IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM

THE HONOURABLE MRS JUSTICE R. KALAIMATHI

W.P.No.7773 of 2011
and M.P.No.1 of 2011

D.Shanmugam ... Petitioner

Vs.

The Chairman / Disciplinary Authority,
Pallavan Grama Bank,
No.6, Yercaud Road,
Hasthampatti,
Salem – 636 007. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records relating to Order No.PGB/VIG/191/2010-2011, dated 05.03.2011 issued by the Respondent and quash the same.

For Petitioner	:	Ms.Y.Kavitha for M/s.P.V.S.Giridhar Associates
For Respondent	:	Mr.P.Raghunathan for M/s.T.S.Gopalan & Co.

ORDER

The order No.PGB/VIG/191/2010-2011 DATED 05.03.2011 issued by the respondent is under challenge.

2. The petitioner D.Shanmugam submits that he entered into service as Principal-cum-Messanger (SR No.5119) in the respondent bank on 23.05.1971. On 14.05.2009, the petitioner found the cashier Vanaraj trying to destroy certain vouchers of the bank and the petitioner prevented him from doing so and immediately submitted a letter dated 19.05.2009 to the respondent complaining about the action of said Vanaraj. He would further submit that thereafter an enquiry was made with regard to the said incident and show cause notice was issued to Vanaraj. The said Vanaraj submitted a letter dated 20.05.2009 admitting the allegations that he had misappropriated various sums and also raised allegations that the petitioner had assisted him in doing such illegal acts.

2.1 It is further submitted by the petitioner that a charge memo dated 28.05.2010 was issued to him and he was placed under suspension on 23.05.2009. It is further submitted that an Enquiry Officer was appointed to held a preliminary enquiry on 30.07.2010 and regular hearing was conducted on 08.10.2010. The petitioner was not permitted to engage defense assistant and his request for engaging a legal practitioner to assist him was also denied and no proper enquiry was conducted. Further, no witness were examined nor documents were marked through witnesses. Two additional documents were taken on record without furnishing advance copies and without deciding the relevance of those documents.

2.2 The petitioner would further aver that the Enquiry Officer interrogated him and held him guilty of the charges after receiving written brief of the Presenting Officer and his defense brief. It is the further case of petitioner that the respondent issued a show cause notice dated 05.03.2011 stating that all the charges were proved and proposed to impose a major penalty of removal from service. A perusal of the said show cause notice would show that the findings are not on the basis of any legal admissible evidence but merely on conjectures.

3. Heard Ms.Y.Kavitha, the learned counsel for the petitioner and Mr.P.Raghunathan, the learned Senior Counsel for the respondent.

4. Ms.Y.Kavitha, the learned counsel appearing for the petitioner would vehemently contend that the respondent issued the impugned show cause notice dated 05.03.2011 with premeditation. She would further argue that without any

material evidence, the authority has predetermined and formed an opinion that the charges were proved and the entire process of enquiry and show cause notice were mere empty formalities.

4.1 In support of her averments, she citied the following judgments:

i) In ***Central Bank of India Ltd., Vs. Prakash Chand Jain reported in AIR 1969 SC 983*** wherein it is held that the principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic Tribunals are not bound by the technical rules of procedure contained in the Evidence Act;

ii) In ***Siemens Ltd. Vs. State of Maharashtra and others reported in (2006) 12 SCC 33,*** the Apex Court held that the statutory authority (appointing authority) has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same will not remain in the realm of a show cause notice.

iii) ***The Chairman, Pandyan Grama Bank Vs. The Presiding Officer, Central Government Industrial Tribunal & other in W.P.No.9814 of 2001 dated 18.08.2010*** it has been held as under:

> *" it is well settled law that a statement recorded behind the back of the employee cannot be treated as substantive evidence by the enquiry officer during the disciplinary enquiry and that such a serious charge of corruption, as it is a quasi criminal proceedings, should be proved beyond any shadow of doubt ."*

5. Mr.P.Raghunathan, the learned Senior Counsel appearing for the respondent, would *inter alia* submit that depending upon the charges framed against the petitioner, due procedures of domestic and departmental enquiry were followed and the petitioner was issued with the second show cause notice and he was given 15 days time to give his reply. The petitioner gave an interim reply on 23.03.2011 and he rushed to this Court on the very next day i.e. on 24.03.2011. The law is well settled that premature writ petition impugning a show cause notice or charge sheet are ordinarily not maintainable and only in exceptional cases it does lie.

5.1 In support of his above contention, the learned Senior Counsel for the respondent relied on the following judgments:

i) ***State of U.P. Vs. Brahm Datt Sharma reported in (1987) 2 SCC 179***;

ii) ***Special Director Vs. Moh.Ghulam Ghouse reported in (2004) 3 SCC 440***;

iii) ***Union of India and another Vs. Kunisetty Satyanarayana reported in 92006) 12 SCC 28***;

iv) ***Khem Chand Vs. Union of India and others reported in 1957 SCC OnLine SC 6***.

6. In this case a letter dated 19.05.2009 was given by the petitioner to the respondent complaining of the action of Vanaraj. When a request notice was issued to the cashier Vanaraj, he has given a reply admitting the mistakes that he did the same along with one D.Shanmugam, Sweeper cum Messanger of M.Kunnathur Branch.

7. A thorough perusal of the reply given by Vanaraj shows that he has withdrawn huge amounts from various Savings Bank accounts namely from SB Account No.2874 of D.Murugan. He had also admitted that he withdrew a sum of Rs.3,75,930/- and in SB No.3406 he has withdrawn a sum of Rs.40,000/-. He

has also admitted to have withdrawn a sum of Rs.26,000/- from Current account-18 to S.B. No.895 and the list goes on and on and he has accounted that he had received a total sum of Rs.7,13,811/- and the petitioner received a sum of Rs.3,02,000/- and he expressed his willingness to pay of the said amount within a week. It is not known whether this amount was paid of by the said cashier Vanaraj.

8. A show cause notice explaining about the letter of Vanaraj which runs to five pages was issued to the petitioner. It is relevant to cullout the third para of the said show cause notice which is extracted hereunder:

> *" ... Investigations have revealed that you had joined the Cashier in committing various fraudulent activities and the irregularities committed by you are described in the ensuing paragraphs…"*
>
> *" ... 3) ... as the Peon of the branch, you were expected to ensure the safety and security of the vouchers and records by proper maintenance and upkeep thereof. Instead of doing your duties as a responsible employee, you had joined with the Cashier and allowed him to have a free excess for pilfering and destroying many of the vouchers and instruments engaged for the fraudulent transactions / misappropriations of money from the customer's accounts ...*
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> *4. An amount of Rs.10,000/- has been found withdrawn from SB account No.2393 of Mr.M.Kuppusamy on 23.01.2009. The customer has denied having withdrawn this amount. Mr.Vanaraj, Cashier was on leave*

on that date. It has been stated by Mr.Vanaraj, Cashier, that you had fraudulently withdrawn the questioned amount from the above account, without the customer's knowledge and consent. The related instrument is also not available. The relative debit entry has been omitted to be entered in party's SB account passbook by you. It is therefore evident that you had fraudulently withdrawn the above amount of Rs.10,000/- from the party's account and destroyed the questioned instrument for avoiding detection of the fraud committed by you. Thereby you have committed the major fraud of fraudulently withdrawing the above amount from the customer's account and by skipping the above debit entry from the customer's passbook, you have concealed the fraud committed by you from being noticed by the customer. Thereby you had acted detrimental to the interest of the bank."

9. For the said show cause notice dated 18.11.2009 the petitioner has given reply denying the show cause notice details. The explanation submitted by the petitioner was found to be not satisfactory and charge memo was issued by the disciplinary authority on 28.06.2010. Even the statement of imputations in respect of charge sheet was obtained along with the documents, the letter dated 20.05.2009 given by the cashier Vanaraj, the letter dated 19.05.2009 sent by the petitioner, the statement of accounts of S.B. Account No. 2393 / M.Kuppusamy, copy of the S.B. account passbook for the said account, copy of SB a/c. No.3406/Sarva Shiksha Abhiyan account of Govt. High School, M.Kunathur and details of vouchers missing in various accounts.

10. A written brief of S.Ravichandran, Presenting Officer, in respect of the department enquiry held against the petitioner on charge sheet No.PGB/VIG/SS/SCHST/02/10-11 dated 28.06.2010, was sent to the petitioner. On a thorough perusal of the written brief of the Presenting Officer, the principles of justice has duly been followed during the conduction of enquiry. Therefore, the allegations raised by the petitioner in this regard is not acceptable.

11. After the receipt of findings, second show cause notice was issued to the petitioner on 18.01.2011, wherein it has been stated that the findings of the Enquiry Officer is concurred by the disciplinary authority enclosing the findings of the Enquiry Officer. Thereafter, on 05.03.2011 after receiving the enquiry report, the appointing authority having discussed each and every charge and came to conclusion that all the charges have been proved against the petitioner. As per Regulation 39 (2)(b)(v) of Pallavan Grama Bank (Officers and Employees) Service Regulations, 2010, elaborate show cause notice dated 05.03.2011 is sent to the petitioner which is under challenge in the present writ petition.

12. In the case on hand the impugned notice dated 05.03.2011 (second show cause notice), in my considered opinion does not suffer from any premeditation.

13. This writ petition was filed in the year 2011 and the petitioner is being paid with subsistence allowance since the date of suspension till date. Therefore this Writ Petition is filed at a premature stage before passing of the order and it is liable to be dismissed.

14. In the result, based on the aforesaid observation, this Writ Petition is dismissed. Taking note of the circumstances of the case, a direction is issued to the disciplinary authority to complete the disciplinary proceedings within a period of four weeks from the date of receipt of a copy of this order. There is no order as to costs. Connected miscellaneous petition is closed.

23.07.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order
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R.KALAIMATHI, J

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