BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.15431 of 2018
and
W.M.P.(MD).No.13901 of 2018

S.Sunder Singh (Deceased)

S.Thenmozhi ... Petitioner

(Petitioner substituted vide Court Order dated 20.06.2022 in W.P.(MD).No. 18964 of 2021 in W.P.(MD).No.15431 of 2018)

Vs.

1.The Managing Director,
Canara Bank,
Head Office,
112 J.C.Road,
Bangalore.

2.The General Manager,
Appellate Authority,
Canara Bank,
Personnel Wing,
Head Office,
112 J.C.Road,
Bangalore.

3.The Deputy General Manager,
Disciplinary Authority,
Canara Bank,
Circle Office,
East Veli Street,
Madurai. ... 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 pertaining to the impugned order & punishment proceedings dated 30.08.2017, on the file of Respondent No.3 and the consequential impugned order dated 20.06.2018 on the file of the Respondent No.2, quash the same as illegal and consequently direct the respondents to reinstate the petitioner into services as Sub-staff (Peon) with consequential effects, within the time stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy,
Senior Counsel,
For Mr.S.Rajasekar

For Respondents : Mr.C.Godwin

ORDER

This Writ Petition is filed to quash the order dated 30.08.2017 and the consequential order dated 20.06.2018 and consequently direct the respondents to reinstate the petitioner into services as Sub-staff (Peon) with consequential effects.

2. The petitioner joined in Canara Bank during 1984 as Daily Wages and subsequently appointed as Sub-Staff (Peon) and was regularized on 03.02.1987, then as Sub-Staff at Canara Bank, Tuticorin from August 1997. On 11.11.2002, a charge memo was issued alleging that the petitioner was instrumental in passing on the OSC/FC details to the fraudsters to enable them to commit fraud in the branch and has committed gross misconduct within the meaning of Clause 3(j) and 3(m) of Chapter XI of Canara Bank Service Code. The contention of the petitioner is that even before completion of investigation, the petitioner's name was falsely implicated in the fraud committed by the outsiders and the petitioner is no way connected with the said fraudulent transaction. The departmental enquiry was conducted by the respondent Bank and the Enquiry Officer submitted his report dated 13.05.2003 and the petitioner was found guilty of 2 out of 3 charges. Based on the report, the petitioner was removed from service. The Bank also preferred criminal complaint on the same set of facts in C.C.No.9 of 2003 on the file of Special Court for CBI Cases. Since the respondents have proceeded with both the criminal proceedings as well as the domestic enquiry, aggrieved over the same, the petitioner filed a Writ Petition in W.P.No.26999 of 2003 and obtained an interim order dated 24.12.2003 in M.P.No.32979 of 2009. The respondents hurriedly fixed the personal hearing

on 24.12.2003 proposing the punishment of removal from service. In the meanwhile, the Special Court for CBI Cases, Madurai has passed the judgment dated 12.12.2006 in C.C.No.9 of 2003, wherein, the petitioner was acquitted. By ignoring the judgment which was rendered in the same set of facts and inspite of the stay granted in the above stated Writ Petition, the respondents mechanically passed the order dated 12.12.2008 by citing the termination order passed by the disciplinary authority on 30.03.2007. Therefore, the petitioner again filed Writ Petition in W.P.(MD)No.921 of 2010 and this Court was pleased to quash the impugned order and remanded the case back to the authorities vide order dated 28.02.2017. The disciplinary authority ignoring the findings rendered by the Court in W.P.(MD)No.921 of 2010 and after conducting a personal hearing on 19.07.2017 as an empty formality, again passed the impugned order and punishment proceedings dated 30.08.2017 and also stated that the termination order passed on 30.08.2017 shall be effective from 30.03.2007, that is the date of earlier orders of the disciplinary authority. Aggrieved over the same, the present Writ Petition is filed.

3. The respondents have filed a counter stating that there is no scope for judicial review and no case made out by the petitioner to interfere with the impugned orders. There is no violation of any statutory right of the petitioner

which warrants intervention of this Court. The impugned orders would indicate that none of the legal rights of the petitioner had been infringed. Instead of approaching the statutory authorities, the petitioner has filed Writ Petition which is against the settled proposition of law. The petitioner is seeking to re-appreciate the oral and documentary evidence led in the disciplinary proceedings and relied on the judgment rendered in the case of *The State Bank of India Vs Ram Lal Bhaskar and another reported in 2011 (10) SCC 249*, wherein it has been held that a petition under Article 226 of Constitution of India cannot be construed as a statutory appeal. As far as the facts are concerned, a fraud was perpetrated at Beach Road Main, Tuticorin Branch by certain fraudsters that on 02.05.2001, a new Current Account was opened in the name of M/s.A.P.N. International. The party had deposited outstation cheques of huge values on various dates of Rs.111.45 Lakhs which were lodged and sent for collection under OSC (Outward Sight for Collection). Subsequently, the branch had received IBA purportedly towards realization of OSC (Outward Sight for Collection) lodged. On 04.08.2001, upon verification of records, it was found that the party had perpetuated fraud on the Bank with the help of some of the employees of the Branch. Hence, the Bank had lodged a complaint with CBI without mentioning any name of the employees. A departmental investigation was also conducted which revealed that the petitioner was also part of the fraud. Hence, a charge sheet dated 11.11.2002 was issued. After due enquiry, the enquiry officer has held 2 charges were proved and 1 charge was not proved. Based on the gravity of the charges, the petitioner was proposed to be imposed for dismissal and granted personal hearing on 18.12.2003. Based on the personal hearing and relevant records, the petitioner was imposed with the punishment of dismissal from service. In the meantime, on completion of the investigation, the CBI had filed a final report before the Court of Special Judge for CBI Cases, District Court, Madurai. As far as the criminal case was pending before the Court, the petitioner has filed W.P.No.26999 of 2003 and this Court has directed to maintain *status quo* in the matter. Therefore, the punishment of dismissal was not issued. Subsequently, on 09.08.2004, this Court disposed of the said Writ Petition, wherein the respondents are directed to keep the disciplinary proceedings in abeyance without passing any final orders and further proceedings could be continued only after the conclusion of the proceedings before the Criminal Court. Aggrieved by the above order, the said Bank filed Writ Appeal in W.A.No.4005 of 2004. Pending Writ Appeal, a judgment was rendered in criminal case in C.C.No.9 of 2003 dated 12.12.2006 wherein the petitioner was arrayed as Accused No.5, had held that the charge was not proved beyond reasonable doubt and the petitioner was acquitted. As such, the Division Bench had dismissed the Writ Appeal as infructuous on

01.02.2007. Since the criminal case was disposed of and as per the directions of the learned Single Judge, the disciplinary authority had accepting the findings of the enquiry officer, had issued afresh punishment proceedings dated 30.03.2007 to terminate the petitioner from service, against which an appeal was preferred and the appellate authority rejected the appeal by confirming the punishment imposed by the disciplinary authority. As against the said order, the petitioner filed W.P.(MD)No.921 of 2010 and this Court vide order dated 28.02.2017 remanded the case to the disciplinary authority for reconsideration. Thereafter, the personal hearing was granted to the petitioner after considering the facts and circumstances and also the relevant records, the petitioner was terminated from service with effect from 30.03.2007 and again preferred an Appeal and the same was rejected vide order dated 20.06.2018. As far as the merits of the case are concerned, the CBI Court has held that "the involvement of the petitioner is not proved beyond reasonable doubt". This would be evident that the petitioner was not acquitted due to his non-involvement, instead the petitioner was acquitted by reason that the prosecution has failed to prove the charge on the petitioner beyond reasonable doubt. Moreover, the petitioner has also contended that the CBI Court has awarded him a clean acquittal whereas in reality the acquittal is not clean and instead only on ground that the involvement of the petitioner has not been proved beyond reasonable doubt.

The Bank has passed the final order only after the completion of the criminal case and as such there is no non-compliance of the orders of the Court by the Bank. Therefore, the allegations against the Bank that the termination order was passed without any reason and non-application of mind which cannot be accepted. Even though the petitioner had prayed in Writ Petition in W.P.(MD)No.921 of 2010 for reinstatement into service, the same was not granted by this Court. But the case was remanded to the disciplinary authority to proceed from the stage of personal hearing to the petitioner. The petitioner has not challenged the order which has now become final. Hence, the allegations that subsequent order of termination was passed on with effect from 2007 cannot be challenged. Therefore, the respondents prayed to dismiss this Writ Petition.

4. Pending writ petition the writ petitioner died on 29.09.2020 and the legal heirs of the deceased employee had filed substitution petition and the same was allowed on 20.06.2022. The legal heir of the deceased employee had filed additional affidavit raising various grounds. It is contended that the employee's co-accused A4 one S.Arumugam, who was an officer with higher responsibility than that of the petitioner was held guilty by the Criminal Court. Inspite of the fact that the said Arumugam was held guilty, the respondents have

imposed a punishment of compulsory retirement on the said Arumugam and he is drawing the pension from the year 2003. Hence, there is discrimination in the disciplinary proceedings and also on the punishment. The charge levelled against the petitioner and the said Arumugam would also establish that the said person Arumugam was also involved in the said fraud whereas the petitioner was not involved in the fraud more particularly, the said Arumugam has prepared the forged schedule but the allegation against the petitioner is that he has transmitted the information to the outsiders to commit fraud. Therefore, the petitioner is aggrieved by the discriminating punishment and hence filed the additional affidavit.

5. The respondents have filed additional affidavit stating that the charge against the petitioner and the said Arumugam were found to be substantially different and accordingly the punishment was awarded in the Departmental proceedings. Therefore, the punishment was awarded based on the charges against each and every delinquent. Moreover, if the petitioner is alleging discriminatory, it cannot be agitated under Article 226 of Constitution of India by way of filing this Writ Petition. The degree of evidence required in criminal case is different, whereas in the departmental proceedings, it is only preponderance of probability. Therefore, the acquittal in the criminal case

cannot be taken into account. Therefore, the respondents prayed to dismiss this Writ Petition.

6. Heard Mr.T.Lajapathi Roy, learned Senior Counsel for Mr.S.Rajasekar appearing for the petitioner and Mr.C.Godwin, learned counsel appearing for the respondents and perused the records.

7. The learned Senior Counsel appearing for the petitioner has relied on the charges framed against the said Arumugam who was an officer and was Accused No.4 in the criminal case. The said charges are extracted hereunder:

> *"...21. It has been further alleged that A5 (unquote: Writ Petitioner), Sunder Singh was showing extraordinary interest in appointing the tapal duty, during the period of May 2001 to July 2001 and he used to receive telephone calls at the branch from A1 and the absconding accused which he used to attend in privacy in the computer room and that immediately thereafter, he used to go out to meet them outside the branch to give cheques removed from the branch after lodgment.*
> *22. It has been further alleged that A4 S.Arumugam, Officer, processed the loan account of A6 T.Mohan at Canara bank, Palayamkottai Branch and was well known to him and hence A6 introduced A4 to A1 and the absconding accused for cheating Canara Bank Beach Road, Tuticorin. Further, A1 and the absconding accused used to meet A4 in the Bank.*
> *23. It has been further alleged that A4, used the CDB schedules exclusively available with him to prepare forged*

OSC schedule dated 14.07.2001 and further that significantly....”

8. On perusal of the charge, it is seen that the allegation against the said S.Arumugam is that he processed the loan account of Bank client who was well known to him. Moreover, the said Arumugam used the CDB schedules exclusively available with him to prepare forged OSC schedule dated 14.07.2001. But the allegations against the petitioner is that he was showing extraordinary interest in attending the tapal duty, during the period of May 2001 to July 2001 and he used to receive telephone calls at the branch from A1 and the absconding accused which he used to attend in privacy in the computer room and that immediately thereafter, he used to go out to meet them outside the branch to give cheques removed from the branch after lodgment. The respondents have clearly discriminated between the petitioner and the said Arumugam. The said Arumugam who was holding an Officer Cadre, who was having exclusive possession of CBD schedules and he was accused of preparing the forged OSC schedule dated 14.07.2001. But the petitioner has handed over the forged OSC schedule to the outsider, hence the gravity of the offence of the said Arumugam is graver than that of the petitioner.

9. It is further seen that the said Arumugam was convicted by the Trial Court but was acquitted in Criminal Appeal No. 580 of 2006. In the disciplinary proceeding the charge against the said Arumugam was held to be proved. As far as the criminal case against the petitioner is concerned the petitioner was acquitted by Trial Court itself and in the disciplinary proceeding two charges were held proved and one charge was held not proved. But the respondents have imposed the punishment of compulsory retirement for the said Arumugam. But has imposed dismissal against the petitioner. The person prepared the forged documents was given compulsory retirement and the person who passed on the forged documents is given punishment of dismissal from service. From the above facts it is clearly evident that the respondents have clearly discriminated the petitioner and the said Arumugam. Not only discriminatory but disproportionate as well.

10. In the criminal case, the Court has held as follows:

> *"227.During cross examination of all the witnesses who spoke about alleged indulgence of A5 in tapal duty, it has been admitted that A5 as sub staff had no right to opt for a particular duty according to his will and pleasure. He has to do the duty allotted to him by the 2 Line Manager who was having internal control of the branch. It was also admitted that A5 was also attending currency chest duties and extension counter duties.*

228.Learned Counsel for A5 forcefully argued that though the Investigation Officer had seized the Work Entrustment Register, the same has not been produced in Court, and the only reason is that it does not conform to the prosecution allegation that A5 was attending tapal duty on the relevant dates. He further argued that because the document had been seized and was in possession of the prosecution and because inspite of this fact, the document had not been produced, A5 was entitled to the benefit U/s.114(g) of the Evidence Act. I find much force in this argument. The Register which had been seized should have been produced.

229.Learned Public Prosecutor argued that A5 should have taken steps U/s.91 Cr.P.C. to summon the document not produced by the prosecution. I do not agree. It is for the prosecution to place the records before the Court and prove the case. The defence is entitled to protection U/s. 114(g) when a document in possession of the prosecution is not produced. If the document had been in possession of any third person, then the argument that the accused should summon the document U/s.91 Cr.P.C can be accepted. But here the case is different. The document in possession of the prosecution had not been produced in Court. P.W.63 the I.O has stated in his cross examination that the document had not been produced because prosecution is not relying on it. But when there is a specific charge that A5 was showing extra interest in attending tapal duty, and it had been admitted that the work for the sub-staff will be allotted by the 2nd Line Manager, and there is a possibility that the same will be reflected in the Work Entrustment Register and when such register had been seized by prosecution but still not produced before court in such circumstances I hold that A5 is entitled to protection and benefit U/s.114(g) of the Evidence Act.

230. Further no evidence has been let in show that there was meeting of minds between A5 and the other accused.

There is also no evidence, unlike with respect to A4 that A5 knew A2 or Al and the absconding accused before the operation took place. I am aware of the evidence of P.W.32, Krishnan, who has deposed that he had seen A5 in conversation with Al and the absconding accused, but I cannot bring myself to pass an order adverse to A5 on this one piece of evidence alone. I am also aware that in conspiracy it is not necessary that all accused must have known each other right from the beginning, and therefore A5 should not get the benefit of doubt on this ground. Still some credible evidence should be forth coming. Further the mere fact that A5 was attending phone calls, cannot be held against him. With no further details, a public servant cannot be convicted for attending phone call in his place of work.

282.On an analysis of the entire materials on record in this case, circumstantial oral and documentary, I hold that the prosecution has not sufficiently and satisfactorily proved its case against A5 and A6 and I acquit A5 and A6 U/s. 235(1) Cr.P.C on all the charges framed against them".

11. The Criminal Court has categorically held that merely the petitioner has attended the phone calls cannot be stated that the petitioner has committed the fraud. Moreover, the respondents have not produced the relevant records especially the work entrustment register. Further the petitioner is only sub staff and is bound to carry on the work entrusted by the Manager and line two manager and has not option to opt for any work. Therefore, the Trial Court has come to the conclusion based on the post of sub staff coupled with the fact that there is no evidence to prove the charge. Hence the contention of the

respondents that the petitioner was acquitted by reason that the prosecution has failed to prove the charge on the petitioner beyond reasonable doubt cannot be accepted.

12. The learned Senior Counsel appearing for the petitioner further relied on the judgment of the High Court where the phrase of "Honourable Acquittal" and "Acquittal" was interpreted. The Criminal Procedure Code and IPC has never used the word 'Honorable Acquittal' or 'Acquittal', it only refers to the word as acquittal. The "Honourable Acquittal" is a phrase used by the Courts in order to distinguish the acquittals. Therefore, such phrase cannot be taken inot for consideration and impose punishment. This Court is of the considered opinion that when there is no discriminatory in the word "acquittal", then the respondents cannot import their own ideas and deny the benefits of acquittal to the petitioner.

13. The next contention of the respondents is that in disciplinary proceedings the test is only preponderance of probability and based on the same the punishment was imposed. It is absolutely right that the test for disciplinary proceedings is preponderance of probability. But the same cannot be a ground to impose a higher punishment, when co-delinquent was imposed a lesser

punishment. At the cost of repetition, the petitioner is only sub staff who had carried out the work allotted to him, but the said Arumugam is in Officer Cadre who had prepared the forged schedules, in such circumstances, this Court is of the considered opinion that the respondents have consciously imposed lesser punishment to the said Arumugam than the petitioner. Hence it is clearly discriminatory. In such circumstances, the preponderance of probability theory cannot come to the aid of the respondents.

14. It is also to be seen that the respondents had imposed a punishment of dismissal from service on 30.03.2007. However, the case was remitted back to respondents for reconsideration. Then the respondents again imposed the same punishment of dismissal from service on 30.08.2017 but the effect of the order was from 30.03.2007. When it was pointed out the discrimination in awarding punishment to the said Arumugam and the petitioner, then also the respondents have imposed the same punishment and that too by giving effect to the date of punishment as 30.03.2007, which would amount to disproportionate of punishment.

15. The next contention that was raised by the petitioner is based on "Sastry Award". However, the learned counsel appearing for the respondents

submitted that the said plea cannot be taken, since the petitioner has never ever taken such plea before the authorities. The respondents' contention is rejected, since the said plea is a legal plea which can be raised at any point of time. In the said "Sastry Award", a direction was issued to the authorities which is extracted hereunder:

> *"505. As already stated we have tried to follow the regulations prescribed by the Sen Tribunal with modifications. We are very particular that a verdict of acquittal passed by a competent court of law should not be lightly thrown aside by the bank management in trying to institute departmental enquiries after the acquittal, as it would amount to a double trial in respect of the same offence. We have occasionally come across instances where a bank management has persisted in its application under Section 33 inspite of an acquittal by an ordinary court of the land after a full trial. The decisions of our courts are entitled to the highest respect and the bank managements should reinstate an employee who is honourably acquitted and pay him his full salary and allowances. The acquittal should not be lightly challenged by departmental enquiries for disciplinary action unless the bank management feels that there has been such a gross violation of the departmental rules as to necessitate a further enquiry in the interests of the institution on matters other than those in respect of which he has been already acquitted. If after the departmental enquiry the management still feels that the employee cannot continue in its service it can terminate his services only on payment of three months' salary and allowances in lieu of notice".*

16. When the Sastry Award has specifically directed the disciplinary authorities to take into consideration the acquittal of the Criminal Court, the

respondents have deliberately violated the guidelines issued by the said Award. Therefore, on this ground also, the petitioner is gaining. Moreover, as on date the writ petitioner died and the punishment imposed on the delinquent ought to be interfered with and the punishment ought to be modified.

17. It is seen from the records that the petitioner has joined the service and was regularized on 03.02.1987. It is seen after remitting the case back to authority, the respondents have imposed a punishment of termination from service on 30.08.2017, but with effect from 30.03.2007. Since this Court has held that the punishment is discriminatory and disproportionate, this Court is fixing the date of compulsory retirement as 30.08.2017.

18. Therefore, this Court is directing the respondents to modify the punishment of dismissal from service into compulsory retirement and take the service of the deceased writ petitioner from 03.02.1987 to 30.08.2017 for granting terminal and monetary benefits and disburse the same to the legal heirs of the deceased writ petitioner. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

19. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

12.04.2023

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

To

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