IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25/3/2024
Delivered on	21/6/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.38961 of 2006

1. N. Ramesh Kumar (Deceased)
2. R. Navaneetham
3. R. Sudha
4. R. Vinodhini
5. R. Sabarish Kumar
   (P.5 is a minor, rep. By the mother and natural guardian)
6. V.N.Natesan
7. R. Sagunthala ... Petitioners

(P.P2 to 7 are substituted as Lrs of deceased N.Ramesh Kumar/P.1 as per the order dated 19.6.2018 by MDIJ in M.P.No.1 of 2013 in W.P.No.38961 of 2006)

Vs

1. The Appellate Authority
   under the Tamil Nadu Shops and
   Establishment Act/
   Deputy Commissioner of Labour
   Office of the Deputy Commissioner of Labour
   Coimbatore.

2. The Management of
Karur Vysya Bank Ltd
Kumaran Road, Tirupur
Coimbatore District.

3. The Management of
Karur Vysya Bank Ltd
Central Office, Erode Road
Karur
Karur District. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records from the first respondent relating to the order dated 12/4/2005 in TNSE1/2004, quash the same and consequently, direct the first respondent to dispose the TNSE No.1/04 in accordance with law.

For petitioners	...	Ms.G.K.Dharshini for Mr.Ajay Khose
For respondents	...	Mr.R.V.Dinesh Raj Kumar Additional Government Pleader for R.1 Mr.P.Raghunathan for M/s. T.S.Gopalan for R.R.2 and 3.

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ORDER

The petitioner is seeking to set aside the order passed by the first respondent/Appellate Authority, dated 12/4/2005 in TNSC Act (1/2004), by way of issuing certiorarified mandamus.

2. During the pendency of the writ petition, first petitioner died and LRs of the petitioner were brought on record, as petitioner Nos.2 to 7.

3. The first petitioner who has joined the second respondent Bank as a Clerk on 24/3/1983 was promoted in the month of November 1988, as Officer Scale I and posted at Tirupur main branch. He has debited an amount of Rs.8 lakhs in TPOT account belonging to Latha Mills over and above OD facility on the oral instructions of one Mr.Senthil, Manager of TPOT and gave Pay Order in the name of Latha Mills, without any written instructions from TPOT, and on the very same day, a cheque for Rs.8 lakhs was purchased with the written instruction of Chief Manager. Subsequently, son of the Proprietor came to the Bank and informed that the said Senthil was not instructed to purchase Demand Draft or Pay Order by debiting from the account of Latha Mills

for Rs.8 lakhs on which immediately, the Chief Manager has given instructions to stop payment and accordingly, the said Pay Order issued in the name of Latha Mills was not honoured.

4. Charges were framed against the petitioner in respect of misconduct and after conclusion of enquiry, the Enquiry Officer has filed report holding that all the charges framed against the first petitioner were proved, after completion of formalities, thereby, first petitioner was dismissed from service. Aggrieved by the orders of dismissal, petitioner has preferred an appeal under the Shops and Establishments Act and the same was rejected on 22/2/2002. He has filed Review Petition and the same was also dismissed on 7/6/2002. Aggrieved by the same, instant writ petition is filed.

5. According to the affidavit filed along with writ petition, even before he joined Tirupur branch, there has been practice in the branch that for VIP customers most of the times, debits were permitted beyond the O.D limits, local cheque purchase was allowed, even before the said cheque was cleared. All the Officers of the Bank used on the oral request of Senthil, Manager of TPOT used to give Pay Orders/DDs

without even balance in the account and that amounts were being transferred from one account to the other account of TPOT on oral instructions and amounts were also being transferred from TPOT account to third party and cheques were given by Mr.Senthil were used to be purchased without waiting for the collection. In respect of the charges levelled against him, the petitioner has admitted that he has given Pay Order/D.D in the name of Latha Mills for Rs.8 lakhs on 16/11/1999 and also purchased cheque of Rs.8 lakhs on the very same day after getting written approval from the Chief Manager.

6. The respondent bank has submitted in the counter affidavit stating that the Bank used to extend several types of credit facilities against security to the borrowers and one such facility is that the borrower will offer his immovable properties by depositing title deeds against which a credit facility up to a certain limit will be allowed, on creation of Equitable Mortgage. It is mentioned further that series of transactions were made in the name of Latha Mills by one Mr.Senthil by misusing credit facility provided by the Bank. On inquiry it came to know that the petitioner has unauthorizedly debited SOD-RE Account of TPOT by Rs.8 lakhs. It is further submitted that not withstanding the

availability of the cash credit facility, without letter of authorization or a cheque in favor of the bank, pay order was issued.

7. Heard Mr.V.Ajay Khose, learned counsel for the petitioner, Mr.R.V.Dinesh Raj Kumar, learned Additional Government Pleader for the first respondent and Mr.P.Raghunathan, learned counsel for the respondents 2 and 3 and perused the record.

8. On a perusal of the grounds of this writ petition, it is clear that the petitioner has admittedly given Pay Order beyond the O.D limit without written instructions basing on the oral request made by Senthil, Manager of TPOT. Later in the evening, it was informed by the son of owner of TPOT to the Bank that Manager of TPOT has not instructed to get any Pay Order in the name of Latha Mills for Rs.8 lakhs and thereby it was stopped. It is the contention of the petitioner that he has given Pay Order/DD in favour of Latha Mills for Rs.8 lakhs over and above the O D limitations, as per the practice prevailing since long time and many of his predecessors have also given the ODs only on the oral instructions of Senthil, over and above OD limitations.

9. It is further submitted that the petitioner was denied effective cross examination in the enquiry proceedings by confining the scope of entire enquiry only with regard to the petitioner, even though charge memos were given to all the officials of the branch including Mr.Chakravarthy, who signed the pay order. It is submitted that enquiry should not have been confined to one incident that took place on 16/11/1999 but, it should have expanded to unauthorised transactions and the practice that was being followed in the branch.

10. It is true that during the course of enquiry, the petitioner has requested to provide the documents pertaining to the transaction of TPOT to prove that on previous occasions also many Officers have given OD facility to TPOT on oral instructions of Senthil. However, the documents as sought for by the petitioner were not furnished to him as they are not relevant to the charges levelled against the petitioner. The issue before the Enquiry Officer was whether the petitioner has committed misconduct or not there by in this enquiry, whether other Officers were also involved cannot be probed into.

11. Giving the Pay Order/Demand Draft for Rs.8 lakhs by the petitioner in the name of Latha Mills without any credit in the account of TPOT on the oral instructions of one of the employees of TPOT certainly against the procedure. Even if there was a previous practice to extend such facility, it cannot be a basis to say that the petitioner can also commit irregularity and flout the procedure of giving Pay Order/Demand Draft without there being any amount to the credit of the account holder. Though there was no financial loss to the Bank, the act of the petitioner in issuing Pay Order or Demand Draft over and above, the O.D facility amounts to misconduct.

12. Further, taking into consideration of his defence, it is clear that the petitioner himself has admitted that he has committed the procedural lapse however, the only ground he has taken is that he has followed the previous practice. Therefore, once the petitioner has admitted that he has not followed the procedure, the defence taken by him that he has followed the previous practice cannot be a ground to exonerate the petitioner.

13. The other ground raised by the petitioner is that Law Officer of the second respondent Bank was appointed as Enquiry Officer, thereby, prejudice is caused to him. The petitioner has failed to explain as to how the appointment of the Law Officer as the Enquiry Officer is prejudicial to his interest. The Enquiry Officer filed the report basing on the admission of the petitioner that he has given the Pay Order on oral instructions of Senthil. Therefore, merely because the Law Officer of the Bank has acted as Enquiry Officer, unless mala fides are attributed, it cannot be alleged that the enquiry Officer acted prejudicial to his interest.

14. It is further submitted by the petitioner that the Chief Manager who is involved in the alleged transaction was produced in the enquiry as witness against the petitioner which is a clear case of victimisation. It was observed by this Hon'ble Court in this regard in ***MADHURA COATS Vs. PRESIDING OFFICER, LABOUR COURT,*** reported in ***(2004) 1 LLN 767*** as follows:-

> "23. .... It is true that the evidence of

Murugan has been referred to. However, it is obvious that Murugan, who himself was caught with the stolen articles has been used as a witness against Ramasamy, the present respondent, to suggest that it was Ramasamy who had stolen the articles and gave them to Murugan. It was on this backdrop that the evidence was liable to be considered as to whether this suggested a pure victimisation. This was nothing but the user of one employee against the other...."

15. The question as to whether examining the Chief Manager as one of the management witness amounts to victimisation is not the issue in this writ petition. This Court will examine whether the impugned orders are perverse and if so can they be intervened. When time of victimisation was not at all the subject matter of enquiry, it cannot be raised in this writ petition.

16. It is submitted by the petitioner that though charge memo was issued to Mr.Chakkravarthy who signed the same pay order along with

the petitioner, no action was taken against him. It is further submitted that when the charges against the employees are same and identical in relation to one when the gravity of charges are the same, dealing the delinquents differently would be discriminatory. Thus, the learned counsel appearing for the petitioner submits that the petitioner was made as a scape goat to protect the Chief Manager of the branch.

17. Once mis conduct is proved, there is no much scope for the petitioner to agitate in this writ petition, irrespective of the fact whether there was financial loss to the Bank or not, whether other employees were changed or not. Employees and Officers working in the Bank are not expected to breach the procedure contemplated as they are the trustees of the people's money. The public will deposit their money in the Bank with lot of trust that Bank. Timely intervention of the Chief Manager and on the Management, the loss of Rs.8 lakhs to the Bank was averted. Therefore, whether the misconduct involved is in respect of a small amount or a big amount, whether the Bank has sustained any loss or not, on account of not following the procedure by the petitioner, loss to the tune of Rs.8 lakhs could have occurred but for the intervention of Chief Manager who has given instructions not to honour the Pay Order

given by the petitioner on the oral request of the petitioner.

18. This Court has gone through the impugned order and found that there is no procedural irregularity in conducting an enquiry, principles of natural justice have been followed, fair opportunity was given to the petitioner. The scope of the writ petition is very limited. The petitioner has put forth similar defence before the Enquiry Officer, before the Appellate Authority and before the revisional authority under the Shops and Establishment Act, but could not succeed. **I**n view of the above, the petitioner has failed to make out any ground to intervene in the finding of the impugned order.

19. In the result, this **writ petition is dismissed**. No costs.

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mvs.

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At the time of pronouncing the orders, learned counsel appearing for the petitioner has submitted that gratuity amount and other benefits if any entitled to be paid to the petitioner can be directed to be paid. In view of the same, respondent Bank is directed to pay the gratuity, other benefits, if any entitled by the petitioner, by following due process.

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mvs.

Index: Yes/No

NCC: Yes/No

To

1. The Deputy Commissioner of Labour
   Office of the Deputy Commissioner of Labour
   Coimbatore.

Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
W.P.No.38961 of 2006

21/6/2024