BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.9558 of 2020

and

W.M.P(MD) Nos.8614 & 8617 of 2020

T.V.Maria Joseph : Petitioner

Vs.

1.The Assistant General Manager (HR)
State Bank of India,
HR Department,
Local Head Office, Rotary Junction,
Poojappura - Post,
Trivandrum,
Kerala - 695 012.

2.The Assistant General Manager (PPG),
State Bank of India,
PPG Department,
Local Head Office,Rotary Junction,
Poojappura - Post,
Trivandrum,
Kerala - 695 012.

3.The Branch Manager,
State Bank of India,
(Erstwhile State Bank of Travancore),
Kosakulam Pudur,
Madurai - 625 007. : Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Orders of the Disciplinary Authority Letter No.DPD/1375/2700 dated 07.03.2015 order issued by the Appellate Authority in his Letter NO.DPA/30/2016-17 dated 18.02.2017 and the order issued by the 1st respondent letter No.HR.IR.MISC.1044/489 dated 10.07.2018 and quash the same as illegal against law, rules of the bank, against conscious, arbitrary and in violation of natural justice, consequently directing the Respondents to settle the entire amount which was taken by collecting the receipt before crediting the gratuity amount as directed in Letter No.ACTS/GRY/2225 dated 24.07.2015 issued by the Chief Manager (PPG) to the third respondent with interest and all other benefits.

For Petitioner : Mr.C.Masilamani

For Respondents : Mr.M.Ponniah

O R D E R

This writ petition has been filed to quash the Impugned Orders of the Disciplinary Authority Letter No.DPD/1375/2700 dated 07.03.2015 order issued by the Appellate Authority in his Letter NO.DPA/30/2016-17 dated 18.02.2017 and the order issued by the 1st respondent letter No.HR.IR.MISC.1044/489 dated 10.07.2018 and consequently directing the Respondents to settle the entire amount which was taken by collecting the receipt before crediting the gratuity amount as directed in Letter No.ACTS/GRY/2225 dated 24.07.2015 issued by the Chief Manager (PPG) to the third respondent with interest and all other benefits.

2. The learned counsel for the petitioner submitted that the petitioner worked in the erstwhile State Bank of Travancore and also served as Branch Manager of Madurai Main and HAPP Branches and worked for the institution for 36 years. Whileso, a charge sheet was issued for certain lapses / irregularities while functioning as the Branch Manager of Madurai Main and HAPP Branches. There was an allegation against the petitioner for some omissions and commissions in sanctioning recommending and

conduct and follow-up of loans, thereby, rendering for disciplinary action and issued with a charge sheet, dated 10.08.2013 and accordingly, an enquiry was conducted through the departmental proceedings. While he served as Manager, Agri Business Department, State Bank of Trivancore at Zonal Office, Chennai, he was issued DPD, dated 16.08.2013, thereby his service was under cessation effective from 31.08.2013. Subsequently, departmental enquiry was conducted. Based on the enquiry report, the Disciplinary Authority had passed the first impugned order, dated 07.03.2015 imposing a punishment of reduction in scale of pay from MMGS III to MMGS II and also fixing at Rs.25,700/- from the pay of Rs.32,400/- last drawn with effect from the date of charge sheet and an amount of Rs.10,00,000/- has been recovered from the CSO being part of the pecuniary loss caused by him to the Bank on account of his lapses. Against the order of the Disciplinary Authority, the petitioner preferred an appeal before the first respondent Appellate Authority and the Appellate Authority vide order, dated 18.02.2017 modified the punishment with regard to reduction of scale of pay, however, confirmed the recovery of Rs.10,00,000/- as part of the pecuniary loss. In the meanwhile, the Bank had deducted a sum of Rs.10,00,000/- from the gratuity amount and apart from that, the petitioner lost his wife on 31.12.2015 and Challenging the recovery order and punishment imposed by the Original Authority and modified by the Appellate Authority, the present writ petition is filed.

3. The learned counsel for the petitioner further submitted that admittedly the petitioner was retired from service on 31.08.2013. However, the punishment was imposed after the retirement and the said punishment was subsequently, modified by the Appellate Authority and the only punishment as against the petitioner is to recover the amount of Rs.10,00,000/- as pecuniary loss. However, there is a procedure created for recovering the penalty amount and the pecuniary loss from the Bank employees and as per the procedure the Disciplinary Authority, if the recovery amount sought to be recovered from the retired employees, who had retired from service, the outstanding amount cannot be adjusted against the gratuity without following the procedure laid down under Article 351-A CSRs (Rule-9 of C.C.S. Pension Rule) and the said loss amount cannot be recovered in full because of his implementation of retirement and if at all

the respondents have to recover the amount only from the pension and recovering the same in Gratuity amount is not sustainable one. Accordingly, he prayed for allowing the writ petition. However, the learned counsel for the petitioner he don't want to agitate the punishment imposed by the Original Authority and modified by the Appellate Authority, however, his grievance is only in the manner in which, they recovered the amount from the petitioner. Hence, the present writ petition is filed.

4. Per contra, the learned Standing Counsel appearing for the respondent-Bank would submit that the petitioner sanctioned 199 Self Help Group loans, without proper assessment / appraisal and all accounts were returned as Non Performing Assets. Grading of the Self Help Group (SHG) was not done properly before granting the loan amount. In all Self Help Groups, uniformly 12 persons were included and a uniform limit of Rs.2,00,000/- was sanctioned without taking into account the activity, The end use of funds was not ascertained properly. NOC from Banks where the groups were maintaining accounts were not obtained. The petitioner had sanctioned 24 SJSRY loans without proper appraisal and inspection to the

relatives, staff members and friends of M/s.Vinayaka Trust and all the said accounts turned as Non Performing Assets. The petitioner sanctioned 8 housing loans promoted by Sri.Chinnadurai. Housing loan was sanctioned to the promoter also. though all the houses were in semi finished stages, full amount were released. The petitioner had failed to conduct proper stage-wise inspection and opinion / credit reports were not properly complied with. Several loans such as Car Loan, Suvidha Loan, Sahaya Varsha Loan and Housing Loans were sanctioned to various customers, without following the procedures prescribed by the Bank, thereby, the petitioner is responsible for the loss to the tune of more than Rs.4,00,00,000/- (Rupees Four Crore) to the Bank and drawn a proven minute against petitioner, in which, an opportunity was given to the petitioner, thereby the Original Authority imposed a punishment of reduction in scale and fixing the pay at Rs.25,700/- from the pay of Rs.34,200/- last drawn and further imposed an amount of Rs.10,00,000/- (Rupees Ten Lakhs) be recovered from the petitioner, being the part of pecuniary loss and subsequently, the petitioner had preferred appeal against the above said punishment and the Appellate Authority modified the punishment and cancelled the reduction in the scale of pay, however, confirmed the recovery of a sum of Rs.10,00,000/- and admittedly, a sum of Rs.10,00,000/- total loss suffered by the Bank. Further, the eligible gratuity amount of Rs.10,00,000/- was also sanctioned and the same was credited to petitioner's account on 31.07.2015, by way of Cheque, dated 21.07.2015. Since the petitioner had failed to pay the sum of Rs.10,00,000/- awarded as penalty by the Appellate Authority, the Bank had recovered the amount from his account, being the part of pecuniary loss suffered by the Bank. The penalty of Rs.10,00,000/- imposed on him works out to just around 2.5% of the loss of more than Rs.4.00 Crore suffered by the Bank due to his negligence. Hence, he prayed for dismissal of this writ petition.

5. The learned Standing Counsel appearing for the respondent-Bank further submitted that the procedure relied upon by the learned counsel for petitioner is not applicable to the present case on hand and the said procedure is applicable only to the Central Government employees and there is a separate procedure contemplated for the State Bank of Trivancore Officer Service Rules. Hence, he prayed for dismissal of the writ petition.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The facts in the present case are not in dispute. The allegations made against the petitioner is that as if the petitioner had sanctioned 199 Self Help Group loans without proper assessment / appraisal and all the accounts were turned as Non-Performing Assets. Grading of the Self Help Group (SHG) was not done properly before granting the loan amount. In all Self Help Groups uniformly 12 persons were included and an uniform limit of Rs.2,00,000/- has sanctioned, without taking into account the activity, the petitioner sanctioned 24 SJSRY loans without proper appraisal and inspection to the relatives, staff members and friends of the one Vinayaka Trust and all the said accounts have turned to Non Performing Assets. The petitioner sanctioned 8 housing loans promoted by Sri.Chinnadurai and Housing loans were sanctioned to promoter also and the petitioner had failed to conduct proper stage-wise inspection and opinion / credit reports were not properly complied. Several loans such as Car Loan, Suvidha Loan,

Sahaya Varsha Loan and Housing Loans were sanctioned to various customers without following the procedures prescribed by the Bank, thereby, the petitioner is responsible for the loss to the tune of more than Rs.4,00,00,000/- (Rupees Four Crore) to the Bank. With the above charge-memo, the disciplinary authority has conducted an enquiry and drawn a proven minute against the petitioner, in which, an opportunity was given to the petitioner, thereby the Original Authority had imposed a punishment of reduction of scale and fixing the pay at Rs.25,700/- from the pay of Rs.34,200/- last drawn and further imposed an amount of Rs.10,00,000/- (Rupees Ten Lakhs) recovered from the petitioner being the part of pecuniary loss and subsequently, the petitioner preferred an appeal as against the above said punishment and the Appellate Authority modified the punishment and cancelled the reduction in scale of pay, however, confirmed the recovery of a sum of Rs.10,00,000/- and admittedly, a sum of Rs.10,00,000/- is imposed on the petitioner works out to just around 2.5% of the total loss suffered by the Bank. However, since the petitioner is not intended to agitate the punishment imposed by the Original Authority, however, his grievance is that the procedure for recovering the punishment amount from his gratuity amount is done without following the procedure as contemplated in the procedure relied upon by the petitioner.

8. The learned counsel for the petitioner vehemently contended that in similar cases, the Apex Court in the case of **State of Jharhand and others Vs. Jitendra Kumar Srivastava and Another (Civil Appeal No. 6770 of 2013, dated 14.08.2013)** held that the Executive instructions are not having statutory character and therefore, they cannot be termed "law" within the meaning of Article-300A of the Constitution of India. However, the said decision relied upon by the learned counsel for the petitioner is not applicable to the facts of the present case, wherein, the procedure referred to by the learned counsel for the petitioner which is applicable to the Central Government Servants, is not applicable to the Bank employees and the petitioner had not produced any Rules for recovering the penalty amount from the Banking Rules. In the absence of any Rule, the recovery order passed by the Appellate Authority/respondents cannot be interfered with.

9. Admittedly, the petitioner had retired from service on 31.08.2013 and the entire terminal benefits settled in favour of the petitioner at the relevant point of time and now the procedure relied upon by the petitioner relates to the Central Government Service, if the person retired from service the recovery amount cannot be adjudicated against gratuity and the authority has to follow the procedure as contemplated under Article 351-A CSR (Rule-9 of CCS Pension) is not applicable to the petitioner. The State Bank of Trivancore Service Rules is also applicable to the petitioner. However, the petitioner has not placed any materials before this Court whether there is a procedure to recover the punishment amount and further, the petitioner had retired from service in the year 2013. The original punishment was imposed by the Original Authority in the year 2015 and an appeal was preferred by the petitioner in the year 2016. The said punishment was modified by the Appellate Authority in the year 2017. Thereafter, Rs.10,00,000/- loss caused to the Bank by the petitioner was recovered from his gratuity amount. Even otherwise, the petitioner has to pay the punishment amount to the Bank and his claim is that amount can be recovered by way of equated instalments. However, the petitioner is only

receiving the monthly pension of Rs.18,000/- per month. It is highly impossible to recover, Rs.10,00,000/- from the petitioner's monthly pension. Hence, the recovery order passed by the respondent-Bank is perfectly in order, which cannot be interfered with.

10. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

10.01.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
RM

M.DHANDAPANI, J.

RM

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