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W.P.(MD)NO.9044 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.06.2023

PRONOUNCED ON: 04.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.9044 of 2023 AND
W.M.P.(MD)Nos.8201 & 8203 of 2023

S.Mayilerinathan

... Petitioner

Vs.

1. The Deputy General Manager & CDO,
State Bank of India,
Local Head Office,
4th Floor, No.16, College Lane,
Circle Top House,
Nungambakkam,
Chennai – 6.

2. The Assistant General Manager(OAD),
State Bank of India,
Local Head Office,
4th Floor, No.16, College Lane,
Circle Top House,
Nungambakkam,
Chennai – 6.

3. The Regional Manager,
RBO-II,
State Bank of India,
No.2, Dr.Ambedkar Road,
Administrative Office,
Madurai -2.

... Respondents



Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the proceedings of the second respondent made in CHE/OAD/DIS.CON/67 dated 14.07.2021 and consequential proceedings of the first respondent made in No.A&R/AS/68 dated 26.08.2022 and quash the same.

For Petitioner : Mr.R.Murali

For Respondents : Mr.M.Ponniah,
Standing Counsel.

* * *

ORDER

Heard both sides.

2. The writ petitioner joined the State Bank of India way back in the year 1984 as Messenger. The petitioner is presently aged about 59 years. He is now said to be suffering from oncological issues. He belongs to the bottommost rank of the society.

3. The petitioner was working as Senior Head Messenger in the administrative office of the State Bank of India, at



Madurai during the year 2014. His colleague namely K.Rajendran had been transferred to some other branch. Rajendran filed writ petition and obtained interim stay of the transfer order. The superior officers appear to have taken the stand that since Rajendran had already been relieved, it may not be possible to permit him to continue to work in the very same branch. Though Rajendran was allowed to discharge his duties, he was not permitted to sign in the attendance register. This generated some heat. The petitioner and one Ramamoorthy who was also an Office Assistant joined the fray. It was on 11.01.2014 which happened to be a Saturday. It was not a full working day. The petitioner and Ramamoorthy insisted that Rajendran must be allowed to sign in the Attendance Register. The management was also unrelenting. In these circumstances, the aggrieved staff resorted to what is known as Sit-In agitation. They were joined by others including a lawyer. Even though the management personated the agitating staff to leave the premises, they refused. This continued till the next day forenoon.



4. The management rightly took a serious view in the matter. The petitioner was issued with charge memo dated 21.03.2014. It contained as many as six articles of charge. The petitioner offered his explanation dated 11.04.2014. The management did not find it satisfactory. An enquiry was conducted. The enquiry report was adverse to the petitioner. All the charges were held to be proved. A copy of the enquiry report was served on the petitioner and his further representation was obtained. The disciplinary authority / second respondent herein concurred with the findings of the enquiry officer and awarded the punishment of dismissal from service.

5. The order dated 14.07.2021 passed by the disciplinary authority was put to challenge before the appellate authority. The appellate authority vide order dated 26.08.2022 confirmed the order passed by the original authority and dismissed the appeal. Challenging the same, the present writ petition came to be filed.



6. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned orders and allow this writ petition as prayed for.

7. The respondents have filed counter affidavit and the learned Standing counsel took me through its contents. The first objection raised by the learned Standing counsel is that the petitioner had moved the Conciliation Officer(RCC) and the conciliation talks had failed. Failure report under Section 12(4) of the Industrial Disputes Act 1947 was also submitted. In the usual course of things, the matter would be referred to the Central Government Industrial Tribunal. He pointed out that a similarly placed employee had moved the said Tribunal and obtained substantial relief. The petitioner had to stick to the usual procedure and not bypass the same by invoking the writ jurisdiction of this Court. He submitted that in matters involving disciplinary issues, the existing alternative remedy ought not be lost sight of by the writ Court. He also added that in this case, the orders passed by the authorities are founded



on substantial material. The conduct of the petitioner cannot be condoned and the materials on record are more than sufficient to sustain the factual findings arrived at by the enquiry officer which have been endorsed by the disciplinary authority as well as the appellate authority. He also pointed out that once this Court comes to the conclusion that the charges framed against the petitioner have been proved, the writ Court would be unjustified in interfering with the quantum of punishment. He also submitted that the parity principle cannot be invoked in this case. He relied on the decision reported in **2022 0 AIR (SC) 1551 (The State of Uttar Pradesh and Others V. Rajit Singh)**. He pressed for dismissal of the writ petition.

8. I carefully considered the rival contentions and went through the materials on record.

9. Before I discuss the merits of the matter, I must place on record the undertaking given by the petitioner through his counsel. The petitioner gives up his claim on backwages. In the event of this Court ordering his reinstatement, he would



be satisfied if the intervening period is taken into account for the purpose of computing increments and pension alone. The petitioner also gives an undertaking that he has only a short period before he reaches the age of superannuation. He is ready to submit a letter of unconditional apology. He would also undertake to conduct himself appropriately. He would state that he would dissociate himself from any union activity in future. This undertaking was given by the petitioner on his own accord and this Court did not nudge him in any manner.

10. The charge memo as already noted, contains as many as six articles of charge. They pertain to the petitioner's conduct on 11.01.2014 and 12.01.2014.

11. In support of the charges, the enquiry officer had examined as many as ten witnesses and also marked 16 exhibits. The petitioner was also given full opportunity to establish his innocence. After a detailed consideration of the materials on record, the enquiry officer came to the conclusion that all the charges framed against the petitioner stood established. The disciplinary authority as well as the



appellate authority after considering the petitioner's further representation and appeal memorandum respectively, came to the conclusion that the findings are justified and would hold good. As rightly pointed out by the learned Standing counsel appearing for the bank management, the scope for interference with such factual findings is rather limited. All that this Court can see is whether the principles of natural justice were complied with and the procedure was fair. I am more than satisfied that a fair procedure was adopted by the management and I therefore decline to interfere with the finding arrived at by the authorities.

12. Next, comes to the question of punishment. The petitioner has been visited with the capital punishment of dismissal from service. In normal circumstances, the writ Court will not be justified in interfering with the quantum of punishment unless there are compelling circumstances. In this case, it is not as if the petitioner was a solitary participant in the Sit-In Dharna. He was accompanied by one Ramamoorthy. The said Ramamoorthy was also dismissed from service. Challenging the same, Ramamoorthy moved the Tribunal. The



Tribunal vide award dated 30.12.2016 made in Industrial

Dispute No.9 of 2016 held as follows:-

“40. So far as the present case is concerned the proven charge is that the petitioner refused to leave the office in spite of request forcing the officials to remain at the office beyond office hours. The proved charge is of lesser gravity when compared to the charges in the decisions referred to above. Apart from this is the fact the petitioner was only a silent partner of his colleague Rajendran and had not done anything on his own except refusing to leave the premises. There is also the fact that the petitioner had served the Respondent establishment dutifully for several years and there is no history of previous misconduct against him. In the circumstance a lesser punishment would be sufficient for the petitioner rather than the punishment of dismissal from service. The punishment of bringing down to lower stage in the scale of pay would be sufficient.

41. In view of my discussion above, an Award is passed as below:

The punishment of dismissal from service on the petitioner is set aside.

The petitioner shall be reinstated in service within two months of publication of the award.

The petitioner is brought down to the next lower stage in the scale of pay.



The pay due to the petitioner in the lower stage from 09.05.2015 shall be paid to him within two months of publication of the Award. In default it will carry interest at the rate of 7.5% per annum from the date of the award.

The reference is answered accordingly.”

13. Questioning the said award, the management filed W.P.No.24701 of 2017. The writ petition was disposed of on 19.10.2022 in the following terms:-

“ 34. Therefore, the Labour Court considered the fact that the 2nd respondent along with two employees were inside the office beyond office hours and the officials held a negotiation with the employees and requested them to leave the office premises. There was no violence, offensive statements, misbehaviour or otherwise were found during the protest by the 2nd respondent along with two other employees. Thus, the 2nd respondent along with two other employees were sitting in the office premises and protested against the administrative transfers issued against them.

35. In the context of protest, the Right to Protest is a Constitutional Right of a Workman. However, Right to Protest is subject to restriction and the procedures which is to be



followed. In the present case, the reason for the protest seems to be untenable. However, the 2nd respondent / employee without any permission or approval from the competent authorities, sat inside the office premises beyond office hours, which amounts to an illegal protest, which is a misconduct. Thus, there is no justification for the manner of protest made by the 2nd respondent by sitting inside the office premises beyond office hours in order to cause inconvenience to the Higher Officials of the petitioner / Bank. However, this Court is of the considered opinion that the punishment of removal from service is harsh, excessive and disproportionate. Thus, this Court do not find any infirmity in respect of the modification of punishment by the Industrial Tribunal by invoking the powers conferred under Section 11(A) of the Industrial Disputes Act, 1947.

36. The long and clean services of about 25 years rendered by the 2nd respondent / employee to be considered. That apart, 5 years of clean service rendered by the 2nd respondent, during the pendency of the writ petition is to be taken note of. The proportionality of the punishment is also to be taken into consideration. The 2nd respondent has not committed any act of violence or



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vandalisation or grave offence or an act of misbehaviour with the officials or otherwise. Therefore, the proved charges against the 2nd respondent cannot be construed as grave to an extent, warranting the major penalty of removal from service. Thus, the modification of punishment imposed by the Labour Court to that of reduction of pay to next lower stage is justified and there is no perversity.

37. Accordingly, this Court has no hesitation in forming an opinion that the writ petitioners have not established any acceptable ground for the purpose of interfering with the Award dated 30.12.2016 passed in I.D.No.9 of 2016 and consequently, the award of the Labour Court stands confirmed, with the following directions:

(a) The 2nd respondent / employee is not entitled for any back wages as the principles of 'no work no pay' would be applicable.

(b) The 2nd respondent / employee is entitled for continuity of service.

(c) The petitioner / Management is at liberty to transfer the 2nd respondent / employee to the transferred branch at Lady Doak College, Madurai or to any other branch in Madurai District for the remaining period of services, enabling him to realise the importance of the



public services in the interest of public at large.”

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14. In normal circumstances, I would have relegated the petitioner to move the Tribunal. But when in the case of an identically placed individual the order of dismissal has been set aside and reinstatement was ordered, there is no reason to treat the petitioner differently.

15.If I relegate the petitioner to go before the Tribunal, it would definitely take quite a few years for the issue to get decided. The petitioner is left with one year to reach the age of superannuation. He is said to be suffering from Cancer. It is for this reason I propose to apply the doctrine of parity. Even otherwise the case of the petitioner is on par with that of Ramamoorthy. The petitioner had already given up his claim for backwages. In the case of Ramamoorthy also, backwages were denied. In this view of the matter, this writ petition is also disposed of on the same lines as that of W.P.No.24701 of 2017.



16.The order of dismissal is set aside. The petitioner will not be entitled for backwages from the date of dismissal till date. The petitioner will be entitled to continuity of service. The petitioner is brought down to the next lower stage in the scale of pay. No costs. Consequently, connected miscellaneous petitions are closed.

04.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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15

W.P.(MD)NO.9044 OF 2023

G.R.SWAMINATHAN,J.

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W.P.(MD)No.9044 of 2023

04.10.2023