



W.A.(MD) No.1497 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**W.A.(MD) No.1497 of 2022
and
C.M.P.(MD) No.12489 of 2022**

- 1.The Chief General Manager
State Bank of India
HR Department
Local Head Office
Circle Top House, Post Box No.737
Aparna Complex, No.16, College Lane
Chennai
- 2.The General Manager (AP)
Network 2, Local Head Office, SBI
Circle Top House
Aparna Complex
No.16, College Lane
Chennai-6
- 3.The Deputy General Manager and
Disciplinary Authority
State Bank of India
Disciplinary Proceeding Cell
Net work 2, Administrative Unit
MC Donals Road
Trichy



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4.The Deputy General Manager
SBI Zonal Office
Kurunji Complex
State Bank Road
Coimbatore-18

5.The Deputy General Manager (Operation)
Legal Office, State Bank of India
Circle Top House
Aparna Complex
16, College Lane
Chennai-600 006

6.The Branch Manager
State Bank of India
Sirkalai, Nagai District-609 110

7.The Chief Manager
State Bank of India
Villupuram

... Appellants

-vs-

A.Radhakrishnan

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 21.07.2022, passed in W.P.(MD) No.2311 of 2012, on the file of this Court.



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For Appellants : Mr.S.Ravindran, Senior Counsel
assisted by Mr.M.Ponniah

For Respondent : No appearance

J U D G M E N T

[Judgment of the Court was made by S.M.SUBRAMANIAM, J.]

We have listed the matter for hearing on 15.12.2023. Since none appeared for the respondent, we adjourned the matter to 19.12.2023. When the matter came up for hearing on 19.12.2023, again there was no representation on behalf of the respondent. Since the respondent is not interested in defending his case either by appearing in person or through his counsel, we have not granted any further adjournment, taken up the matter for hearing, heard the learned Senior Counsel appearing for the appellants and thereafter, posted the matter for passing orders today i.e. 20.12.2023. Accordingly, this writ appeal is listed today under the caption “for orders”. Even today, there is no representation for the respondent either in person or through his counsel.

2. Learned counsel on record for the appellants made a submission that he has sent a whatsapp message as well as text message to



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the learned counsel for the respondent and he has also received the same. Beyond that, the learned counsel on record for the appellants made a phone call to the learned counsel for the respondent through mobile and informed him about the listing of the case today under the the caption “for orders”. Despite the same, learned counsel for the respondent failed to appear before the Court and argue the case.

3. This intra-court appeal has been instituted by the State Bank of India challenging the order, dated 21.07.2022, passed in W.P.(MD) No.2311 of 2012.

4. The respondent was working as an Officer in the rank of Junior Management Grade Scale-I in Sirkali Branch of the appellant – Bank. On the allegation of misconduct, disciplinary proceedings were initiated against him. A charge memorandum was issued to the respondent on 20.07.2009. An Inquiry Officer was appointed *vide* proceedings dated 10.09.2009. The Inquiry Officer conducted an inquiry by affording opportunity to the delinquent officer and submitted final report on 29.07.2010. The delinquent officer submitted his further objections on the findings of the inquiry report and finally, the Disciplinary Authority imposed the punishment of dismissal from service on



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the respondent in terms of Rule 67(j) of State Bank of India Officers' Service Rules (SBIOSR), *vide* proceedings dated 01.02.2011. Challenging the same, the respondent preferred an appeal on 10.03.2011 and it was rejected by the Appellate Authority, *vide* proceedings dated 30.06.2011, confirming the punishment of dismissal from service imposed on the respondent by the Disciplinary Authority.

5. The charges framed against the respondent are that he has fraudulently used the password of N.Sivashanmugham, Deputy Manager and enhanced overdraft facility. He has unauthorizedly credited Rs.4,79,495/- to his account. He has fraudulently used the password of N.Sivashanmugham, Deputy Manager, with a view to credit Rs.4,79,495/- to his account. On 41 occasions, he has unauthorizedly overdrew the overdraft facility. He has sanctioned gold loan of Rs.61,500/- to his wife R.Senthamarai at a concessional rate of interest, which is meant for agriculturists. He has sanctioned gold loan of Rs.1,58,100/- to Baskar, Bank's retainer taxi driver, at a concessional rate of interest, which is meant for agriculturists.

6. It is not in dispute that inquiry was conducted by affording opportunity to the respondent to defend his case. The Inquiry Officer held



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that the charges framed against the respondent are proved. The report of the Inquiry Officer was accepted by the Disciplinary Authority, who in turn imposed the penalty of dismissal from service on the respondent. Since the Appellate Authority confirmed the punishment of dismissal from service imposed on the respondent, he has chosen to file the writ proceedings.

7. The learned Single Judge, by the impugned order, disposed of the writ petition by modifying the punishment imposed on the respondent from dismissal from service to that of a compulsory retirement.

8. Challenging the same, the appellant – Bank has filed this writ appeal.

9. Mr.S.Ravindran, learned Senior Counsel, assisted by Mr.M.Ponniah, learned counsel on record for the appellant – Bank, contended that the learned Single Judge was misled that an incompetent authority imposed the major penalty of dismissal from service. The observations made in Paragraph No.13 of the impugned Judgment are incorrect in view of the fact that the BPR Project Department has changed the designation of DGM (NCM) to DGM (Operations & Credit).



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10. The learned Single Judge misconstrued as if that for Scale I and II Officers, for the disciplinary proceedings, the Disciplinary Authority is DGM (NCM) and the appellate authority for minor penalty is GM, for major penalty is CGM and the reviewing authority for minor penalty is CGM, for major penalty is RC. The learned Single Judge arrived at a conclusion that on perusal of the delegation of powers, it is seen that fourth and fifth respondents in the writ petition are not having any power as pointed out by the first respondent in the writ petition.

11. In the context of the above observation, the fourth respondent in the writ petition is the Deputy General Manager, SBI Zonal Office and the fifth respondent is the Deputy General Manager (Operation), State Bank of India, Legal Office. However, the learned Single Judge failed to note that as per the Circular dated 09.07.2009, issued by the State Bank of India, HR Department, the change of designation from DGM (NCM) to DGM (Operations & Credit) has been notified as the Disciplinary Authority. The said Circular advised that the decisions taken by DGM (O&C) as Disciplinary Authority and Appellate Authority after change in the designation should also stand ratified. Therefore, the respondents 4 and 5 in the writ petition are one and the same



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on account of the re-designation and the said observation made in the order impugned in this writ appeal is erroneous and contrary to the delegation of the administrative powers conferred on those officials.

12. Secondly, in Paragraph No.14 of the impugned order, the learned Single Judge made an observation that the charges framed against the respondent are serious. However, the learned Single Judge arrived at a conclusion that all the amounts were subsequently remitted back and there is no financial loss to the appellant – Bank. The jewel loan obtained by a driver had also been repaid and therefore, the said repayment would vitiate the disciplinary proceedings, since there was no intention on the part of the respondent to grant loan to the ineligible persons by using his capacity as an officer. Such a finding is beyond the scope of judicial review. By a mere remittance of money in an illegal transaction, the delinquent officer cannot be allowed to be escaped from the clutches of the disciplinary proceedings. Once the charges are proved, the Disciplinary Authority is empowered to impose penalty and in the present case, the penalty imposed cannot be construed as disproportionate to the gravity of the charges proved. Thus, the learned Single Judge is incorrect in forming such an opinion.



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13. The learned Single Judge undoubtedly formed an opinion that the charges against the respondent are absolutely serious. The respondent misused the password of N.Sivashanmugham, Deputy Manager, who in turn deposed before the Inquiry Officer that he has not authorized the respondent to use his password and ID. Though the proved allegations are serious, learned Single Judge modified the punishment to that of a compulsory retirement from dismissal from service.

14. The learned Senior Counsel further contended that modification of punishment by exercising the power of judicial review is impermissible and therefore, the order impugned in this writ appeal is liable to be set aside.

15. The charges against the respondent are undoubtedly serious in nature, which has been observed by the learned Single Judge also in the impugned order. The charges held proved. Fraudulent usage of password of one N.Sivashanmugham for authorizing the transaction was held proved. Irregular sanctioning of jewel loans to the ineligible persons were also held proved. When such serious allegations are proved against the respondent,



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who was working as an officer in the appellant – Bank, there is no reason to modify the punishment of dismissal from service to that of a compulsory retirement.

16. The procedures, as contemplated under the Discipline and Appeal Rules, were followed by the appellant – Bank. Adequate opportunities were afforded to the delinquent officer to defend his case. The power of judicial review by the High Court under Article 226 of the Constitution of India is to ensure the process through which the decision taken by the authority concerned is in consonance with the statute and rules in force, but not a decision itself.

17. By exercising the power of judicial review, High Court cannot modify the punishment. Even in case the High Court forms an opinion that the punishment imposed is disproportionate, the matter is to be remitted back to the Disciplinary Authority for imposing any other penalty in consonance with the rules in force. High Court cannot modify the punishment from dismissal from service to that of a compulsory retirement, by exercising the power of judicial review in disciplinary matters. High Court cannot sit as the second appellate authority so as to modify the punishment imposed by the



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Disciplinary Authority and confirmed by the Appellate Authority. Such an exercise is beyond the scope of the judicial review.

18. Usurping the powers of the Disciplinary Authority and the Appellate Authority by the High Court for modification of punishment has been held as impermissible by the Honourable Supreme Court in the cases of ***Deputy Commissioner, KVS & Others vs. J.Hussain***, reported in **(2013) 10 SCC 106** and ***Union of India and another vs. S.S.Ahluwalia*** [Order dated 24.08.2007 in Appeal (Civil) No.4247 of 2006] In the present case, the charges against the respondent are serious in nature and the procedures as contemplated were followed by the Disciplinary Authority and based on the proved charges, the punishment of dismissal from service was imposed on him. The Appellate Authority has also independently considered the grounds raised by the respondent and rejected the appeal by confirming the order passed by the Disciplinary Authority.

19. The ground of jurisdiction raised by the respondent before the Writ Court is also untenable in view of the Circular issued by the appellant – Bank changing the designation from DGM (NCM) to DGM (Operations & Credit). Thus, the designated Disciplinary Authority has imposed the penalty



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of dismissal from service. Thus, the ground of jurisdiction raised by the respondent before the Writ Court is untenable.

20. We do not find any other reason to reconsider the penalty of dismissal from service imposed on the respondent by the Disciplinary Authority and confirmed by the Appellate Authority. The learned Single Judge has gone beyond the scope of the judicial review by modifying the punishment from dismissal from service to that of a compulsory retirement, which is unacceptable. For all these reasons, we are inclined to interfere with the order impugned in this writ appeal.

21. Accordingly, the writ appeal is allowed and the order dated 21.07.2022, passed in W.P.(MD) No.2311 of 2012, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.]

[V.L.N., J.]

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

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