



W.P.Nos.11107 of 2021 & batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

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CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. Nos.11107, 1113, 11661, 11110, 9850, 11658, 11663, 11666 of 2021
and
W.M.P.Nos.16935, 17077, 17632, 16909, 16931, 16908, 16906 of 2022
and 11754, 11759, 10481, 11762, 12403, 12405, 12408, 12409, 12411,
12412, 12416, 12417, 13417 of 2021

W.P.No.11107/2021

A.Lakshminarayanan

...

Petitioner

/vs/

1. The Chief Manager – HRM/Disciplinary Authority,
Tamil Nadu Grama Bank, Head Office,
No.6, Yercaud Road,
Hasthampatti,
Salem – 636 007.

2. The Regional Manager,
Tamil Nadu Grama Bank,
Regional Office,
7H/33, Palayamkottai Road,
3rd mile, Pudukudi,
Thoothukudi – 628 008.

... Respondents



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Writ Petition is filed under Article 226 of the Constitution of India

to issue a writ of certiorarified mandamus to call for the records pertaining to the UNDATED entry marking Loss of pay on 01.03.2021 against the petitioner's name in the Attendant Register of Arumuganeri Branch of Tamil Nadu Grama Bank and proceedings No.TNGB/VIG/CS/41/2020-21 dated 30.03.2021 issued by the first respondent, quash the same and consequentially direct the second respondent to pay one day salary deducted for 01.03.2021.

For Petitioners ... Ms.D.Geetha
(in all W.P's.)

For Respondents ... Mrs.Rita Chandrasekaran
(in all W.P's.) for M/s.Aiyar & Dolia

COMMON ORDER

Heard Ms.D.Geetha, the learned counsel for the petitioners, Mrs.Rita Chandrasekaran, the learned counsel for the respondents.



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2. W.P.Nos.9850, 11107, 11110, 11661 & 11113 of 2021 have been filed challenging the order cancelling the leave already granted by treating it as “Leave on loss of pay” and the charge memo issued to them.

W.P.Nos.11666, 11663 & 11658 of 2021 they have been filed challenging the order of transfer stating that the order is punitive and it is liable to be quashed.

3. To sum up, the petitioners have challenged the legality of the following orders:

- i) Cancelling the leave already granted to them by treating as “leave on loss of pay”;
- ii) The legality of the charge sheet issued to them; and
- iii) The legality of the transfer orders.

4. The petitioners are the employees of the respondent bank in various capacities. On 01.03.2021, ‘Dharna’ was organised by the retired employees of the bank in front of the bank by raising several demands including their pensionary benefits. Those retired employees who are



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protesting outside the bank sought an appointment with the Chairman of the Bank. They have also given invitation to other unions to participate in the Dharna. These petitioners being the office bearers of Tamil Nadu Grama Bank Officers's Association and Tamil Nadu Grama Bank Worker's Union have applied for leave on the said day and extended their solidarity with the retired employees who were demonstrating Dharna. When the protestors wanted to give a memorandum to Chairman of the bank, he refused to meet them and went away. Subsequently the petitioners have been slapped with charge memo by alleging that they have falsely availed leave on personal reasons but participated in the Dharna and that would amount to misconduct. The petitioners have filed these writ petitions challenging the charge memo.

5. Ms.D.Geetha, the learned counsel for the petitioners, submitted that the above orders have been issued with *mala fide* intention out of bias and arbitrary exercise of power; the petitioners have submitted leave application stating the reasons of 'personal work' and it has been granted; subsequently the Regional Manager of the respondent bank has cancelled



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the leave and considered the leave as “leave on loss of pay” and he is not competent to do so; the petitioners did not remain in any unauthorized absence and they had availed the leave by getting it granted.

5.1 He further submitted that the leave has been revoked without complying the Regulations 23 and 57 of the Tamil Nadu Grama Bank (Officers and Employees) and without notice to the petitioners; the petitioners’ have got the fundamental right to participate in Dharna; there is biased attitude in the mind of the respondents and hence there cannot be any neutrality in the enquiry process.

6. Mrs.Rita Chandrasekaran, the learned counsel for the respondents, submitted that the petitioners committed breach of discipline and failed to maintain decorum and discipline in the office; they have trespassed into the Head Office premises during working hours with a group of retired persons and others and forcefully entered into the Chairman’s cabin without following the established procedure; inside the Head Office, they resorted to violence and unruly behaviour and enacted unruly scene and disturbed



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the normal functioning of the Head Office by shouting in a disrespectful manner; the petitioners have also blocked the pathway and denied freedom of passage and movement to top executives and obstructed their official duties; the petitioners failed to abide by the service regulations and their act is detrimental to the interest of the bank and conflict with the instructions.

6.1 It is further submitted that if the petitioners face the disciplinary proceedings and prove themselves innocent, they can get back their pay deducted due to no work on the alleged day; the petitioners cannot seek right to cancel the order as though it is their legal right; transfer is incidental to service and hence there is no illegality attached to the same.

7. The petitioners who are the staff members of the respondent bank have extended their solidarity with the retired employees who were staging Dharna and had availed leave by citing personal work. The petitioners claimed that participating in protest like Dharna is their fundamental right and hence the act of the respondents in cancelling the leave by treating it as



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“leave on loss of pay” and framing charges to initiate disciplinary proceedings is illegal.

8. The learned counsel for the petitioner cited the decision of the Division bench of this Court held in ***D.Thomas Franco Rajendra Dev Vs. D.Suresh Kumar in W.A.No.431 and 432 of 2013 dated 04.07.2013*** wherein it is held that holding demonstration is a form of expression guaranteed under the Constitution of India unless it is prejudicial to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign state, public order, decency or morality or which involves contempt of Court, defamation or incitement to an offence.

9. In the above case the petitioners were demonstrating Dharna at the local head office during the lunch hours between 2.00 p.m. to 02.10 p.m. The demonstration was also outside the head office and they have done in a peaceful way without bothering anyone. But in the case on hand, the petitioners were extending support as they were sympathizing with the retired employees association. The allegation is that the Dharna turned into



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an ugly event and the demonstrators have barged into the office premises and raised slogans against the bank and its staff. In such kind of protest, the petitioners could have obtained prior permission from his employer to demonstrate Dharna. In fact the petitioners have applied leave only by stating 'personal work'. However, they were found participating in the demonstration held before the head office.

10. The demonstration of Dharna *per se* is not illegal provided had it been done with the previous notice to the employer and without affecting the harmony of the business inside the bank premises. The demonstration was not held by the staffs but by the retired employees and for which the petitioners have extended sympathy and support. If the regulations of the bank do not prevent such participation, even that gesture of the petitioners cannot be called as misconduct. But, what actually aggravated the respondents was the alleged forceful entry into the Chairman's cabin by creating ruckus and spoiling the very decorum of the office and the office of the Chairman.



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11. It is also alleged that the petitioners have blocked the pathway and disrupted the movement of the staffs present in the head office by raising slogans in some disrespectful manner. No officer will grant leave to any office subordinates to indulge in such kind of unruliness in the name of demonstration.

12. In fact granting leave is not a matter of right. Even those leave except 'Casual Leave' can also be recalled by the competent authority depending upon the exigencies of the service of the bank. In such circumstances it is not even possible even to give any prior notice. Even according to the definition of 'Competent Authority' of the Service Regulations of the respondent bank, it is the General Manager in respect of Officer Scale - I and II.

13. It is claimed that one of the petitioners who was holding the post of 'Branch Manager' would come under the Scale I or II. The competent authority in respect of employees relating to Group 'B' Office Assistant and Group 'C' Office Attendant would be any officer not below the rank of



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Scale IV. The other petitioners who are working in clerical cadres are not above the cadre of Branch Manager. So it is claimed by the petitioners that it is the Regional Manager who has to mark the leave on loss of pay and the competent authority to effect such order is only a Chief Manager.

14. Even if an Officer who is below or above the rightful Officer who has to grant or cancel the leave had passed such orders, that can only be an irregularity and not an illegality. So the petitioners cannot make much fuss upon the authorities concerned who had either granted or cancelled the leave.

15. It is not denied by the petitioners that they have participated in the Dharna demonstrated outside the head office on the alleged day by availing leave stating that they have got some personal work. When there are specific allegations made against the petitioners that in the name of Dharna they have involved in activities demeaning the office of the Chairman and activities reducing the decorum of office, then they are answerable to those charges. If at the end of disciplinary proceedings, if



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the charges against them are not proved, then it will consequently revive the grant of leave. So cancellation of leave was done and it was considered as leave on loss of pay only because the petitioners are seen to be engaged in unbecoming conduct which cannot be allowed by any management without resorting to any disciplinary action. If the petitioners claim that they have not involved themselves in any such rude or unruly behaviour as indicated by the respondents, they can very well participate in the disciplinary proceedings and prove the same.

16. However, it is submitted by the learned counsel for the petitioners that there is a bias in the mind of the respondents and hence there would not be any neutrality in the disciplinary proceedings. But, it is too early to come to such conclusions without subjecting to the process of enquiry.

17. The learned counsel for the respondents submitted that the writ petitions are not maintainable because the petitioners have got an alternate remedy available before the Labour Court. It is further claimed that since



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the petitioners did not work, but participated in some misconduct, the leave has been cancelled by adopting the principle “no work no pay”.

18. The petitioners claimed that they have been subjected to double jeopardy as their leave has been cancelled and marked as “leave on loss of pay” by reducing one day’s pay and they have also been given with charge memo. The “leave on loss of pay” is an incidence attached to the discretionary power of the authority concerned in respect of granting / rejecting / treating the absence otherwise. So it is a separate action not connected to the charges given in the charge memo. The petitioners cannot claim that the order marking their leave as 'leave on loss of pay' and issuance of charge memo alleging disorderly behaviour on the alleged day of demonstration as one and the same and that the petitioners are affected due to double jeopardy.

19. Some of the petitioners have challenged the transfer order by stating that it is a punitive action taken against them. But so far as the transfer is concerned, it is incidence of service and hence any transfer



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cannot be considered as punitive action. In fact, some of the petitioners against whom transfer order has been issued are said to be working in same branch for a long time and hence the transfer initiated on administrative grounds cannot be considered as something punitive. It is learnt that the transfer in respect of the petitioner in W.P.No.11661 of 2021 was at his own request.

20. Whatever may be the case, the very transfer order itself cannot be considered as illegal. Sometimes allowing the employee to be in the same station may be detrimental to the harmonious or productive engagement of the branch. In view of the reasons stated above, I do not find any merits in these writ petitions and they are liable to be dismissed.

21. In the result, these Writ Petitions are dismissed. No costs.
Connected miscellaneous petitions are closed.

28.02.2024

Index: Yes
Speaking order
Neutral Citation : Yes
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R.N.MANJULA ,J.

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