



W.P(MD)No.7773 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P(MD)No.7773 of 2014

and

M.P.(MD)No.1 of 2014

P.Seeni

... Petitioner

Vs.

The Senior Manager,
Disciplinary Authority,
Indian Overseas Bank,
Central Office,
763, Anna Salai,
Chennai-600 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records vide order DO:VIG:SM(GR):DA:7968:2012-13, dated 02.03.2013 passed by the respondent in which the respondent dismissed the petitioner from service of part time sweeper of Indian Overseas Bank, Narikudi Branch and quash the same and consequently direct the respondent to appoint the petitioner as part time sweeper in his Indian Overseas Bank of Narikudi Branch.

For Petitioner : Mr.R.Murugappan

For Respondent : Mr.N.Dilipkumar



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ORDER

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This writ petition seeks for a writ of certiorarified mandamus to quash the proceedings of the sole respondent in proceedings No. DO:VIG:SM(GR):DA:7968:2012-13, dated 02.03.2013 and for a consequential direction to the respondent to appoint the petitioner as a part time Sweeper in Indian Overseas Bank, Narikudi Branch.

2.The petitioner was working as a part time sweeper with the respondent Bank at Narikudi Branch, Virudhunagar District. He was dismissed from service with effect from 02.03.2013 on the charge that he has forged the signature of two account holders, namely one Mr.K.S.Krishnan and Smt.Rajamani and misappropriated the amounts. From the account of Mr.K.S.Krishnan, he has received a sum of Rs.46,500/- on different dates and from the account of Smt.Rajamani, he had received a sum of Rs.7,000/-. Apart from that, the petitioner had represented to one Mr.Gopal that he remitted a sum of Rs.5,000/- received from him in his account, but the petitioner had actually remitted the said amount in his own account.



3. On the above charges, the petitioner was suspended from service on 17.11.2011. Thereafter, an Enquiry Officer was appointed and initially, the enquiry was conducted at Indian Overseas Bank, Narikudi Branch at Virudhuangar District. Subsequently, the enquiry was shifted to Chennai and the Enquiry Officer submitted a report against the petitioner. The Disciplinary Authority on the basis of the enquiry report, dismissed the petitioner from service on 02.03.2013. Challenging the same, the present writ petition has been filed.

4. Mr. R. Murugappan, learned counsel appearing for the petitioner urges the following three points:

(1) prior to the order of dismissal, due process of law was not followed;

(2) the enquiry was transferred from Narikudi to Chennai to prejudice the writ petitioner; and

(3) the petitioner was not heard prior to the passing of order of dismissal.

He would say that all these are facets of principles of natural justice and in violation of the same, the impugned order had been passed.



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5.Mr.N.Dilipkumar, learned counsel for the respondent bank submitted that the petitioner was given sufficient opportunity during the enquiry. He would point out that defence representative was appointed, who had conducted the proceedings for three days at Narikudi branch and it was on the request of the defence representative for the examination of the defence side witnesses alone, the matter stood adjourned to Chennai. Further, the petitioner did not avail that opportunity and therefore, the evidence was closed and report was submitted. He would lastly, point out that before the acceptance of the enquiry report, two show cause notices were issued to the writ petitioner and his objections were considered and only thereafter, the order of dismissal was passed.

6.I have considered the arguments on either side and perused the materials placed on record.

7.The entire case as projected by the petitioner revolves only on violation of principles of natural justice. It is on record that charge sheet was served on the petitioner and after obtaining his explanation, he was given an opportunity to appoint a defence representative at the time of enquiry. The petitioner also availed the same and the enquiry



proceedings commenced on 11.10.2012 at Narikudi Branch and completed on 13.10.2012. The defence representative of the petitioner had cross examined the witnesses produced by the Bank. Therefore, the first submission of the learned counsel for the petitioner that the petitioner was not given sufficient opportunity to defend his case has to necessarily fail.

8.Insofar as the second point that the enquiry had been shifted from Narikudi Branch to Chennai, distancing about 500 km away from the place of occurrence, causing prejudice to the petitioner is concerned, I have to agree with the learned counsel for the respondent bank. This is because on 13.10.2012, the presenting Officer has stated that he had no further witnesses or documents to introduce and he was closing his side witnesses and documents. At this stage, the defence representative wanted to examine one Mr.Ganesan and Mr.Senthilkumar, two Cashiers, who are working with the respondent bank and requested the Enquiry Officer to shift the matter to Chennai. Accepting the said request, the Enquiry Officer had shifted the matter to the Central Office, Chennai and had further stated that the enquiry will be conducted only for one further date.



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9. In other words, the respondent Bank had presented all the documents and examined the witnesses for the purpose of proving its case and the matter was shifted to Chennai only at the instance of the writ petitioner to let in his side of evidence. Therefore, it is the petitioner, who had not availed the opportunity granted to him by producing any evidence at Chennai.

10. Further, the enquiry was conducted for three full days at Narikudi Branch from 11.10.2012 to 13.10.2012. The petitioner had presented in the enquiry and also had the assistance of the defence representative. It is pertinent to note that on 13.10.2012 agreeing to the shifting of the enquiry to Chennai, the writ petitioner had signed the proceedings.

11. Copies of the deposition, which have been placed before me lead me to the conclusion that principles of natural justice had been scrupulously adhered to by the Bank during the time of enquiry. Therefore, the contention that the enquiry was shifted from Narikudi to Chennai prejudicing to the petitioner does not appeal to me.



12. In any event, shifting was at the request of the charge sheeted Officer / writ petitioner and his representative, hence, he has nobody to blame, other than himself and it is not open to him to turn around and argue that the enquiry was not conducted in a proper manner and in violation of principles of natural justice.

13. There remains yet another point, which has to be dealt with that the petitioner was not heard prior to his dismissal. Going through the typed set of papers, it is clear that the disciplinary authority namely, the Senior Manager had issued show cause notice in proceedings No.DO:VIG:SM(GR):DA:7968:2012-13 calling upon the petitioner to give his explanation for the proposed punishment on 12.02.2013. Hearing date was also fixed to appear in the show cause notice, but the petitioner did not appear before the disciplinary authority on the date of hearing. When the petitioner failed to appear for enquiry, it is not open to the petitioner to say that there has been violation of principles of natural justice.

14. Natural justice is not a straight jacket formula to be applied but the one, which depends on the facts and circumstances of each case. The bank having complied with the principles of natural justice, none of



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the points raised by the learned counsel for the petitioner vitiate the order of dismissal.

15.It is also on record that the petitioner had given two documents, namely ME-9 and ME-20 confessing to his immediate authority namely, Manager stating that he had misappropriated the amount. It is the case of the Bank that for an employee, who misappropriated funds, no other punishment cannot be given other than one of dismissal. The punishment of dismissal is justified in consideration to the nature of the employment that has been carried out by the petitioner. A Bank cannot have a thief on its rolls and therefore, even on the ground of proportionality, the order of dismissal does not warrant any interference.

16.Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.10.2023

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
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V.LAKSHMINARAYANAN, J

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