



W.P.(MD).No.13838 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.13838 of 2009
and
M.P.(MD).Nos.1, 2 and 3 of 2009

1.R.Varadharajulu (Died)

2.Sumithra

3.Bharath Ramakrishnan

... Petitioners

(P-2 and P-3 are substituted as LRs vide Court Order dated 01.11.2022 in W.M.P.(MD).No.11153/2021 in W.P.(MD).No.13838/2009)

Vs.

1.The Chief General Manager,
State Bank of India,
Personnel & HRD Department,
Local Head Office,
College Lane,
Chennai – 6.

2.The Assistant General Manager (Operations),
(Disciplinary Authority),
Region-IV,
The State Bank of India,
Disciplinary Proceedings Section,
Zonal Office, Mcdonalds Road,
Trichirappalli District.



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3.The Branch Manager,
The State Bank of India,
Perambalur Branch,
Perambalur District.

...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 relating to the impugned order dated 27.07.2006 of punishment of DISMISSAL WITHOUT NOTICE FROM SERVICE in the nature of disciplinary proceedings in terms of Memorandum of settlement dated 10.04.2002 issued by the second respondent against the petitioner and quash the same and consequently directing the respondents to reinstate the petitioner with full back wages from the date of dismissal (27.07.2006)

For Petitioner : Mr.T.Lenin Kumar

For Respondents : Mr.M.Kannan

ORDER

This Writ Petition is filed to quash the impugned punishment order dated 27.07.2006, wherein the petitioner was imposed the punishment of dismissal from service with a consequential relief directing the respondents to reinstate the petitioner with full backwages.



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2. The petitioner joined the respondent Bank service in the year 1995.

The petitioner was issued with the charge memo containing 15 charges vide order dated 12.04.2005. After elaborate enquiry, the petitioner was held guilty of charges and the impugned order dated 27.07.2006 came to be passed. The petitioner challenged the impugned order before this Court.

3. The respondents submitted that the charge against the petitioner are very serious. The petitioner is of habit to purchase the cheque inspite of insufficient funds in the account. He has misused his power as a Cashier which will amount to misappropriation of funds. It is not the single incident, but the petitioner has committed 12 such incidents. Moreover, the petitioner was continuously absented himself from duty without any intimation, few incidents are on 24.05.2003, 03.10.2003, 06.11.2003, 23.12.2003, 05.01.2004 to 23.01.2004 and 15.07.2004. Therefore, the respondents have initiated action against the petitioner. The further contention of the respondents is that the petitioner has challenged this after lapse of 4 years. Moreover, the charges are very serious and the respondents have rightly imposed the punishment of dismissal from service.



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4. Pending Writ Petition, the petitioner died on 13.01.2015. The wife of the deceased and son of the deceased have substituted themselves in this Writ Petition and the Substitution Petition was allowed vide order dated 01.11.2022.

5. The learned counsel appearing for the respondents vehemently opposed for modifying the punishment. The petitioner has not participated in the enquiry inspite of several notices.

6. The learned counsel appearing for the respondents relied on the judgment rendered in the case of *Chairman, State Bank of India and another Vs M.J.James reported in (2022) 2 SCC 301* for delay and laches, wherein it is held by the Hon'ble Supreme Court that if substantial hardship is caused to the other side, then the Court should not grant any relief to the person who had belatedly approached the Court. In this case, admittedly, the petitioner has approached this Court belatedly. However, the deceased family is before this Court. Hence, this Court is inclined to condone the delay.

7. As far as the proportionality of punishment is concerned, the learned counsel appearing for the respondents relied on *United Bank of India Vs*



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Bachan Prasai Lall reported in (2022) 4 SCC 358, wherein, the Hon'ble Supreme Court has held that the Bank employee always holds the position of trust where the honesty and integrity are the *sine qua non* and it would never be advisable to deal with such matters leniently. This Court is sympathetically modifying the punishment in order to grant benefits to the family alone. Therefore, this Court is inclined to grant relief on equity to the deceased family.

8. The learned counsel appearing for the respondents further relied on *Chennai Metropolitan Water Supply and Sewerage Board and others Vs T.T.Murali Babu reported in (2014) 4 SCC 108*, wherein, the Hon'ble Supreme Court has held that the charge of unauthorized absence cannot be condoned, if the delinquent without reason deliberately absented for work. Hence, the respondent submitted that for this charge alone the petitioner is liable to be dismissed. In the present case, the delinquent had faced charges and one of the charges is unauthorized absence. The respondents have imposed the punishment of dismissal from service for all the charges including unauthorized absence. Therefore, this Court is not inclined to deal with the charge of unauthorized absent separately, but deal with all charges including unauthorized absence and inclined to modify the punishment. For all charges,



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the modification of punishment is compulsory retirement by taking only 10 years of service of the deceased petitioner.

9. Moreover, it is seen that the impugned order is an ex-parte order. If it is so, then the case ought to be remitted back to the employer to conduct an enquiry by giving opportunity to the petitioner. But pending writ petition, the petitioner died. Therefore, this Court is of the considered opinion that the family of the deceased petitioner may not suffer without any terminal benefits. Therefore, taking a sympathetic view, this Court is inclined to modify the punishment.

10. It is seen from the records that the petitioner has joined the service in the year 1995 and dismissal order was passed in the year 2006. For the reasons stated above, the respondents are directed to modify the punishment as compulsory retirement and the date of dismissal shall be taken as the date of compulsory retirement. The respondents are directed to pay the terminal benefits to the wife and son of the deceased petitioner namely, Sumithra and Bharath Ramakrishnan. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.



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

23.01.2023

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

To

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Personnel & HRD Department,
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College Lane,
Chennai – 6.
- 2.The Assistant General Manager (Operations),
(Disciplinary Authority),
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S.SRIMATHY, J.

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