IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 05.03.2024

ORDER PRONOUNCED ON : 15.04.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA
W.P.No.32359 of 2017

The Management of Citibank, N.A.,
1st Floor, No.2-Club House Road,
Chennai-600 002.

...Petitioner

Vs

1.Special Deputy Commissioner of Labour,
Commissionerate of Labour,
Chennai-6.
2.T.R.Ramesh.

...Respondents

Writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for records connected with the order of 1st Respondent made in T.S.E-1/3/2011 dated 19.09.2017 and quash the same.

For petitioner : Mr.H.Karthik Seshadri

for M/s. Iyer and Thomas

For respondents: Mr.P.Sanjaygandhi, Government Advocate
for R1
Mr.Niranjan Rajagopalan
for M/s.G.R.Associates.
for R2

ORDER

Writ Petition is filed challenging the order dated 19.09.2017 made in T.S.E-1/3/2011.

2. The facts in a nut shell are as follows:

The petitioner is the management of Citi Bank, Chennai. The 2nd respondent joined the petitioner Bank in the year 1993 as a Citi-phone officer. On completion of probation period of one year, the 2nd respondent was placed in the management cadre as Assistant Manager. In 2004, the 2nd respondent was promoted as Manager and thereafter in 2007, he was designated as Manager (Print Logistics). It appears that the 2nd respondent in and around April 2007 had made two complaints to the ethics office of the petitioner of which one of the complaints on investigation was found to be justifiable. The 2nd respondent was informed in September 2007 about the redressal and closure of the complaints. On 12.03.2008, the 2nd respondent proceeded on six months unpaid sabbatical leave from 01.05.2008 to 31.10.2008 and the same was granted by the petitioner. In July 2008, the 2nd respondent made a further complaint regarding retaliation by the Indian Management for forwarding article in the newspaper containing allegations of violations by the Banks including Citi Bank in India. The said complaint was investigated and found to be proved. On completion of sabbatical leave, the 2nd respondent joined the petitioner Bank on 01.11.2008. Whereas the petitioner contends that the 2nd respondent was assigned same position in the department of marketing which he left, the 2nd respondent contends that he was not assigned any job post sabbatical leave. The petitioner contends that all the assignments given to the 2nd respondent were rejected by him on the premise that they were not commensurate with his skill and experience. Therefore he made a complaint in May 2010, to the Ethics Complaint Committee against the local managers stating that they took retaliatory actions against by not assigning any work post sabbatical. Investigation was conducted and the 2nd respondent was also interviewed on 8th and 9th July 2010, and on multiple occasions. Thereafter on 15.11.2010, the investigator submitted his report stating that the allegations of retaliatory action were not made out by the 2nd respondent but the investigator in his conclusion recommended the Citi Management to locate an appropriate position for the 2nd respondent that best matched his skill and capabilities in the areas of work that best matched his skill, namely customer service in business training or operations. Thereafter City Management located a C-11 position as ATM Operations Specialists and communicated the same to the 2nd respondent and position was said to be equivalent to the 2nd respondent position. However, the 2nd respondent rejected the same stating that it was a role similar to the one he performed 10 years ago. The petitioner therefore located a second position that of Specialist Branch Banking Controls, again C-11 position and placed it before 2nd respondent on 20.09.2010. Though the 2nd respondent accepted the post, two months later he decided to reject the position on the pretext that it did not involve customer interactions and also that he wanted to work from a specific branch office which had gym facility. Because of the persistent refusal of the 2nd respondent to accept positions as identified by the Bank, wherein the emoluments and service conditions were not affected, the petitioner could not find any further position for the 2nd respondent in the Chennai area of operations. As a result, the petitioner informed the 2nd respondent vide letter and e-mail dated 24.11.2010 that his position in the petitioner Bank had been rendered surplus to requirement and hence redundant. The letter urged him to reconsider and accept the Specialist Branch Banking Controls position that had been offered to him or to agree for transfer or relocation to any other part of India. Though the letter requested for response before 03.12.2010, the date was extended periodically till 31.01.2011. The petitioner having received no positive response from the 2nd respondent, on 01.02.2011 terminated the services of the 2nd respondent citing the reason that the services of the 2nd respondent in the bank had been rendered surplus as he was not inclined to take up alternative position suggested for him.

3. The 2nd respondent on the other hand contended that the respondent was victimized for having acted as a whistle blower. It was contended by the 2nd respondent that he was victimized for making complaints on ethical issues in good faith. The 2nd respondent further contended that he joined duty on 01.11.2008. On return to office after six

months sabbatical leave, he was not given any responsibility or work by the petitioner bank. Inspite of the 2nd respondents repeated requests to the Business Manager and Human Resource Manager for an assignment he was continuously ignored and treated in a cavalier manner. The 2nd respondent was therefore constrained to approach officials of Ethics Committee of the petitioner Bank at New York, with a request to stop the wilful mistreatment and victimization and also to assign a job at the earliest. On 01.07.2010, the Ethics Committee appointed the Head of Human Resources Department of Malaysia as an enquiry officer to investigate the complaint made by the 2nd respondent and the 2nd respondent was asked to appear before the enquiry office for an enquiry to be held in Mumbai on 8th and 9th of July 2010. Initially the 2nd respondent raised objections in respect of the manner in which the enquiry was being conducted but on the assurance of the petitioner Bank that the enquiry would be fairly and properly conducted the 2nd respondent attended the enquiry. The 2nd respondent was again summoned for enquiry on 06.08.2010 to Mumbai and was informed that Human Resource Management at the conclusion of enquiry, found that the 2nd respondent was not victimized, but that there was serious deficiency on the part of the Indian Management in not assiging any responsiblity to him, on his return from sabbatical leave. The 2nd respondent sent a representation to the Ethics officer, at USA on the deficiencies of the enquiry and that the decision of the enquiry was arbitrary and violative of natural justice. The 2nd respondent was given an undated and unsigned summary of the enquiry report, wherein it was stated that the investigation revealed that there was no evidence of victimization but there was serious deficieny in not assigning any job to the 2nd respondent post sabbatical leave, that 2nd respondent had issues with his supervisors over the years of his employment because of his ego and attitude. In conclusion, it was recommended that the petitioner bank should locate approprate position for the 2nd respondent which best matched his skill and capabilities. It was contended by the 2nd respondent that between August 2010 to 24.01.2011, the offers of job were given to him which were below his skills and experience and made with a view to deny promotion to him in future. Though the South Asia HR Head had promised to review the 2nd respondent's grievances, the same was not done. On the contrary, the 2nd respondent was pressurized to accept jobs which were far beneath his skill and experience. On 24.01.2011, the 2nd respondent wrote to the HR Head, South Asia that he awaited a fair and equitable review of the enquiry but did not receive any reply to the mail. Finally on 01.02.2011, the 2nd respondent's was summoned by the Regional HR Manager to accept severance package which he refused and hence the termination order was issued. Challenging the termination order, the 2nd respondent filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 before the 1st respondent.

4. The 1st respondent on the basis of the evidence placed on record allowed the appeal. Aggrieved by the order passed in the appeal, setting aside the termination order and directing the petitioner Bank to reinstate the 2nd respondent with continuity of service and with all other benefits, the petitioner Bank has filed the above writ petition.

5. The learned counsel for the petitioner submitted that the 1st respondent erred in holding that the termination order was corporal in

nature over looking that it was the 2nd respondent who refused to accept any position offered to him by the petitioner, on his own notions of superiority. The learned counsel further submitted that the 1st respondent mechanically upheld the allegations of the 2nd respondent that the petitioner Bank frustrated the 2nd respondent to the extent of going on sabbatical leave without any evidence and despite the findings of Ethics office. The petitioner's counsel further submitted that the termination order was issued for a reasonable cause, in that the 2nd respondent's position in the bank, was rendered surplus to the requirement of the bank and hence became redundant. The learned counsel further submitted that the 1st respondent over looked that even in the termination order it was clearly stated that the 2nd respondent was offered assignments in C-11 position which was the current position of the 2nd respondent but the 2nd respondent rejected the positions eventhough they were equal to the present emoluments and service conditions of the 2nd respondent. For the aforesaid reasons the learned counsel for the petitioner prayed that the writ petiiton be allowed and the impunged order set aside.

6. The learned counsel for the 2nd respondent on the other hand submitted that the 2nd respondent was victimized and the real reason for his termination was because he acted as a whistle blower. The learned counsel relied on the facts of the case to support that the termination order was retaliatory in nature. The learned counsel further submitted that reasonable cause should not relate to acts or omissions of an employee. In the present case the termination order referred to the conduct of the 2nd respondent in rejecting the offers of assignment as a reason for termination and therefore the same was corporal in nature. In the absence of any evidence in support of the reasons for termination, the petitioner Bank could not terminate the 2nd respondent services as surplus and redundant. The learned counsel therefore prayed that the writ petition deserved to be dismissed as meritless.

7. I have heard both the learned counsels and I have perused the materials placed on record.

8. The facts of the case are narrated above and therefore the

question that arises from the narration of the aforesaid facts is whether the termination order is justified or not?

9. The 1st respondent drew support from the following instances to hold that the termination order was invalid.

i) That there was a delay of 1 ½ years before an offer of assignment was given to the 2nd respondent post his sabbatical leave.

ii) That the two positions offered to the 2nd respondent were not commensurate with his experience and skill and further there was no evidence on the side of the petitioner bank to establish the reasonable cause for termination.

10. The 1st respondent found that the specific allegation of the 2nd respondent that he was deliberately isolated for 1 ½ years after he returned from his sabbatical leave, was not properly countered by the petitioner. The 1st respondent on the basis of the evidence on record further found that there was no evidence to establish that the 2nd respondent was rendered surplus/redundant which was one of the reasons given in the termination

order, apart from the denial of the positions offered to him. The 1st respondent therefore concluded that the above factors clearly showed that there was no reasonable cause for terminating the services of the 2nd respondent and therefore set aside the same.

11. The Division Bench of this Court in the case of *S.Janardhanan Vs. The Additional Commissioner for Workmen's Compensation, Madras and another* reported in *81 Law weekly 468* held on an interpretation of Section 41(1) of the Tamil Nadu Shops and Establishment Act, 1947 that the termination of employment under Section 41(1) could be made on two contigencies, specified in the Section itself. Firstly, that an employee whose services were dispensed with, was given atleast one month notice or wages in lieu of such notice and secondly, that his services were dispensed with, only for a reasonable cause. The Division Bench further held that the question whether there was a reasonable cause or otherwise was a question of fact and not a question of law.

12. In the present case, it is to be seen whether the petitioner has made out reasonable cause for terminating the services of the 2nd

respondent. Obviously such cause would not depend merely on the subjective satisfaction of the employer. It is always open to the Court to examine whether the satisfaction of the employer about the necessity of terminating the services of the employee was bonafide or not.

13. In the present case, the impugned order gives two reasons for terminating the services of the 2^{nd} respondent. The reasons are that the 2^{nd} respondent was not inclined to takeup alternate positions offered to him by the petitioner bank and that his services in the bank were rendered surplus to the requirements of the bank. It is seen that on 24.11.2010, the petitioner bank conveyed to the 2^{nd} respondent and pressed the 2^{nd} respondent to reconsider and accept the Specialist Branch Banking Controls, Chennai or agree for transfer of location within India. It is seen that the 2^{nd} respondent sent a reply mail on 26.11.2010, denying that the petitioner bank located appropriate position for him. The 2^{nd} respondent clearly stated that ATM operator specialist job was taken over from him 12 years back and therefore the claim that the job was meant to give excellent job opportunity was a hollow statement as the person who took over from him remained in

the same position and also that the said position was lower to his earlier position. In effect, the 2nd respondent stated that the petitioner bank wanted to demote him and even the claim of "surplus and redundant" was a design to press the 2nd respondent to succumb to its designs. The same was also reiterated in the petitioners mail dated 29.11.2010. Thereafter, there were exchange of mails and finally the termination order was passed. It is further pertinent to note that the second position of Specialist Branch Banking Controls was initially accepted by the 2nd respondent, but later he found that he had to work in the position in a remote branch. In this backdrop the petitioner Bank should have filed evidence/documents to show that the apprehensions/objections of the 2nd respondent were unreasonable and unfounded. No document was filed to show that the positions offerred to the 2nd respondent were commensurate with his skill. The aforesaid communications are referred to for the purpose of showing that the reasonable cause referred to in the termination order is not a genuine one. It is undisputed that the 2nd respondent was denied assignments for more than 1 ½ years and only after he made a complaint to the Ethics Committee and on the recommendation of the Ethics Committee, the above offers were made. As rightly pointed out by the 2nd respondent, there is absolutely no explanation from the petitioner for keeping him out of any assignment for 1 ½ years which resulted in denial of promotion and bonus etc and hence the offer of positions to the 2nd respondent was made with the intention that he would accept it out of sheer frustration.

14. In my view in the absence of any evidence that the offers were genuine offers, the only conclusion that can be drawn is that only to ease out the 2nd respondent from the services of the bank, the preteutious offers were made. The contention of the petitioner that the termination order was not corporal in nature cannot be countenanced. The termination order clearly refers to acts of ommissions on the part of the second respondent and hence, in the absence of reliable evidence to substantiate the reasons it cannot be said that the termination was not corporal. It is trite that when imputations are cast, the termination cannot be construed as non-corporal. Further, the petitioner bank took a specific stand that the 2nd respondent was rendered surplus. Therefore the burden was on the 2nd respondent to establish the same by producing evidence. Mere statement that the 2nd

respondent was found surplus, without any material to support the same in my view cannot be accepted. I am fortified in my view by the Judgment of this Court in *Rallis India Ltd, Madras v. Narasimha Rao and another* reported in *1991(2)LLJ 505,* wherein the Hon'ble High Court held that,

> "*the statement contained in the order of termination that the Company has no further need of the services of the employee does not in law by itself constitute a reason.*"

15. The narration of the above facts clearly establish that the petitioner bank has failed to establish both the causes given in the termination order and therefore, I hold the requirement of Section 41(1) of the Shops and Establishments Act, is not satisfied. Therefore, I find that the 1st respondent has considered the case on the basis of the records in a fair and reasonable manner and hence the same does not call for any interference. The order of the 1st respondent is therefore confirmed.

Accordingly, writ petition is dismissed. No Costs.

15.04.2024

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Index:Yes/No

Speaking Order: Yes/No
Neutral Citation: Yes/No

N.MALA,J.

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To
1.The Management of Citibank, N.A.,
1st Floor, No.2-Club House Road,
Chennai-600 002.

2.Special Deputy Commissioner of Labour,
Commissionerate of Labour,
Chennai-6.

PRE-DELIVERY ORDER IN
W.P.No.32359 of 2017

ORDER DELIVERED ON
15.04.2024