IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **16.02.2024**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.9108 of 2011

S.Natesan ....Petitioner

Vs

1. The General Manager,
Indian Overseas Bank,
Central Office,
763, Annasalai,
Chennai -600 002.

2. The Deputy General Manager,
Indian Overseas Bank,
Central Office,
763, Annasalai,
Chennai – 600 002. ....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records relating to the DO/GM/(GRG/AA/1968/2010 Dated 16.07.2010 of the 1st respondent and quash the same as illegal, arbitrary, malafide, contrary to the Principles of Natural Justice and unconstitutional and consequently direct the respondents to continue the petitioner in service with all attendant benefits including seniority and monetary benefits.

For Petitioner	: Mr.S.Nedunchezhian
For Respondents	: Mr.K.Srinivasamurthy

ORDER

The Writ Petition has been filed calling for the records relating to the DO/GM/(GRG/AA/1968/2010 Dated 16.07.2010 of the 1st respondent and quash the same as illegal, arbitrary, malafide, contrary to the Principles of Natural Justice and unconstitutional and consequently direct the respondents to continue the petitioner in service with all attendant benefits including seniority and monetary benefits.

2. The case of the petitioner is that, he joined as a Sub Staff in the year 1981 at Eraiyur Branch of Indian Overseas Bank. He owned a vacant house in S.No.200/2A2 measuring an extent of 1,290 ½ sq.ft situated at Venkatapuram Village, Madhurapuri Panchayat, Tiruchirapalli District. He executed a registered Power of Attorney in favour one R.V.Loganathan in respect of the property. When he was working as Clerk, he availed a Housing Loan of Rs.4,25,000/- from the respondent Bank under the "Subha

Gruha Housing Loan Scheme". Petitioner was regularly paying the loan amount. Meanwhile, Chief Manager of the Respondent Bank by his proceedings in RO/INS/65/2007-2008 dated 12.11.2007 issued a memo stating that he availed loan by creating a legally invalid mortgage by way of deposit of title deed of the property on which, he had no title. He submitted his reply denying the charges on 03.03.2008. Thereafter, enquiry was conducted and Enquiry Officer submitted his report. On the basis of his report, petitioner was dismissed from service. Petitioner preferred an appeal before the Appellate Authority ie., 1st respondent herein. Appellate Authority modified the punishment and awarded a punishment of compulsory retirement with superannuation benefits as would be due otherwise under the rules or regulations and without disqualification from future employment by proceedings in DO/GM/(GRG)AA 1968/2010 dated 16.07.2010

3. It is the further submission of the learned counsel for the petitioner that there was previous enmity between him and Power of Attorney agent due to monetary transaction. Power of Attorney cunningly acted and sold petitioner's property without his knowledge to his own brother. Power of

Attorney agent is a money lender. For the money borrowed from him, he cheated the petitioner by selling the property without his knowledge. Power of Attorney was executed only as a security. The fact that petitioner produced all the original documents and encumbrance certificate reflects that the property was still owned by the petitioner and that he had not committed any offence. However, he was penalized.

4. He further submitted that, after the punishment of dismissal from service, punishment was modified to punishment of compulsory retirement with superannuation benefits. Respondent Bank has not paid the monetary benefits due to him. When he claimed his monetary benefits, 1st respondent issued a communication in PAD/PENSION/866/2016-17 dated 04.02.2017, wherein it was stated that, petitioner was not eligible for terminal benefits as he had been dismissed from service. It is patently not correct and illegal. That apart, for the loan due from him, because of non-payment of terminal benefits, he was not able to repay the amount and therefore, interest got accumulated. Petitioner's terminal benefits were paid only in the year 2010 and that was adjusted towards the loan amount recoverable from him. This is also patently illegal.

5. He further submitted that the punishment imposed against the petitioner is grossly disproportionate and excessive to the misconduct committed by him. Petitioner may be imposed smaller punishment like stoppage of increment. In support of his submissions, he relied on the judgement of ***Hon'ble Supreme Court of India*** in ***Civil Appeal No.3565 of 2009*** in ***Jagdish Singh Vs. Punjab Engineering College & Others***, for the proposition that, in the absence of specific imputation of dishonest/oblique motive, lack of bonafide or utter negligence in discharge of duties, initiation of disciplinary proceedings is required to be quashed.

6. In reply, learned counsel for the respondent submitted that the charge against the petitioner is a grave charge. Petitioner was an employee in Indian Overseas Bank. At the relevant point of time, he was serving as a Clerk and he knows the rules and regulations with regard to the Bank. Despite knowing the fact the he executed the power of attorney deed in favour of R.V.Loganathan and sold the property on 19.10.2005, he had executed mortgage deed in respect of the same property with a knowledge that he had no title and obtained a loan of Rs.4.25 lakhs. Accordingly, departmental proceedings were initiated. When he was questioned with

regard to charges, he candidly admitted all the charges. Despite his admission, proper enquiry was conducted. Enquiry Officer found charges against the petitioner had been proved. On the basis of the enquiry, final order was passed in DO: DGM(JMR) DA:5764:2010 dated 02.03.2010 dismissing him from service. In the appeal filed by him, petitioner had not challenged the enquiry report or the finding of the Enquiry Officer. The only ground taken by him was that, punishment ordered to him was highly disproportionate to the charge leveled against him. Taking into consideration this submission, the Appellate Authority passed an order in DO/GM/(GRG/AA/1968/2010 dated 16.07.2010 modifying the punishment to that of compulsory retirement with superannuation benefits as would be due otherwise under the rules or regulations and without disqualification from future employment.

7. It is the further submission of the learned counsel for the respondent that, petitioner had not repaid the loan amount with the Bank and allowed it to be defaulted which resulted in initiation of proceedings under SARFAESI Act. Till now, he has not repaid the loan amount. Thus, he prays for dismissal of the present petition.

8. Considered the rival submissions and perused the records. From the facts obtained from the materials produced and from the submissions of the learned counsel appearing for the parties, it is not in dispute that, petitioner was working as a Clerk in Indian Overseas Bank when he was issued charge memo in DO:DGM(JMR):DA:568:2009 dated 28.05.2019. The relevant portion of charges read as follows:

> *On 16.09.2006, you had along with your wife Smt.S.N.Shanthi availed a term loan of Rs.4.25 lacs under out Subhagruha Scheme, sanctioned by Regional Office, Trichy vide their sanction endorsement dated 4.9.06 for construction of a house at a estimated cost of Rs.6.50 lacs at S.F.No.200/2 A2 in Venkatesapuram Village, measuring 1290 ½ sq.ft. Purchased by you on 09.12.04. While applying/availing the loan, you had committed the following omission/commission.*
>
> *1) You had sold the above said landed property on 19.10.05 itself to one Sri.V.Subramani, through your registered POA holder Sri R.V.Loganathan (registered POA executed by you in favour of Sri.R.V.Loganathan vide the document No.339/111/4 dated 9.12.04). You had fraudulently concealed the above fact and availed a term loan of Rs.4.25 lacs jointly with your wife Smt. Shanthi under out Subhagruha Scheme for construction of a house at the above site in which you had no title and thereby cheated the bank.*

2.You had managed to obtain and submit an encumbrance certificate for the above said property in such a way without incorporating the entry of the sale dated 19.10.05 of the said property.

3. You had created equitable mortgage on the said property in favour of the Bank by depositing the title deeds with out Irudayapuram branch on 11.09.06 which was followed by Regd.Memorandum on 13.09.06 (Registration No.3742/2006) knowing fully well that you had no title over the said property and thus cheated the bank.

9. It is seen that there are three charges. One is that, he along with his wife S.N.Shanthi availed a term loan of Rs.4.25 lacs and mortgaged a property in S.F.No.200/2 A2 in Venkatesapuram Village measuring 1290 ½ sq.ft on 16.09.2006. Prior to this, he executed a registered Power of Attorney deed in respect of the said property in favour of one R.V.Loganathan. The said R.V.Loganathan sold this property on 19.10.2005. Despite the knowledge of existence of Power of Attorney, the sale of property covered in Power of Attorney deed dated 19.10.2005, petitioner created equitable mortgage on the said property by depositing the title deeds.

10. The learned counsel for the petitioner submitted that, he has produced all his original title deed at the time of getting the loan. The General Power of Attorney deed was executed only as a security for the loan transaction with R.V.Loganathan. However, the legal opinion given by the Bank's Panel Advocate T.R.Ramamoorthy shows that, though petitioner produces his original title deed and parent deed, he has not produced the General Power of Attorney deed executed by him in favour of R.V.Loganathan. Had he produced the General Power of Attorney deed executed by him in favour of R.V.Loganathan, certainly the Panel Advocate would not have given legal opinion stating that petitioner had clear and marketable title for obtaining loan. This is the suppression of material fact by the petitioner. It is not known how petitioner's name is shown as Owner in the encumbrance certificate after the property was sold through registered sale on 19.12.2004. Patently it is a clear case of manipulation of records.

11. The indisputable facts that remains are as follows:

(1) Petitioner had executed general power of attorney deed in favour of R.V.Loganathan on 09.12.2004

(2) On that basis, R.V.Loganathan executed registered sale deed in favour of one Subramani.

(3) These factors are not diverged by the petitioner at the time of obtaining loan from the bank.

12. Petitioner had not seriously contested the enquiry, rather he admitted all the charges. However, proper enquiry was conducted by the Enquiry Officer. On completion of enquiry and on the basis of oral and documentary evidence Enquiry Officer found that all the charges have been proved and that was followed by dismissal from service and then appeal proceedings. In the appeal dated 08.04.2010, petitioner had just stated that the punishment was grossly disproportionate to the charges leveled against him. Nothing more said in the Appeal, especially with regard to the enquiry report and findings of the disciplinary authority imposing the punishment of dismissal from service. Taking note of this submission, Appellate Authority deemed it fit to reduce the punishment and therefore, punishment was

reduced to compulsory retirement with superannuation benefits instead of dismissal from service.

13. In the nature of misconduct committed by the petitioner after deliberately suppressing the material facts, truth etc., this Court is of the view that the modified punishment of compulsory retirement with superannuation benefits is just and appropriate. Therefore, the judgement relied by the learned counsel for the petitioner is not applicable to the facts of the case. Thus, this Court is not inclined to interfere with the order of the 1st respondent in DO/GM/(GRG/AA/1968/2010 Dated 16.07.2010.

12. Accordingly, this Writ Petition is dismissed. With regard to deduction of pensionary benefits towards the loan amount, this Court gives liberty to the petitioner to challenge the deduction of terminal benefits towards the loan payable in the manner known to law. No costs.

16.02.2024

Index :Yes/No
Internet:Yes/No
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G.CHANDRASEKHARAN, J

Sma

To

1. The General Manager,
   Indian Overseas Bank,
   Central Office,
   763, Annasalai,
   Chennai -600 002.

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   Indian Overseas Bank,
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