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W.P.No.26597 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.26597 of 2010

and

M.P.Nos.2 & 3 of 2010

P.Rajasekaran

...Petitioner

Vs

1.Indian Overseas Bank, Rep. by,
The Chairman & Managing Director,
Mount Road,
Chennai 600 002.

2.Senior Regional Manager,
Disciplinary Authority,
Indian Overseas Bank Regional Office,
No.40, Eighty Feet Road,
Arignar Anna Nagar,
Madurai – 20.

3.V.Jebasingh
Enquiry Officer,
No.40, Eighty Feet Road,
Arignar Anna Nagar,
Madurai – 20.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of compulsory retirement Ref.No.RO/IR/184/dt. 18.01.2010 passed by the 2nd respondent and quash the same and



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consequently direct the respondent to reinstate the petitioner into service with all backwages, promotions, continuity of service and all service benefits.

For Petitioner : Mr.P.Narayanamoorthi

For Respondents : Mr.K.Srinivasamurthy (R1 to R3)

ORDER

This Writ petition has been filed to call for the records pertaining to the order of compulsory retirement Ref.No.RO/IR/184/dt. 18.01.2010, passed by the 2nd respondent and quash the same and consequently, direct the respondents to reinstate the petitioner into service with all backwages, promotions, continuity of service and all service benefits.

2.The learned counsel for the petitioner submitted that the petitioner joined in Indian Overseas Bank on June 1991 as a Messenger and worked in Appanthiruppathy Branch. His service was confirmed in December 1991. His mother was suffering from a disease which needed operation in her head. His brother was employed in Indian Bank, who expired two years. Petitioner had to look after his son aged about 12 years. He was also suffering from jaundice from October 1998. Therefore, he was forced and constrained to take leave. He was awarded



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a punishment of “stoppage of one increment without cumulative effect” on 20.05.1998. He applied for leave from 06.10.1998 and submitted a letter for extension of leave. By a letter dated 17.11.1998, the respondent Bank informed that his leave from 06.10.1998 was rejected and his absence was treated as unauthorized. He was issued charge sheet on 21.11.1998. After conducting an improper enquiry, a major punishment of dismissal was imposed on him. He filed a writ petition in W.P.No.8896 of 2000. This Court remitted the matter to the Disciplinary Authority to reconsider the punishment imposed. Now, a punishment of compulsory retirement is imposed. In the said circumstances, this writ petition is filed.

3.In response, the learned counsel for the respondents submitted that the petitioner joined the service of the Bank as a Messenger on 27.06.1991. He was on leave/unauthorized absence from April 1996 to February 1998 for 373 days. His absence was at regular intervals, but not exceeding 90 days every time. He was charge sheeted and imposed with punishment of stoppage of one increment without cumulative effect. Again he went on unauthorized absence from 06.10.1998. Therefore,



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after proper disciplinary enquiry, he was dismissed from service. He filed a writ petition in W.P.No.8896 of 2000. This Court remitted the matter to the Disciplinary Authority for reconsidering the gravity of the punishment. Thereafter, he was imposed with the punishment of compulsory retirement. Because of the petitioner's unauthorized absence, Bank had to suffer a lot. Others had to work more because of the absence of the petitioner. He further submitted that the petitioner never submitted the leave application, medical certificate, fitness certificate, necessary records and never followed the leave rules of the Bank. He lacks basic discipline. If his act is unchecked, it will spread to other disciplined employees. He was charge sheeted and punished for similar misconducts on four previous occasions. Despite that he has not mended his ways. Because of his unauthorized absence, Bank work had suffered and Bank had to engage the fellow workmen in his place, forcing them to sit beyond office hours, thereby, overburdening and demotivating them. His continuation in service would affect the fellow workers. As per the directions of this Court, the punishment imposed on the petitioner is modified as follows:

In compliance of the High Court's directions,



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*after taking in to account all the relevant factors and decisions rendered by Apex Court, I am of the opinion that the punishment of "dismissal without notice", proposed in the show-cause notice is not proportionate to the charges established and is too harsh and hence I am inclined to reduce the punishment to **"compulsory retirement with superannuation benefits."***

*Accordingly, I award the punishment of **"compulsory retirement with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment"** as per para 17.6(b) of the Bipartite Settlement dated 14.12.1966 between the Bank and its workmen as amended upto date. Please note that this order will replace the original order ref. RO/IR/184/278/98-99 dated 31.03.1999 and will take effect from the date of the said punishment order viz. 31.03.1999.*

4.Considered the rival submissions and perused the records.

5.It is seen from the submissions of the learned counsel appearing for the parties and the materials that the petitioner was serving as a



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Messenger in Indian Overseas Bank, Appanthiruppathy Branch. It is informed that the petitioner was not regular in his work, he used to remain absent unauthorizedly making the Bank to suffer in providing customer services and other banking operations. It is informed that the petitioner was punished four times earlier for similar misconduct. Even thereafter, petitioner has not changed his ways and he continued to remain absent unauthorizedly. He never cared to submit the leave application, medical certificate and fitness certificate in case of leave on medical grounds. In the earlier writ petition filed by the petitioner, this Court after elaborate consideration of the materials produced before the Court, passed the following order:

.....

20. Therefore, while looking into the relevant doctrines and taking into consideration the penalty of dismissal from service imposed on the petitioner by the Disciplinary Authority, the impugned proceedings of the Disciplinary Authority is liable to be set aside.

21. In the light of the above discussion and upon analysing the various decisions of the Apex Court and on strictly scrutinising the materials on record, the order of dismissal from service passed against the petitioner warrants interference and



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accordingly, the order dated 31.03.1999 passed by the 2nd respondent is set aside and the matter is remanded to the Disciplinary Authority to reconsider the order of punishment imposed on the petitioner and pass appropriate orders taking into account all the relevant factors and decisions rendered by the Apex Court. This exercise shall be completed within a period of two (2) months from the date of receipt of a copy of this order.

The writ petition is allowed with the above direction. No costs.

6.Complying the said directions, petitioner was imposed with the punishment of compulsory retirement as per the order passed in RO/IR/184 dated 18.01.2010.

7.Considering the nature of the repeated misconduct of unauthorized absence of the petitioner, this Court is of the view that modification of the punishment from dismissal of service into compulsory retirement with superannuation benefits is just and proper and does not call for any modification and interference. Therefore, the order passed by the second respondent in RO/IR/184, dated 18.01.2010 is confirmed.

8.Accordingly, this Writ Petition stands dismissed. No Costs.



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Consequently, connected miscellaneous petitions are also closed.

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Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No

To

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The Chairman & Managing Director,
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Chennai 600 002.

2. Senior Regional Manager,
Disciplinary Authority,
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G.CHANDRASEKHARAN, J.



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