IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.26810 of 2010

G.Shanmugha Sundaram ... Petitioner

Vs.

1. The Assistant General Manager -cum- Zonal Manager,
   Bank of India, 324, Oppanakara Street,
   Coimbatore – 641 001.

2. The General Manager,
   Terminal Benefits Division,
   Human Resources Department,
   3rd Floor, West Wing, Star House,
   C-5, G Block, Bandra Kurla Complex,
   Mumbai – 400 051. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the First Respondent culminating in the impugned order ZO:CBE:1R:417 dated 20.02.2010, quash the same and direct the Respondents to forthwith pay the Petitioner his terminal benefits along with compensation in the form of interest @ 12% per annum from 06.03.1991 till date of payment to the petitioner.

For Petitioner : Mr.K.R.Arunshabari

For Respondents : Mr.S.Gopinath for
M/s.Gokul Krishnan

O R D E R

While the petitioner was working as 'Special Assistant' in the respondent Bank, he was placed under suspension and disciplinary proceedings were initiated by issuing a charge-memo dated 30.03.1989, containing five charges, alleging the misconduct of having responsible for the loss caused to the Bank to a tune of Rs.21,00,000/-. After having conducted an enquiry into the said charges, a final order came to be passed on 05.02.1991, inflicting the punishment of dismissal from service, without issuing notice, within the meaning of Clause 19.6(a) of the First Bipartate Settlement dated 19.10.1966. The said order of punishment was challenged by the petitioner and the litigation in connection therein is stated to be still pending in I.D.No.77 of 2003 on the file of the Central Government Industrial Tribunal, Chennai.

2. It is after inflicting the punishment of dismissal from service on the petitioner, the respondent Bank, through Letter dated 06.03.1991, requested the petitioner to forward his application for payment of terminal benefits. It is thereafter, the petitioner made a claim for payment of terminal benefits such as provident fund, gratuity etc., which according to petitioner, he is entitled to, inspite

of the order of dismissal is treated as final. Thereafter, complaining the inaction on the part of the respondent Bank in considering the said application, the petitioner approached this court by filing W.P.No.4980 of 2000 and this Court by an order dated 29.06.2009, disposed of the said writ petition, directing the respondent Bank to pass appropriate orders on the application submitted by the petitioner for release of gratuity and provident fund.

3. It is pursuant to the said order, the respondent Bank passed the impugned order bearing Reference No.ZO:CBE:IR 417, dated 20.02.2010, stating that the respondent Bank is entitled to recover the amount of loss caused by the petitioner to the respondent Bank to a tune of Rs.21,00,000/- and therefore, the petitioner is not entitled for Bank's contribution towards provident fund and the amounts of gratuity payable to the petitioner. It is aggrieved by the said order dated 20.02.2010, the petitioner approached this Court by filing the present writ petition.

4. Heard Mr.K.R.Arunshabari, learned counsel for the petitioner and Mr.S.Gopinath for M/s.Gokul Krishnan, learned counsel appearing for the respondents.

5. Though, a charge-memo dated 30.03.1989 was issued to the petitioner making a specific reference to the allegation of aiding the misappropriation of funds by others and also of having not bringing such misappropriation to the notice of the bank, though within the knowledge of the petitioner, the respondent Bank, after having conducted a detailed enquiry on the five charges that are framed against the petitioner, has chosen to impose the punishment of dismissal from service alone and admittedly, there is no conclusive finding that is recorded against the petitioner and fixing the liability for the alleged loss stated to have been caused by the petitioner as seen from the final order of punishment dated 05.02.1991. It is only after the petitioner made an application for release of provident fund, gratuity, approached this court by filing W.P.No.4980 of 2000 and after this Court passed an order directing the respondent Bank to pass appropriate orders on the said application, the respondent Bank appears to have issued a show-cause notice referring to the five charges, which were the subject matter of the punishment dated 05.02.1991 and proposed to appropriate the terminal benefits that are payable to the petitioner towards the alleged loss caused by the petitioner and required the petitioner to show-cause why such amounts should not be appropriated.

6. A perusal of the said show-cause notice makes it clear that the very same

charges, which are the subject matter of the charge-memo dated 30.03.1989 are verbatim extracted and the show-cause notice was issued to show-cause on the very same charges, as to why the terminal benefits payable to the petitioner should not be appropriated by the respondent Bank.

7. As already noted above, all the said five charges are the subject matter of enquiry, which ended in passing a final order dated 05.02.1991. Admittedly, there is no finding of loss alleged to have been caused by the petitioner in the said final order of punishment and there is no order, ordering for recovery of any loss caused to the respondent Bank from the petitioner.

8. Once the disciplinary proceedings that were initiated on the five charges levelled against the petitioner are concluded by passing a final order, the question of the respondent Bank, again initiating any proceedings basing upon the very same charges is legally impermissible and such an action, if allowed, would jeopardise the rights of the petitioner. If at all the respondent Bank is of the view that the petitioner is responsible for any loss, they could have passed an order of recovery or requiring the petitioner to reimburse such loss, while passing the order dated 05.02.1991. But, no such order was passed by the respondent Bank even as on date.

9. Issuing a show-cause notice basing upon the very same five charges is not permissible under law. It is nothing but, subjecting the petitioner to disciplinary proceedings once again basing upon the very same charges. Therefore, the entire action of the respondent Bank in issuing a show-cause notice proposing to appropriate the terminal benefits payable to the petitioner and resulting in passing of the impugned order dated 20.02.2010 is totally illegal, arbitrary and violative of Article 300-A of the Constitution of India.

10. During the course of arguments, it is also brought to the notice of this Court that the employees' contribution of provident fund was already released in favour of the petitioner, while passing the impugned order dated 20.02.2010 i.e., in the year 2010, whereas the dismissal order was passed on 05.02.1991. Thus, there is a delay of nearly 19 years, in releasing the employees' contribution of provident fund. Thus, in all fairness, the respondent Bank, after inflicting the punishment of dismissal from service, ought to have released the said amounts to the petitioner for which he is otherwise legally entitled. The respondent Bank itself found that the petitioner is entitled for release of the Employees' contribution of provident fund and accordingly released the amounts of Rs.65,189.16/- only on 23.04.2010. Thus, the petitioner was deprived of enjoying the said amount for almost a period of 19

years. Therefore, the respondent Bank is also liable to compensate the petitioner for such delayed payment of the said amounts.

11. In the light of the above, the impugned order bearing Reference No.ZO:CBE:IR 417, dated 20.02.2010 is quashed and the respondents are directed to release the Employers' contribution of provident fund of Rs.52,723.63/-, together with interest at the rate of 6% per annum and gratuity due at the rate of 8% per annum from 05.02.1991 till 2010 as expeditiously as possible at any rate within a period of eight weeks from the date of receipt of a copy of this order. The respondents are further directed to pay interest on Rs.65,189.16/- with effect from 05.02.1991 till 23.04.2010 at the rate of 6% within the time stipulated hereinabove.

12. Accordingly, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions, if any shall stand closed.

15.10.2024

skr
Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

1. The Assistant General Manager -cum- Zonal Manager,
   Bank of India, 324, Oppanakara Street,
   Coimbatore – 641 001.

2. The General Manager,
   Terminal Benefits Division,
   Human Resources Department,
   3rd Floor, West Wing, Star House,
   C-5, G Block, Bandra Kurla Complex,
   Mumbai – 400 051.

MUMMINENI SUDHEER KUMAR, J.

skr

W.P.No.26810 of 2010