senior employees it is recognised that their greater responsibility should be matched by a greater level of expertise and judgement; or
(c) For new employees with less than three months service or during an employee's specified probationary period where this is longer.

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5. Warnings

5.1 Where a warning is to be issued, the letter to be issued to the concerned employee in this regard should set out the following :

(a) The nature of the misconduct;
(b) The type of warning, and that until marked improvement is shown by the employee concerned, he/she is not eligible for transfer, promotion, or any discretionary increase in salary or benefits. Advice of the ERCM must be taken if it is proposed that hte normal policy on restricting transfer, promotion, or any discretionary increase in salary or benefits is not to aply, when a written warning is issued to an employee;
(c) A clear definition of what change in behaviour or improvement is expected and a summary of the assitance/ training Citi will provide to the employee (possibly in a schedule);
(d) The time scale within which the improvement is required, including details of the next review meeting; and
(e) The consequences of the employee's failure to correct the problem or of further misconduct, i.e., that he or she faces further disciplinary action and what that might be.

6. Dismissal

6.1 Dismissal of an employee for misconduct shall be only pursuant to a proper disciplinary process and only for gross misconduct or negligence as set out above.

6.2. Among others, the following misconduct will be considered as gross and can lead to dismissal :

(a) Acts of criminal nature under applicable law including theft, fraud, forgery, misappropriation of funds insider trading (including tipping), bribery and physical harm to another employee, customer, supplier or any person;
(b) Breaches of an applicable law, regulation or rule;
(e) Conviction in any court of law for any criminal offence;
(d) Falsification of information relating to employment;
(e) Sexual and non-sexual harassment, including transmitting or displaying images or text of sexual nature or containing material deemed to be offensive or lewd;
(f) Continuous absence without permission or without satisfactory cause for more than 30 days;
(g) Knowingly providing false or misleading information and/ or documents to support any client application (applicable for direct sales agency/ daily sales report directly contracted/ managed by Citi);
(h) Unauthorized sharing of private, confidential or proprietary data, especially customer data, with external parties (except as required by law, regulations or on the instructions of a regulatory authority);
(i) Drunkenness, fighting or riotous, disorderly or indecent behaviour while on duty at place of work; or misusing controlled substance or selling, manufacturing, distributing, possessing, using or being under the influence of illegal drugs;
(j) Immoral behaviour and moral turpitude;
(k) Sharing passwords with other persons, especially to systems that give access to financial transactions and customer/confidential information; or
(l) Tampering and manipulating official documents.

<u>Annexure A is as follows :-</u>

Annexure A
Disciplinary Matrix

Categories of Misconduct /violation	Termination	Written Warning	Verbal Warning	Conselling	No Action
Citi Code of Conduct	Forgery of Customer Signature	Usage of Corporate Credit Card for Personal Use.	Inter-Staff Money Lending/ Transfer		
	Tampering the Customer Records/ Documents (Check the Intension)	Financial Transaction with Customer – First Instance			
	Circulating e-mail containing objectionable/Adult Content	Financial Transaction with Vendor/ Business Associate			

14. A perusal of the above Disciplinary Procedure Guidelines makes it clear that, as per clause 4, the Country Disciplinary Committee (in short "CDC") will decide on the levels of disciplinary action depending on the findings of the investigation report. Clause 4.1(e) states that, except in cases of gross misconduct, gross negligence or gross incompetence, dismissal should not normally be the first level of disciplinary action. Dismissal should normally occur only after warnings have been issued and only if the employee has repeated the act of misconduct or carried out further misconduct, then the order of dismissal

has to be passed. In the present case, from the year 1997 to 2014, no disciplinary proceedings was initiated against the second respondent and in the first instance itself, disciplinary action was initiated. In the present case, sum and substance of the charge memo is that the second respondent has not disclosed the family relationships who became Citi vendor/sub vendor, doubtful financial transactions between the employee, the family members and some vendors, approval and facilitation of unauthorized payments to undisclosed family members, collusion with the undisclosed family members and vendors for unauthorized payment. Admittedly, the second respondent alone cannot decide the approval of vendor and there are various levels in the petitioner Bank for approval of vendor. Vendor of the petitioner Bank, namely M/s.V & M Prints Pvt. Ltd. is continuously a vendor of the petitioner Bank. Pursuant to the contract, if the said vendor had given sub contracts to other company that will not *ipso facto* be held against the second respondent to hold him responsible. In the absence of the petitioner Bank examining the Director of M/s.V & M Prints Pvt. Ltd. as as witness in the disciplinary proceedings and prove that there was a money transaction between the vendor and the second respondent by which the second respondent enriched himself, then only major punishment can be imposed. The allegation against the second respondent squarely falls within the terms of Annexure A of City Code of Conduct wherein the maximum punishment is only written warning. Even assuming that the petitioner Bank has power to issue a dismissal order in terms of clause 4.1(e) of the Disciplinary Action, if they decided to dismiss the second respondent, in such a scenario, necessarily, the petitioner Bank has to follow the procedure contemplated under clauses 6.1 and 6.2 of the Disciplinary Procedure Guidelines. However, the procedure contemplated under clauses 6.1 and 6.2 have been followed by the petitioner Bank and on the basis of the CSIS report alone, after issuing additional charge sheet and after receipt of the reply, the major punishment of dismissal from service has been inflicted on the second respondent, which is wholly against the procedure contemplated and the same does not deserve to be sustained.

15. Further, during the interview conducted by the CSIS, though most of the questions were admitted with regard to the wining and dining with the Director of M/s.V & M Prints Pvt. Ltd., however, that does not

mean that the second respondent accepted his guilt and it is his stand that only in the capacity of Vice President, he attended the function of the said Director which cannot be construed to mean that it is a misconduct committed by the second respondent. The said issue was elaborately considered by the first respondent while appreciating the entire factual matrix and, rightly appreciating the clauses in the City Code had set aside the termination order and directed reinstatement, which is perfectly in order and the same cannot be interfered.

16. The next issue arises is with regard to payment of back wages to the second respondent. It is seen from the records that, this Court, by its order, dated 04.08.2017 in W.M.P.No.21769 of 2017, granted interim stay in this matter on condition to deposit 50% back wages, pursuant to which, the petitioner Bank deposited the same to the credit of this writ petition. Thereafter, the second respondent filed a writ miscellaneous petition in W.M.P.No.12991 of 2018 seeking to withdraw the deposited amount. This Court, by its order, dated 24.07.2019 directed the Registry to deposit the amount lying to the credit of this writ petition in an interest bearing fixed deposit scheme initially for a period of one year, renewable

periodically and permitted the second respondent to withdraw interest on the same once in three months, till the disposal of this writ petition.

17. In the backdrop of this Court confirming that the reinstatement ordered by the first respondent, considering the entire factual matrix and also the fact that the second respondent was permitted to withdraw the interest on the amount kept in deposit, considering the fact that the second respondent had not discharged any work, but at the same time has been meted out with a perverse order, the scales of justice has to be balanced so that neither party is put to injustice. In the aforesaid circumstances, this Court is of the considered opinion that the second respondent would be entitled to back wages to the tune of 25% would be just and reasonable. In the aforesaid circumstances, the second respondent is permitted to withdraw the 25% of the amount lying in deposit and the petitioner Bank is permitted to withdraw the balance amount of 25% lying in the said fixed deposit.

18. This writ petition is dismissed with the aforesaid modification in the payment of backwages alone. It is made clear that the second

respondent is entitled for continuity of service and all other benefits. No costs. Consequently, the connected miscellaneous petitions are closed.

14.09.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

The Special Deputy Commissioner of Labour,
Commissionerate of Labour,
Chennai – 600 006.

M.DHANDAPANI, J.

sp

Pre-Delivery order
in
W.P.No.20893 of 2017
and
W.M.P.Nos.29847 & 29848 of 2017

14.09.2023