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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2023

PRONOUNCED ON : 30.04.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.30692 of 2014

1. N.Pichaimuthu (Deceased)
2. Poochandrakodi
3. Jagadish
4. Subadhra
5. Rajamma ...Petitioners

Vs.

1. The Bank of Baroda,
Rep. By its General Manager,
(Tamil Nadu & Kerala Zone),
(Disciplinary Authority)
Zonal Office, Baorda Pride,
New No.41 III Floor,
Luz Church Road,
Mylapore, Chennai – 600 004.

2. The Executive Director
Bank of Baroda (Appellate Authority)
Baroda Corporate Centre,
C-26, HG-Block, Bandra Kural Complex
Mumbai – 400 05 ...Respondents

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Prayer : Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for the records relating to the order bearing Ref.SZ:VIG:F320:38:756 dated 31.10.2011 passed by the first respondent (Ex-A) and the order bearing Ref.Nil dated 28.03.2012 passed by the second respondent (Ex-B) in confirming the order of dismissal passed by the first respondent and consequential order bearing Ref: TKZ:HRM:COORD:03/275 dated 09.06.2014 passed by the first respondent in forfeiting the gratuity (Ex-C) and quash the same as being illegal, arbitrary and violation of Article 21 of the Constitution of India and direction to the respondents to reinstate the petitioner back in service with backwages, continuity of service including all other attendant benefits.

For petitioner : Mr.P.I.Thirumoorthy
for Ms.Row & Reddy
For R1 and R2 : Mr.G.Anand Gopalan

ORDER

The petitioner is seeking for a direction in the nature of certiorarified mandamus to quash the order passed by the first respondent

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dated 31.10.2011 as confirmed by the second respondent dated 20.03.2012 and consequentially depriving the gratuity by an order dated 09.06.2014 passed by the first respondent which are filled and marked as Ex-A", Ex-B", Ex- "C".

2. During the pendency of the writ petition proceedings, the petitioner who has filed this writ petition has passed away and his legal representatives were brought on record as petitioners 2 to 5.

3. Facts in brief as per the affidavit enclosed in this writ petition are as follows:

3.1. On 01.08.1985, the first petitioner who was working in the respondent Bank was promoted as Junior Management Grade – I and subsequently as Middle Management Grade – II and later as Senior Management Grade – II in the year 2011. He was charge sheeted on 23.06.2010 by the respondent Bank alleging that the petitioner being the power of attorney holders of A.Kirubanandan and A.Raajendhar has sold First Floor in Plot No.19, Kalaivani Street, kalaivani Nagar, Old

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No.155, New No,97, Keelkattalai, Chennai to Dr.Govindaraju, who has purchased the said property by borrowing loan from the respondent Bank of Baroda and prior to that the said property was under mortgage to Vijaya Bank.

4. The petitioner has submitted representations dated 05.08.2009 and 24.06.2010 denying the charges levelled against him. An enquiry officer was appointed who after conducting the enquiry has submitted a report holding that the charges levelled against the first petitioner are proved.

5. As Dr.G.Govindaraju who has borrowed loan has not paid the loan amount, the loan account has become NPA on 17.03.2009 the respondent on which the respondent Bank of Baroda issued paper notification indicating the property which was mortgaged by Dr.G.Govindaraju will be sold to realise the loan amount. In response to the said paper publication Vijaya Bank has sent a notice dated 06.04.2009 to the respondent Bank of Baroda stating that the first floor of the said property has already been mortgaged to Vijaya Bank and since

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the borrower of the loan by name A.Kirubanandan has committed default in repayment of the loan amount, notice has been issued under SARFAESI Act. Accordingly, communication was sent by Vijaya Bank to the respondent Bank asking the respondent Bank not to proceed against the said property, as the said property.

6. Counter affidavit has been filed by the respondents stating that the first petitioner was working as a Manager in the respondent Bank of Baroda and he purchased a property by way of Power of Attorney from A.Kirubanandan and A.Raajendhar. The first petitioner had no permission from the respondent Bank authorities for obtaining Power of Attorney and for purchasing the said property. The first petitioner has sold the said property to one Dr.G.Govindaraju who had availed housing loan from the first respondent Bank of Baroda and the said loan account has became NPA. While so, the first respondent Bank of Baroda has published a notice in newspaper about the sale of the said property for realising the loan amount on which a letter was sent by Vijaya Bank to stop the proposed auction by Bank of Baroda, since the said property was already mortgaged in Vijaya Bank. The first petitioner,

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without permission of the respondent Bank had executed sale of the said property in favour of Dr.Govindharajan as a result of which the first respondent Bank suffered a huge financial loss. Charge sheet was filed against the first petitioner under six charges. Enquiry was conducted and the same was thus proved. Disciplinary authority *vide* order dated 31.10.2011 imposed a penalty of dismissal.

7. It is further mentioned in the counter affidavit that the petitioner filed an appeal against the order of dismissal and the same was dismissed by the appellate authorities *vide* order dated 28.03.2012. In view of the dismissal order, the first respondent Bank forfeited the gratuity payable to the petitioner under Section 4(6) (b) of the Payment of Gratuity Act, 1972. Further, the first respondent Bank submitted the agreement for sale and construction agreement between the vendor (petitioner) and the purchaser (Dr.G.Govindarajalu) for the same property as claimed by the Vijaya Bank. The first petitioner did not produce any documents to substantiate any of his claim and hence, prayed for dismissal of this writ petition.

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8. Heard both sides and perused the materials available on record.

9. The petitioner was charge sheeted with following seven charges:

i) Mr. Pichaimuthu had not sought permission from higher authorities for obtaining “Power of Attorney” dt. 14.09.2005 in his favour from Mr. A.Kriubanandan and Mr. A.Raajendher.

ii) He had not secured permission for purchase of the property as his reply to the “Show Cause Notice” was that POA executed in his favour by Mr A.Kirubanandanand Mr. A.Raajendhar, is for consideration of part money paid to them for purchase of the property by him.

iii) He had not produced any proof for having paid the advance amount for purchase of the above property.

iv) He engaged himself in business outside the scope of his employment without Permission from Bank as evidenced by executing a sale deed on 21.03.2006.

v) He acted prejudicial to the interests of the Bank involving

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serious loss by misleading the Bank into believing that he had valid power to convey valid title and getting the sale consideration paid by the Bank.

vi) He cheated the Bank by executing sale of the said property with defective title.

vii) He misrepresented facts by stating wrong property description in page 2 (Para 10) of agreement for sale deed at. 16.02.2006.

10. It is submitted by the learned counsel for the petitioner that Vijaya Bank has mistakenly addressed letter to the Respondent Bank and that the said property was not under the charge of the Vijaya bank.

11. The respondent Bank has not agreed with the submissions of the petitioner that mistakenly Vijaya Bank has addressed a letter to the respondent Bank about the mortgaging of the first floor of the property, prior purchase of the same by Dr.Govindaraju. If at all Vijaya Bank has sent the letter erroneously as contended by the petitioner, another letter of Vijaya Bank could have been obtained and filed by the petitioner stating that letter addressed by it was a mistake.

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12. It is alleged that the petitioner has not sought permission from higher authorities for obtaining Power of Attorney dated 14.09.2005 in his favour from A.Kirubanandan and A.Raajendhar and that the petitioner has engaged himself in a business without obtaining permission from bank. The petitioner has conducted sale transactions against the interest of the respondent Bank. The petitioner as a Power of Attorney of A.Kirubanandan and A.Raajendhar has sold the property to Dr.Govindaraju. For the purchase of the said property Dr.Govindaraju has obtained loan from the respondent bank. The loan account of Dr.Govindaraju became NPA. Thereby, the respondent Bank has published notice in the newspapers regarding the auction of the said property. But Vijaya Bank has addressed a letter to the respondent Bank stating that the said property was already mortgaged to them and that loan was not re-paid, thereby proceedings were initiated under SARFASSI Act. The loan amount borrowed by Dr. Govindaraju for purchase of the property was utilised to pay to the petitioner towards sale consideration therefore, the petitioner is beneficiary of the said transaction of sale of property in favour of Dr.Govindaraju. The first

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petitioner should not have involved in the sale without obtaining permission from the higher authorities of the Bank. The petitioner is not expected to have conflicting business interest with the respondent Bank.

13. The petitioner is working in a nationalised Bank. People have reposed a huge trust and confidence in the Bank. It is the duty of the employees of the Bank to maintain the trust of the people and see that their confidence is not eroded. On account of the act of the petitioner in executing the Power of Attorney and sale in respect of the property in favour of Dr.Govindaraju who has borrowed loans from the respondent Bank in respect of the property which was already mortgaged to Vijaya Bank, the respondent Bank could not recover Rs.12,00,000/- of loan amount borrowed by Dr.Govindaraju. These kind of actions of the employees create a dent in the confidence of the people on the Bank system.

14. The learned counsel for the petitioner has cited a decision of

(i) Brijesh Chandra Dwivedi (Dead) Thr.Lrs. Vs. Sanya Sahayak and Orss., reported in ***Civil Appeal No.7382 of 2021, dated 25.01.2022***

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and relevant portion is extracted below:

> *"1. In view of the above and for the reasons stated herein above and in the peculiar facts and circumstances of the case, narrated herein above, the award of punishment of dismissal can be said to be too harsh, the punishment of dismissal is directed to be converted into compulsory retirement of the employee. As the employee has since died, and on converting the punishment of dismissal to that of compulsory retirement, death-cum-retirement benefits as also the benefit of family pension, if any, shall be paid to the legal heirs of the deceased employee in accordance with law and bearing in mind that punishment of dismissal has now been converted into one of compulsory retirement. The present appeal is partly allowed to the aforesaid extent. However, there shall be no order as to costs"*

(ii) In ***United Bank of India Vs. Bachan Prasad Lall,*** reported in ***2022 Livelaw (SC) 64,*** and the relevant portion is extracted below:

> **"***11. In our considered view, looking into seriousness of the nature of allegations levelled against the respondent employee, the punishment of dismissal inflicted upon him in no manner could be said to be shockingly disproportionate which would have required to be interfered with by the Tribunal in exercise of its power under Section 11A of the Act 1947. At the same time, merely because the employee stood superannuated in the meanwhile, will not absolve him from the misconduct which he had committed in discharge of his duties and looking into the*

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> *nature of misconduct which he had committed, he was not entitled for any indulgence. The Bank employee always holds the position of trust where honesty and integrity are the sine qua non but it would never be advisable to deal with such matters leniently."*

15. Considering the above, this Court is of the opinion that the findings of the enquiry officer that all the charges have been proved against the petitioner and confirmation of the same by the disciplinary authority cannot be interfered with. In respect of the punishment, this Court has seriously thought of reducing the punishment of dismissal, however, considering the serious allegations which are proved against the first petitioner, this Court is not inclined to take any lenient view.

16. Accordingly, this writ petition is dismissed, No costs

30.04.2024

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Index : Yes/No
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To,

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Rep. By its General Manager,
(Tamil Nadu & Kerala Zone),
(Disciplinary Authority)
Zonal Office, Baorda Pride,
New No.41 III Floor,
Luz Church Road,
Mylapore, Chennai – 600 004.

2. The Executive Director
Bank of Baroda (Appellate Authority)
Baroda Corporate Centre,
C-26, HG-Block, Bandra Kural Complex
Mumbai – 400 05

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Dr.D.NAGARJUN,J.

Vca

Pre-Delievery order made in
W.P.No.30692 of 2014

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