IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.6149 of 2011
and
M.P.No. 2 of 2011

K.Sasikumar ... Petitioner

Vs.

1. The Zonal Manager (Appellate Authority),
Life Insurance Corporation of India,
Zonal Office, No.153, Mount Road,
Chennai-600 002.

2. The Senior Divisional Manager,
Life Insurance Corporation of India,
Tirunelveli Division,
Tirunelveli. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent made in Ref.S7/112/DD dated 08.03.2007 and quash the same and consequently direct the respondents to reinstate the petitioner with full back wages with continuity of service and all other attendant monetary benefits.

For Petitioner : Mr.N.Umapathi

For Respondents : Mr.D.Muthukumar

O R D E R

The Writ Petition is filed challenging the impugned order of the second respondent dated 08.03.2007 and the first respondent dated 02.05.2009. By the order of the second respondent, a punishment of removal from service was imposed on the Writ Petitioner. By the order of the first respondent, the same was confirmed on appeal.

2. The case of the Petitioner is that he was working as a Development Officer in the respondent organisation. While so, his wife was running a financial institution in the name of SVS Bankers. The petitioner was neither a partner nor had anything to do officially with the said concern. In the said concern of his wife, several persons have invested. Due to the slump in business, his wife was temporarily unable to repay the amount to the depositors. Therefore, a criminal case was registered under the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997.

Since the petitioner was also made as an accused, he was unable to attend duty and was remanded to judicial custody. Thereafter, he was enlarged on bail. During the said period, a charge memo dated 01.11.2006 was issued against the petitioner. The following three charges are levelled against the petitioner :-

> "*1. You indulged in private trading of accepting money deposits in the name of SVS Bankers under your signature from various persons including, out development officer working in Thuckalay Branch office in violation of the Rules of the Corporations.*
>
> *2. You have further indulged in financial dealings with various persons including our Development Officers and as a result 13 attachment orders have been served in various judicial courts in Kanyakumari District holding LIC of India as Garnishee in all these attachments, thereby you have brought disrepute to the corporation and failed to uphold the interest of the corporation.*
>
> *3. You have not furnished the details to the competent authority, a statement of Debts/Liabilities and your position once in the half yearly on 30th June and 31st December every year in the light of the above mentioned charges.*"

3. Given his situation, the petitioner would not submit any detailed

explanation. However, without providing ample opportunity to the petitioner, the respondent proceeded *exparte*. The enquiry officer submitted a report holding the charges as proved. Thereafter, a show cause notice was issued on 17.02.2007. Even at that time, the petitioner was not in a position to submit his explanation. Pending the criminal case, the impugned order was passed on 08.03.2007. Thereafter, the petitioner preferred an appeal on 15.08.2008 to the first respondent. However, the appellate authority without even considering very many grounds raised in the appeal, by an order dated 22.05.2009 dismissed the appeal. Hence, the present Writ Petition.

4. The Writ Petition is resisted by the respondents by filing a detailed counter affidavit. They would submit that the departmental enquiry has been conducted following the procedure laid down in the rules. In spite of due opportunity, the petitioner did not submit any explanation. Even while proceeding *exparte*, due evidence was recorded. Only after considering the evidence on record and the Conduct Rules, under which private trading, restriction on borrowing, the debt of employees etc. are misconduct, the impugned order was passed by the disciplinary authority. The appellate

authority has duly applied his mind as to the contentions raised by the appellant and dismissed the appeal.

5. Heard *Mr N.Umapathi,* learned counsel for the petitioner and *Mr Muthukumar,* learned counsel for the respondent.

6. The learned counsel for the petitioner taking this court to the charges would submit that the petitioner was not directly or indirectly involved in the business. Merely because he acted as a messenger for his wife, it cannot be said that he indulged in any trade. Secondly, he would submit that when the civil suits are filed by the alleged debtors, they have filed the attachment proceedings by showing LIC as garnishee. The same is a process of law. It cannot be regarded as disrepute to the organisation. Therefore, the second charge would not amount to any misconduct at all. As far as the third charge is concerned, only because a criminal case is filed and some persons managed to force and extract signatures on promissory notes etc., from the petitioner, it would not amount to proof of indebtedness and the criminal case ultimately ended in honourable acquittal. The amounts were repaid to the depositors.

7. *Mr Umapathi*, the Learned Counsel would submit that when the

petitioner is not a partner or a director in the concern and when his wife has repaid the amount and the depositors have been settled, the only allegations made are accepting the deposits from the co-employees resulting in a situation where suits were filed and not reporting the debts to the organisation. These are non-compliance of procedural requirements. They do not relate to the employment or duties of the petitioner. In that view of the matter, the imposing of punishment of removal from service is grossly disproportionate to the delinquency alleged.

8. The learned counsel would also submit that the appellate authority must consider the grounds raised by the appellant in respect of every charge specifically, but it has not been done. No action has been taken against the employees who have invested the money. The order does not show any application of mind in respect of each of the charges. The learned counsel relies upon the judgment of Hon'ble Supreme Court of India in ***Narinder Mohan Arya vs. United India Insurance Co. Ltd., and others*** reported in ***(2006) 4 SCC 713,*** more specifically to paragraph 26 to contend that the enquiry officer should strictly adhere to the charges and should look into

whether there is any evidence on record in respect of the alleged misconduct and the Writ Court is entitled to interfere with the findings of disciplinary authority if the order is passed without even giving proper opportunity to the petitioner and when the evidence on record does not prove the charge. He would also rely upon paragraph 37 of the same judgment to the impugn appellate authority's order by pointing out that the same would not amount to proper consideration and due application of mind. The appellate authority also did not go into the adequacy or otherwise of the punishment, which is imposed.

9. Per contra, *Mr. D.Muthukumar*, learned counsel appearing on behalf of respondents placing reliance on the relevant rules of the Corporation, which are extracted in the counter affidavit would submit that private trading directly and indirectly is defined as misconduct under Rule 27. Similarly, Rule 32 imposes restrictions on borrowing and investments. Rule 35 enjoins an indebted position also as misconduct. The employee of the corporation has to manage his private affairs to avoid habitual indebtedness. With due consideration of the Rules, the charges are framed.

10. When the charge memo was issued, the petitioner did not even deny the charges by submitting any explanation. He did not participate in the proceedings. Only after the punishment, he filed an appeal. In the grounds of appeal, he has admitted the fact of issuing receipts to the persons, who are examined as witnesses. Even for an *exparte* enquiry, the relevant witnesses were examined and documents were marked. There was due compliance with procedure and the order of disciplinary authority and the appellate authority cannot be termed as perverse, on the other hand, they were passed with due application of mind on the evidence on record.

11. I have considered the rival submissions made on either side and perused the material records of the case.

12. The first submission on behalf of learned counsel for the petitioner that the acts complained off in the charges viz., acting as a messenger for his wife as well as LIC being in a position as garnishee in 13 matters by itself would not amount to misconduct. It is further argued that co-employees are also willingly deposited money and they have not been proceeded with. I reject the said contentions. The petitioner has admitted to signing of receipts.

He has suffered decrees of the Civil Court. The petitioner was also prosecuted for the offences under the T.N.P.I.D. Act. Thus, the petitioner's contention that he was only a messenger cannot be countenanced and therefore, his action is trading, directly and indirectly, is misconduct as per the Rules. As far as the second charge is concerned, the charge is not that the Life Insurance Corporation of India is made to stand as a garnishee before the civil court, but the charge is against the petitioner bringing disrepute to the organisation by leading to the situation.

13. As far as the third charge, even though it may be a private affair, still if out of his habitual indebtedness repeated proceedings are filed in court then it does not augur well for the organisation and the said act is misconduct under the Rules. It is one thing to get a hand loan for some urgency from a friend or a relative, but it is another thing to run a financial institution and accept deposits to the tune of Rs.88 lakhs from the depositors and not re-paying the depositors and facing multiple proceedings both civil and criminal. On a perusal of the Judgment of the Special Court, it can be seen that the petitioner and his wife had admitted the indebtedness and pleaded repayment

after the registration of the criminal case. Only on the basis that the offence is compoundable, they are acquitted. That would only further buttress the case of the Corporation.

14. The further submission is that the punishment is disproportionate to the acts of misconduct. The petitioner and his wife had indulged in a business viz., running the financial institution and accepting deposits from the public including from co-employees. They were unable to repay the same and were dealt with under T.N.P.I.D. Act and a criminal case was registered against them and they were remanded to judicial custody. The petitioner simply did not report from work and only thereafter, the management found out the indebtedness of the petitioner. Therefore, when the petitioner is a habitual debtor unable to pay his debt, when he has accepted debts from co-employees and having financial transactions of accepting deposits, not repaying etc. within the office from colleagues etc. is a serious misconduct and it cannot be said that punishment is disproportionate. Naturally, the employer loses confidence in that the petitioner can anymore be in employment.

15. A submission is also made that no action is taken against the co-

employee. That would not in any manner be a benefit to the petitioner in the instant case. They are not co-delinquents in the act of collecting deposits and not repaying the money. They were victims.

16. Therefore, I am unable to accept any of the contentions made on behalf of the petitioner and accordingly, finding no merit, the Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

01.03.2024

Index: Yes/No
Internet: Yes/No
rpp

To
1. The Zonal Manager (Appellate Authority),
Life Insurance Corporation of India,
Zonal Office, No.153, Mount Road,
Chennai-600 002.

2. The Senior Divisional Manager,
Life Insurance Corporation of India,
Tirunelveli Division, Tirunelveli.

D.BHARATHA CHAKRAVARTHY, J.

rpp

W.P.No.6149 of 2011

01.03.2024