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W.P.No.26798



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.26798 of 2015

K.Anbalagan

... Petitioner

Vs.

1. The Managing Director and Chief Executive Officer,
Union Bank of India, Union Bank Bhavan,
239, Vidhan Bhavan Marg Nariman Point,
Mumbai – 400 021.

2. Filed General Manager (HR),
Union Bank of India, Union Bank Bhavan,
2nd Floor, 239, Broadway, Chennai – 600 108.
[R1 & R2 amended as per order dated 20.11.2023]

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records and quash the order dated 09.08.2014 by the 3rd Respondent to the extent that it imposes a punishment of reduction in lower grade i.e. MMGS - III to MMGS -II, While fixing the basic at the maximum of the scale i.e. Rs. 28,100/- in MMGS II Grade. Further the period of absence from 29.05.2008 to 25.11.2008 is treated as unauthorized absence without pay and allowances.

For Petitioner : M/s.D.Nagasaila

For Respondents : M/s.Rita Chandrasekar



for M/s. Aiyar & Dolia

ORDER

The impugned order in this writ petition is an order dated 09.08.2014, passed pursuant to an order dated 03.06.2014 passed by a learned Division Bench of this Court in W.A.No.1142 of 2012.

2. The learned Division Bench, while disposing of the said writ appeal, has taken note of the factual aspects of the matter in detail and instead of repeating the same, this Court feels it appropriate to extract the said facts for proper appreciation of the matter.

“2.1. The appellant/writ petitioner joined the services of the Andhra Bank as Probationary Officer and he worked in various places, namely Trivandram, Ahmedabad, Nellore, Tripathi, Chennai, Karimnagar etc., and according to him, his performance at all places of posting earned appreciation and was awarded "Excellence Club Membership" for excellent performance in deposit mobilization in three consecutive branches. The appellant/writ petitioner also claims that only 100 out of 10,000 employees are members of the said club. The appellant would further state that he has also served in Karimnagar, a naxalite area and performed his duties without fear even though there was personal risk to his life and he had rendered hard, blemishless and sincere



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services for a period of 27 years and earned letters of appreciation numbering about 10 from the superior officers.

2.2. The appellant, on account of his heart ailment, underwent after heart surgery, he served in Chennai and Tiruppur. In the year 2005, the appellant suffered Acute Myocardial Infraction (heart attack) and he took treatment at Madras Medical Mission Hospital with Dr.K. Latchmanadhas, Senior Cardiologist attached to the said hospital and he is also taking regular weekly check up, some times twice a week. During the month of April 2008, the appellant was having constant chest pain and hence he went for check up and it was found that his heart was functioning only at 37% efficiency.

2.3. The appellant was transferred to Kurnool Zone, Andhra Pradesh on 15.04.2008 and immediately he submitted a representation informing the concerned authorities about his health condition and requirement of emergency health care and prayed for retention at Chennai for at least one year on health ground. The representation submitted by the appellant was forwarded to the Head Office of the Bank at Hyderabad by the Chennai Zonal Office, which also made a positive recommendation. The appellant was also issued with a



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medical certificate dated 16.04.2008 by the Madras Medical Mission Hospital by Dr.K. Latchmanedhas, Senior Cardiologist attached to the said hospital stating that in the year 2005, he has undergone Coronary Angioplasty stenting for Acute Myocardial infraction and in view of the same, he requires continuous medical treatment and regular follow up in the above said hospital and he was advised to stay in and around Chennai in anticipation of any acute episodes, which is a threat to his life. The very same Doctor has also issued another certificate dated 27.05.2008 stating among other things that the appellant is having chest pain and was advised to take one month rest. The appellant submitted a letter praying for sanction of leave on medical grounds on 28.05.2008 enclosing the medical certificates and as per the same, he was advised to take rest for a month from 28.06.2008 ?? 27.07.2008.

2.4. The fifth respondent has issued a charge memo dated 30.06.2008 to the appellant stating among other things that the appellant was transferred from Zonal Office to Kurnool Zone, vide order dated 15.04.2008 and he was relieved by Zonal Office, Chennai on 28.05.2008 and was requested to report for duty on 29.05.2008 or after availing the admissible joining time on 05.06.2008, but he has not reported to duty, which has caused



dislocation of work in the Kurnool Zonal Office and thus, he has remained absent unauthorizedly from 29.05.2008 onwards and the said act is a misconduct in terms of Regulation 13 (1) read with 24 of Andhra Bank Officer Employees (Conduct) Regulations 1981. The appellant was also called upon to report for duty immediately and offer his explanation within 10 days from the date of receipt of the charge memo, failing which it shall be construed that he has not offered any explanation and proper action would be taken without any further reference.

2.5. On 02.07.2008, the appellant submitted a letter praying for medical leave enclosing medical certificate and on 08.07.2008, his order of transfer to Kurnool Zone was modified and he was posted at Hyderabad. On 12.07.2008, the appellant submitted his explanation ?? the charge memo stating that he had already applied for sick leave on account of chest pain as he had already undergone two major heart surgeries and also enclosed copies of medical certificates for sanction of medical leave and also drawn the attention that he has been useful to the Bank for securing good business to the tune of Rs.400 crores in Chennai and also got advances from TNEB to the tune of Rs.50 crores in the form of deposits to Mount Road Branch and he has been very sincere to his job and



hence, prays for medical leave.”

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3. Pursuant to the charge-memo dated 30.06.2008, an Enquiry Officer was appointed and the Enquiry Officer, after having conducting an enquiry by examining the petitioner, submitted his report and accordingly, the disciplinary authority viz., Deputy General Manager passed an order dated 26.11.2008, imposing the punishment of compulsory retirement from the service of the respondent Bank. Aggrieved by the same, the petitioner filed an appeal before the Appellate Authority viz., General Manager, Andhra Bank Head Office, Hyderabad. The said order of punishment passed by the disciplinary authority was confirmed by the appellate authority by an order dated 06.01.2009. Aggrieved by the said orders dated 26.09.2008 and 06.01.2009, the petitioner approached this Court by filing W.P.No.17821 of 2009. However, the said writ petition was dismissed by a learned Single Judge of this Court by an order dated 19.01.2012. Aggrieved by the same, the petitioner filed W.A.No.1142 of 2012 and the said writ appeal came to be disposed of by an order dated 03.06.2014 by taking note of the factual situations and the learned Division Bench has been pleased to set aside the original order of punishment as well as the order passed by the Appellate Authority and remanded the matter back to the Appellate Authority for fresh consideration to consider the proportionality of the



punishment imposed on the petitioner. The relevant portion of the said order of the learned Division Bench reads as under:-

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“24. This Court in the earlier paragraphs has found that the appellant continues to suffer on account of heart ailment repeatedly submitted leave letters seeking leave on medical grounds and by enclosing medical certificates given by the Doctor, who continues to treat him and in fact, before the Enquiry Officer pleaded leniency only on that ground and the said material fact has been overlooked by all the authorities. It is also the specific case of the appellant that he has rendered 27 long years and he has been given 11 awards in the form of letters of appreciation by the concerned authorities and the said fact is also not under serious dispute.

25. The appellant, except the period of absence as indicated in the charge memo, has worked to the satisfaction of the superior officers and in the light of the above facts, this Court is of the view that the punishment of compulsory retirement imposed by the fifth respondent/Disciplinary Authority, confirmed by the second respondent/Appellate Authority is severe and inappropriate and the conscience of the Court is also shocked. Therefore, those orders are liable to be set aside and the matter is to be remanded to the second respondent/Appellate Authority for fresh consideration



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consider the proportionality of the punishment imposed on the appellant in the light of the Andhra Bank Officer Employees' (Discipline and Appeal) Regulations, 1981.

26. In the result, this Writ Appeal is allowed and the order dated 19.01.2012 made in W. P.No.17821/2009 as well as the order dated 28.02.2009 passed by the third respondent, the order dated 06.01.2009 passed by the second respondent and the order dated 26.09.2008 passed by the fifth respondent are set aside and the matter is remanded to the second respondent/Appellate Authority and the second respondent is directed to pass fresh orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. It is made clear that if the Appellant Authority finds that the quantum of punishment requires reduction, the appellant/writ petitioner shall not claim/entitled to backwages for the period during which he has not performed his duty.”

In terms of the above order dated 03.06.2014 passed by the learned Division Bench of this Court, the Appellate Authority passed an order dated 09.08.2014, imposing the major punishment of “*reduction in lower Grade i.e., MMGS III to MMGS II by fixing the basic pay of the petitioner at the maximum scale I.e., 28,100/- in MMGS II grade and further treating the period of absence from 29.05.2008 to 29.11.2008 as unauthorized absence without pay and allowance*”.



It was further stated in the said order that the petitioner was reinstated into service on that Bank notionally with effect from 26.11.2008. It is aggrieved by the said order dated 09.08.2014, the petitioner approached this Court once again by filing the present writ petition.

4. During the pendency of the writ petition, the respondent Andhra Bank was merged with the Union Bank of India and consequently, the cause-title in the writ petition is amended by substituting the respondents 1 and 2 herein in the place of original respondents 1 to 3.

5. Heard M/s.D.Nagasaila, learned counsel for the petitioner and M/s.Rita Chandrasekar, learned counsel for the respondents.

6. In the light of the factual background, as narrated above, the scope of this writ petition is only to consider as to whether the punishment that was imposed through the impugned order dated 09.08.2014 is in terms of the order passed by the learned Division Bench of this Court or not and also to consider as to whether the punishment that is imposed through the impugned order is commensurate with the charges that were levelled against the petitioner or not?



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7. The learned Division Bench, while disposing of the writ appeal, has taken note of various facts and circumstances and also recorded its findings and summed up the same at Paragraph No.24 of its order, which is already extracted herein above.

8. From the said Paragraph No.24, it is noticed that the petitioner continues to suffer on account of his ailment and submitted repeated leave letters seeking leave on medical grounds by enclosing medical certificates and continued to take treatments and the same was also submitted by the petitioner before the Enquiry Officer, but the said fact was overlooked by the disciplinary authority as well as the appellate authority while imposing the punishment of compulsory retirement. The learned Division Bench has also taken note of the contention of the learned counsel for the petitioner that he has rendered 27 long years of service and has been given 11 awards in the form of letters of appreciation by the concerned authorities and also taken note of the fact that the said contention of the petitioner is also undisputed. But, the appellate authority, while passing the impugned order dated 09.08.2014, failed to take into consideration any of the observations made by the learned Division Bench in the order passed in the writ appeal.



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9. In the impugned order, except stating that the matter has been given a fresh look in view of the orders of the Hon'ble High Court of Madras, has not taken into consideration any of the observations made by the learned Division Bench. The appellate authority also observed that the misconduct that was alleged against the petitioner is long unauthorized absence. Thus, the appellate authority proceeded to once again impose the major punishment of "*reduction in lower grade i.e. MMGS - III to MMGS -II, While fixing the basic at the maximum of the scale i.e. Rs. 28,100/- in MMGS II Grade. Further the period of absence from 29.05.2008 to 25.11.2008 is treated as unauthorized absence without pay and allowances. Accordingly, he is reinstated into service of the bank notionally with effect from 26.11.2008 with the above fitment.*"

10. From the impugned order, it does not appear that the appellate authority has neither taken into consideration nor appreciated the factual aspects of the matter in a proper perspective. On the other hand, it is evident that the appellate authority is oblivious of the factual matrix of the case on hand and the same is evident from the manner in which the punishment was imposed by treating the period of absence from 29.05.2008 to 25.11.2008 as unauthorized absence. The charge, that is the subject matter of the disciplinary proceedings



against the petitioner is only in respect of the period from 29.05.2008 to 30.06.2008, but not beyond 30.06.2008. For the reasons best known, the appellate authority has gone beyond the scope of charge-memo dated 30.06.2008 and also proceeded to impose the major punishment of reduction to lower grade by taking into consideration that the petitioner was unauthorizedly absent from 29.05.2008 to 29.11.2008.

11. Admittedly, there is no charge with regard to the alleged unauthorized absence of the petitioner beyond 30.06.2008 till 25.11.2008. Further, it is also observed that the learned Division Bench, while disposing of the writ appeal, has taken note of the fact that the petitioner has submitted applications for sanction of leave after 29.05.2008, though the same was not sanctioned by the respondent Bank. It is not as if the petitioner has either absconded or failed to appear before the respondent Bank on 29.05.2008. It is an admitted fact that the petitioner has submitted representation explaining his health condition seeking retention at Chennai atleast for a period of one year, when he was transferred through proceedings dated 29.05.2008 and thereafter also the petitioner submitted applications for sanction of leave along with medical certificates and the same was also categorically taken note of by the learned Division Bench, but the



appellate authority while passing the impugned order dated 09.08.2014, failed to take into consideration any of the said circumstances which are taken note of by the learned Division Bench in detail and proceeded to pass the impugned order in a mechanical manner without application of mind.

12. Ultimately, the alleged misconduct against the petitioner is only the unauthorized absence from 29.05.2008 to 30.06.2008 i.e., the date on which the charge-memo was issued to the petitioner. This is not the case of the respondent Bank that the petitioner is totally absconded and the whereabouts of the petitioner is not known. From the material on record, it is evident that he was very much available before the respondent Bank, requesting for his retention at Chennai on health grounds and as a matter of fact, the said request of the petitioner was also considered positively by the respondent Bank and he was posted at Hyderabad, where good medical facilities are available. The failure of the petitioner in not joining the new place is not the subject matter of disciplinary proceeding. Hence, the question of taking into consideration the conduct of the petitioner after 30.06.2008, without framing any charge or without affording any opportunity to the petitioner is once again in violation of the principles of natural justice. As the conduct of the petitioner subsequent to 30.06.2008 was taken into consideration and the same was confirmed by the



appellate authority by passing the impugned order dated 09.08.2014. The said punishment is bound to be declared as the one in violation of the principles of natural justice. In case, if the same is not taken into consideration, definitely the appellate authority would have arrived at a different conclusion and ought not have resorted to once again imposing the major punishment as is imposed in the impugned order dated 09.08.2014.

13. As already noted above, the alleged act of misconduct against the petitioner is only unauthorized absence from 29.05.2008 to 30.06.2008 i.e., hardly for a period of one month. Even assuming that the entire period of absence during the period of 29.05.2008 to 30.06.2008 is totally unauthorized also, in the considered view of this Court, the punishment, as is imposed in the impugned order dated 09.08.2014 can, under no circumstances, be said to be proportionate with the alleged act of misconduct.

14. In the light of the above, imposing the major penalty of “*reduction in lower grade i.e. MMGS - III to MMGS -II, While fixing the basic at the maximum of the scale i.e. Rs. 28,100/- in MMGS II Grade. Further the period of absence from 29.05.2008 to 25.11.2008 is treated as unauthorized absence without pay and allowances*” on the petitioner for the alleged proved misconduct



as alleged in the charge-memo dated 30.06.2008 can, under no circumstances, be said to be commensurate with the charge that is established against the petitioner.

15. Taking into consideration the overall circumstances right from the date on which the petitioner was transferred through proceedings dated 29.05.2008 and the time at which a charge-memo came to be issued while the representation of the petitioner for altering the transfer order is pending for consideration before the respondent Bank and the manner in which the disciplinary proceedings were initiated by issuing a charge-memo dated 30.06.2008 and the manner in which the impugned order came to be passed would go to suggest that the respondent Bank has acted in an vindictive manner against the petitioner, who has rendered 27 years of unblemished service.

16. It is not even the case of the respondent Bank that the conduct of the petitioner during the entire 27 years of service is defective. On the other hand, there were many number of appreciations that were given to the petitioner by the respondent Bank themselves for his excellent performance during the said period of 27 years.



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17. The contention of the respondent Bank that the petitioner has given an affidavit dated 16.08.2014, agreeing for the settlement payment given by the respondent Bank as per the Court order dated 03.06.2014 passed by this Court and that he will not claim any further amount from the respondent Bank as an act of waiver to question the impugned order in this writ petition cannot be accepted for the simple reason that the respondents, have not paid any amounts to the petitioner by the date of the said affidavit and therefore, the question of the petitioner waving his right to challenge the impugned order does not arise. In this context, it is also necessary to notice that the specific contention of the petitioner that the impugned order dated 09.08.2014 was for the first time served on the petitioner only on 25.08.2014, but not either on the date of the above referred affidavit dated 16.08.2014 nor prior to that. Therefore, the question of petitioner waving his right to question the impugned order by virtue of the affidavit dated 16.08.2014 does not arise. Even otherwise, the right of the petitioner to question the impugned order, under no circumstances, can be said to be waved of by virtue of the affidavit dated 16.08.2014. The contents of the said affidavit dated 16.08.2014 are so vague and no rights of the petitioner can be said to have been waved by virtue of the said affidavit.

18. The reliance placed by the learned counsel appearing for the



respondents on a decision of the Hon'ble Apex Court in the case of ***“North Eastern Karnatak RT Corporation -vs- Ashappa”*** reported in (2006) 5 SCC 137 is concerned, that is case where the delinquent employee was absent for long time in the said post and in the said circumstances of such conduct of the delinquent employee was found to major misconduct. But in the instant case, the alleged unauthorized absence of the petitioner is hardly for a period of one month, that too under the circumstances noted herein above. Therefore, the said decision has no application to the facts of the case on hand.

19. Then coming to another decision relied upon by the learned counsel for the respondents in the case of ***“Director (Admin and HR) KPTCL and others -vs- C.P.Mundinamani and other”*** reported in (2023) SCC Online SC (401) is a case dealing with award of increments for the services rendered by a delinquent employee. As the award of increments is not the subject matter of the present the writ petition, the said case has no relevancy to the facts of the case on hand.

20. In the light of the above, in the considered view of this Court, the major punishment of *“reduction in lower grade i.e. MMGS - III to MMGS -II, While fixing the basic at the maximum of the scale i.e. Rs. 28,100/- in MMGS II*



Grade. Further the period of absence from 29.05.2008 to 25.11.2008 is treated as unauthorized absence without pay and allowances” imposed on the petitioner is once again shocking to the conscious of this Court. The appellate authority has failed to exercise the discretion conferred upon him and also ignored the purpose for which the matter was remanded back to the appellate authority and proceeded to pass orders, without any application of mind, in a mechanical manner. In the light of the above, the impugned order dated 09.08.2014 cannot be sustained and the same is accordingly set aside.

21. In the normal course, this Court would have remanded the matter back once again to the respondents for fresh consideration. But in the light of the fact that there is a long lapse of time of nearly a decade from the date of passing of the impugned order and the matter is also pending before this Court for the past about 9 years and also considering the fact that the petitioner has already attained the age of superannuation on 31.01.2014, this Court is not inclined to remand the matter back to the respondents again and is of the considered view that this issue should be put to rest once and for all.

22. Accordingly, the punishment of “*stoppage of increment for a period of three years without cumulative effect*” is substituted in the place of the



punishment of “*reduction in lower grade i.e. MMGS - III to MMGS -II, While fixing the basic at the maximum of the scale i.e. Rs. 28,100/- in MMGS II Grade.*”

Further the period of absence from 29.05.2008 to 25.11.2008 is treated as unauthorized absence without pay and allowances” imposed through the impugned order dated 09.08.2014. The period between 29.05.2008 to 30.06.2008 shall be treated as the leave for which the petitioner is otherwise entitled to in terms of the order passed by the learned Division Bench in W.A.No. 1142 of 2012 setting aside the order of compulsory retirement and petitioner is deemed to have been continued in service while denying the backwages for that period from the date of compulsory retirement till the date of passing of the impugned order by the learned Division Bench. Therefore, it is implied that the petitioner is entitled for the counting of the said period as in service for all practical purpose except for the backwages.

23. Accordingly, the respondents are directed to pass a consequential order duly fixing the pay of the petitioner and pay all differential amount of terminal benefits payable to the petitioner by duly giving effect to the modified punishment as above, as expeditiously as possible at any rate within a period of eight weeks from the date of receipt of a copy of this order.



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24. Accordingly, the writ petition is allowed. There shall be no order as to costs. Connected Miscellaneous Petitions, if any shall stand closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Managing Director and Chief Executive Officer,
Union Bank of India, Union Bank Bhavan,
239, Vidhan Bhavan Marg Nariman Point,
Mumbai – 400 021.
2. Filed General Manager (HR),
Union Bank of India, Union Bank Bhavan,
2nd Floor, 239, Broadway, Chennai – 600 108.



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MUMMINENI SUDHEER KUMAR, J.

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