IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2023

PRONOUNCED ON : 29 .02.2024

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

W.A.No.1476 of 2019
and CMP.No.10081 of 2019

1.The General Manager (RRB & Lead Banks)
and Disciplinary Authority,
United Bank of India, Regional Office,
118, Ramakrishna Mutt Road,
Mylapore, Chennai – 600 004.
(Presently at: No.184/192,
Sree Durga Towers, Ramakrishna
Mutt Road, Mandavelli,
Chennai – 600 028)

2.The Appellate Authority and
Deputy General Manager (Personnel),
Disciplinary & Industrial Relations Dept,
United Bank of India,
11, Hemanthabasu Sarani,
Kolkatta – 700 001. .... Appellants

vs.

Sujatha Bhupathiraj ... Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the learned Single Judge order dated 12.06.2014 made in WP.No.12766 of 2007.

For Appellants : Mr. P.S. Ganesh

For Respondent : Mrs.A.L.Gandhimathi,
Senior Counsel for M/s. SA.Kanmani.

JUDGMENT

(Order was delivered by **G.ARUL MURUGAN, J**)

This Writ Appeal is filed challenging the order of the learned Single Judge dated 12.06.2014 in WP.No.12766 of 2007, partly allowing the writ petition by modifying the impugned order of punishment of dismissal of the petitioner from service, as against the respondent, into one that of reinstatement in service with continuity of service and other attendant benefits, however without backwages.

2. The respondent herein worked as officer in the appellant bank at

Bangalore Cantonment Branch. During her service from 01.10.2004 to 31.03.2005, the appellant bank came to know about a lot of extraneous/unusual debit and credit transactions through the statements of three savings bank accounts maintained by the respondent, singly/jointly with her son and daughter at ICICI Bank, Nanganullur Branch, Chennai. On 12.12.2005, the appellants bank issued a show cause notice, asking for explanations with respect to large value of credit entries on several occasions in the form of cash, transfer and clearing mode in the three accounts. On receipt of the notice, the respondent submitted her reply on 22.12.2005 explaining that the credits were made from friends and relatives of her husband and also the accounts were all flexi deposit type and that, the accounts were auto transferred and Fixed Deposits Accounts were credited. Not satisfied with the reply, the respondent was placed under suspension on 10.03.2006 and a charge memo containing three charges was issued on 03.04.2006, as suppression of facts on the part of the respondent is misconduct for violation of Regulation 20 of United Bank of India Officer Employees' (Conduct) Regulations 1976.

The charges are as follows:

i) While analyzing the statement of S.B. A/c No. 602601509322 standing in your name with ICICI Bank, Nanganallur Branch, it has been noticed that large value of credit entries on several occasions in the form of cash, transfer and clearing mode and against such credits big amount of debit entries as noted under during period 01.10.2004 to 31.03.2005 are appearing in the statement.

ii) While analyzing the statement of S.B. A/c No. 005401513199 during 31.12.2004 to 31.05.2005 standing in the name of your daughter Ms. B. Manika jointly with you maintained with ICICI Bank, Nanganallur Branch, it has been noticed that unusual high amount of credit entries on different occasions in the form of cash, transfer and amount of debit entries in the form of clearing and cash on different dates as stated under are appearing in the said statement.

iii) During analysis of Bank's statement of SB A/c No. 005401021830 in the name of Mr. B. Arun (operated by you as guardian) maintained with ICICI Bank, Nanganallur Branch, it has been observed that in such a minor account also unusual big amonts of credit and debit entries are appearing in the statement during the period 11.01.2005 to 07.05.2005.

3. Not satisfied with the reply submitted by the respondent, the appellant bank appointed an enquiry officer to enquire into the charges. The enquiry officer, after conducting enquiry, submitted the report on 09.09.2006 concluding that all the charges were proved against the respondent. The enquiry report was forwarded to the respondent and she submitted her objections on 23.10.2006. After considering the objections, the 1st appellant by proceeding dated 06.11.2006 imposed major penalty of dismissal with immediate effect, in terms of regulation 4(j) of the United Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976. The appeal filed by the respondent before the 1st appellant also came to be rejected by an order dated 05.02.2007. Challenging both orders, the respondent has preferred the present writ petition.

4. The learned Single Judge observed that the explanation offered by the respondent was plausible since she is from a Hindu family, which is patriarchy in nature and male dominated one and therefore she might not have got the knowledge about the transactions made by her husband. The learned Judge also has observed that sufficient time and opportunity was not provided to her to effectively participate in the enquiry and therefore the impugned orders are liable to be quashed as arbitrary, illegal and in violation of the principles of natural justice. However holding so, the learned Single Judge proceeded to consider the penalty of dismissal from service on the ground of proportionality.

5. The learned Single Judge concluded that it is a fit case where the doctrine of proportionality can be applied and therefore has passed orders by modifying the punishment of dismissal from service imposed on the petitioner into that of reinstatement in service with continuity of service and other attendant benefits, however without backwages. Challenging the same, the appellants are before this Court on writ appeal.

6. Mr.P.S.Ganesh, learned counsel appearing for the appellants bank

submitted that the respondent's husband is also an officer in the appellant bank who got indulged in various irregularities based on which a complaint was lodged and he was arrested in a criminal case and was in jail. He was a Chief Manager and also had the sanctioning authority of advances. The respondent who also worked as an officer in the appellant bank, maintained three accounts, one in her individual name and other two accounts jointly with her minor son and daughter. In a short span of nearly six months, there had been huge transaction of credits and debits from these three accounts which were completely disproportionate to her source of income. She suppressed to declare the same while filing the statement of assets in that financial year to the Appellant bank, which is in clear violation of the Regulations. Further she had no explanation to offer except stating that she had no knowledge about the same and that her husband made those deposits and withdrawals, which is not acceptable.

7. The learned counsel for the appellants further submitted that the findings of the learned Single Judge that since the respondent is a female in a Hindu family, her explanation that she had no knowledge about the transaction, is plausible cannot be sustained, particularly when the

respondent is an officer of the appellant bank who is bound by the regulations of the bank. He further submitted that the learned Single Judge by considering the punishment on the ground of proportionality has evidently concluded that the enquiry was fair and proper, even though the observation was otherwise. The respondent herein also has accepted the same and not challenged the order of the learned Single Judge.

8. The learned counsel for the appellants further submitted that the learned Single Judge ought not to have interfered in the punishment imposed by the disciplinary authority, particularly when the domestic enquiry had been found to be proper. Moreover, by applying the doctrine of proportionality, the learned Single Judge has interfered in the order of dismissal from service which is the major penalty into that of reinstatement in service with continuity of service and other attendant benefits, however without backwages which is not one of a major penalty as enumerated under the penalties in United Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976.

9. The learned counsel further submitted that the order of the learned

Single Judge in interfering the punishment by completely modifying the punishment from dismissal into reinstatement in service is against the settled proposition, particularly when the Hon'ble Supreme Court has held that the High Courts under judicial review cannot interfere in the order of punishment imposed by the employer when the punishment has been imposed for the proved charges. The learned counsel further submitted that the respondent who was found acted against the regulations of the bank cannot be taken back into services and sought for interference of this Court to allow the appeal. The learned counsel also relied on the following decisions in support of his submissions,

i) Boloram Bordoloi Versus Lakshmi Bank and others reported in 2021 (2) SCC 806

ii) B.C. Chaturvedi versus Union of India and others reported in 1995 (6) SCC 749

iii) Union of India versus K.G. Soni reported in 2006 (6) SCC 794

10. Mrs. A.L.Gandhimathi, learned Senior Counsel assisted by Mrs.S.A.Kanmani appearing for the respondent submitted that the respondent had been working in the bank for more than 20 years without any blemish in various branches of the appellant bank throughout the country. The respondent was not aware of any of the transactions made by her husband in the three accounts, and in fact he was solely responsible for

the transactions and due to some complaints he had been remanded to judicial custody during that relevant point of time and was also dismissed from service.

11. The learned Senior Counsel further submitted that the enquiry was conducted in a hurried manner and sufficient time was not granted to the respondent to submit her explanations by ascertaining the details from her husband who was under incarceration and therefore she was not able to effectively participate in the enquiry.

12. The learned Senior Counsel further submitted that the disciplinary authority without independent application of mind by considering the explanation offered by the respondent has simply imposed the punishment merely on the findings of the enquiry officer which was rightly taken note of by the learned Single Judge. Further the Senior Counsel submitted that it is not the case of any misappropriation or any loss caused to the bank and in fact absolutely there is no complaints as against the respondent in respect of discharging her duty within the branch of the bank where she works. The entire charges relates to some credit and debit

transactions made in an other bank in her name and her minor son and daughter's accounts. When no loss was caused or irregularities committed in the appellant bank, the same was taken note of and considered by the learned Single Judge and therefore came to the conclusion that the punishment imposed is not proportionate to the charges leveled. Therefore, the learned Single Judge has interfered in the order of punishment that too only by modifying the punishment from dismissal into reinstatement in service with continuity of service and other attendant benefits but however, the learned Single Judge has not ordered for any back wages. In such circumstances, no interference is required in the order of learned Single Judge and sought for dismissal of the above appeal.

13. Heard the learned counsel for the appellants and the learned counsel for the respondent and considered the materials on record.

14. The respondent worked as an officer in the appellant bank at Bangalore Cantonment Branch between 2004 and 2005. While so, the appellant bank came to know about lot of extraneous/unusual credit and debit transactions in the statements of three savings bank accounts retained

by the respondent singly and jointly along with her minor son and daughter with ICICI Bank, Nanganallur Branch. The three Saving Bank Accounts namely, (1) SB Account No.602601509322 (2) S.B Account No. 005401513199 and (3) S.B. Account No.005401021830, one operated in her name individually, another account jointly with her daughter B.Manika and the third account operated along with her son B.Arun. It is also relevant to point out that her husband also worked as a Chief Manager in the appellant bank itself, and he had the sanctioning authority of loans. Due to some malpractices, complaints have been lodged and her husband was arrested in a criminal case and was under incarceration for nearly five months. While so, the appellant bank came to know about huge transactions in the bank accounts which the respondent did not disclose and therefore the second appellant issued a show cause notice dated 12.12.2005 calling for explanations from the respondent in respect of large value of credit and debit entries on several occasions in the form of cash, transfer and clear mode in the three accounts cited supra. From the analysis of the bank statements, it was found that the transactions reflected were quite disproportionate to the salary income of the respondent. Therefore, the clarification as to why the deposits so made in these accounts were not disclosed through annual property returns submitted by the respondent was called for. The respondent, on receipt of the show cause notice submitted her reply on 22.12.2005 simply stating that the transactions were made from the friends and relatives of her husband and further the accounts were all flexi deposit type, fixed deposits accounts were auto transferred and created. Except this, there was no explanation given by the respondent for the show cause notice issued and explanation called for in respect of each of the entries. Therefore, not satisfied with the reply, the respondent was placed under suspension and disciplinary proceedings was initiated against her.

15. The second respondent issued a charge memo on 03.04.2006 under major penalty proceedings and explanations were called for. The respondent submitted her reply but failed to clarify about the deposits or the withdrawals and how the money was spent or utilised and also she has not clarified the details of unusual and extraneous financial transactions in the above said three accounts. The respondent was unable to justify these transactions and further has concealed the high value transactions. By suppressing the high value deposits in her name and the name of her

dependents children, the respondent has been charged that she violated the Regulations 20 of the United Bank of India, Officers and Employees' (Conduct), Regulations 1976. The respondent submitted a reply stating that she was not aware of any of those transactions in the three accounts and that it was done by her husband. Further, she has stated that she has been in service for past 20 years without any adverse remarks.

16. The appellant bank not satisfied with the reply, appointed an enquiry officer who conducted enquiry. The respondent participated in the enquiry but her only allegation is that she was not able to effectively participate in the enquiry as time was not given to get the details from her husband who was at that point of time arrested and remanded to judicial custody. On conclusion of the departmental enquiry, the enquiry officer submitted a report on 09.09.2006 holding that the charges are proved against the respondent. The enquiry report was forwarded to the respondent and she also submitted her objections.

17. The second appellant by considering the enquiry report and the remarks offered by the respondent has observed that the respondent could

not justify the unusual financial transactions done in her own account and in the other two accounts jointly with her daughter and minor son. Further, there were huge transactions in a span of six months from 31.12.2004 to 31.05.2005 which were beyond the known source of income of the respondent and the respondent was not in a position to explain the sources and receipts of even a small portion of these transactions. Further, the respondent has suppressed all those transactions in the assets and liabilities statements submitted by her during the relevant period. All of these transactions and deposits were required to be reported in the said statements under regulations 20 of the United Bank of India Officer Employees' (Conduct) Regulations, 1976. Considering all those aspects, the second appellant accepted the enquiry report and by proceedings dated 06.11.2006 imposed the major penalty of “dismissal from service”, with immediate effect in terms of regulations 4(j) of the United Bank of India Officers and Employees Discipline and Appeal Regulations 1976.

18. The respondent filed appeal to the first appellant as against the order of dismissal which was also ultimately came to be rejected on 05.02.2007.

19. In our considered opinion, the observations of the learned Single Judge that the explanation offered by the respondent was plausible, as she is from a Hindu family which is a patriarchy in nature and male dominated one and therefore there was every possibility that the husband might have made the transactions without the knowledge of the respondent, cannot be sustained as the respondent herself is an officer of the appellant bank and she is bound by the regulations. Moreover when the respondent has filed the annual statement to the appellant bank suppressing huge credit and debit entries in the three accounts, it cannot be said that even the filing of the details of assets in the financial year to the appellant bank was also done by the respondent without any knowledge.

20. Firstly, there have been huge transactions in the three accounts maintained by her individually and jointly with her daughter and minor son. Secondly, when the annual disclosure statements were filed to the appellant bank, the respondent intentionally suppressed those transactions, which is in violation of Regulation 20. The respondent cannot simply give an explanation that she had no knowledge and that the same was done by her husband. It was her bounden duty to explain but despite

the notice and enquiry, she failed to offer sufficient explanation. This only leads to the inference that the transactions were knowingly suppressed.

21. The only allegation of the respondent is that she was not given sufficient time to get the details from her husband, who was in jail, to effectively participate in the enquiry, cannot be accepted. In fact, if the learned Single Judge has found that the enquiry conducted was not proper and was in violation of the principle of natural justice then the learned Single Judge ought to have quashed the proceedings and directed the appellant bank to conduct de nova enquiry from the stage of the reply. Even though, the learned Single Judge has observed that the enquiry proceedings are liable to be quashed on the grounds of arbitrariness and violation of principle of natural justice, the learned judge proceeded further to consider the question of punishment on the ground of proportionality. Once the punishment has been considered by the learned judge on the question of proportionality, it can be taken that the enquiry against the respondent is fair and proper. Moreover, since the respondent has not challenged the order, it is evident that they have accepted the conclusion arrived at by the learned Single Judge in respect of the fact that enquiry was proper. Therefore, the

only issue to be considered now is whether the interference of the learned Single Judge in the order of punishment on the ground of proportionality is justified.

22. The learned judge finding that punishment of dismissal from service is disproportionate to the charges has modified the punishment from dismissal from service to that of reinstatement into service with continuity of service but without back wages.

23. While interfering in the punishment, the learned Judge could not have modified the punishment from dismissal from service into that of reinstatement into service, which is not one of the punishment enumerated under the major penalties of the United Bank of India Officers Employers (Discipline and Appeals), Regulations 1976. Clause 4 of the regulations are extracted hereunder for easy reference.

> *4.* ***Penalties:***
>
> *The following are the penalties which may be imposed on an officer employee for acts of misconduct or for any other good and sufficient reasons:*
>
> *Minor Penalties:*

(a) censure;

(b) withholding of increments of pay with or without cumulative effect;

(c) withholding of promotion;

(d) recovery from pay or such other amount as may be due to him/her of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders;

(e) reduction to a lower stage in the time scale of pay for a period not exceeding 3 years without cumulative effect and not adversely affecting the officer's pension.

Major Penalties:

(f) save as provided for in (e) above reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his/her pay;

(g) reduction to a lower grade or post;

(h) compulsory retirement;

(I) removal from service which shall not be a disqualification for future employment;

(j) dismissal which shall ordinarily be a

disqualification for future employment.

24. It is clear from the above, that the modified punishment imposed in the impugned order by the learned Single Judge is not a major penalty enumerated under major penalties in clause 4 of the regulations, which is not a right approach. To that extent, the order of the learned Single Judge needs interference.

25. Even though we are not in agreement with the reasons adduced by the learned judge in the impugned order for modifying the punishment, we are proposing to modify the punishment for the reasons dealt with hereunder. Further the decisions relied on by the learned counsel for the appellants may not be useful for the present case as the decision in *Bolorom Bordoloi* cited supra pertains to case where there were allegations of misappropriation by sanctioning loans. It was a case under Prevention of Corruption Act in ***B.C. Chaturvedi's case*** cited supra and as far as facts in ***K.G. Soni's case*** cited above, it is a case where the delinquent conducted second marriage during the subsistence of first marriage.

26. At this juncture, it will be useful to refer the decision of the Hon'ble Supreme Court in ***Umesh Kumar Pehwa versus Board of Directors Uttarkand Gramin Bank*** and others reported in ***2022 (4) SCC 385,*** where the Hon'ble Court has modified the punishment of removal from service to compulsory retirement, taking into account that there has been no monetary loss caused to the bank and in the service of 25 years there is no allegation against the delinquent. Paragraph 12 of the order is usefully extracted hereunder,

> ***"12.*** *Even looking to the charges proved in the departmental proceedings we find that as such, there is no financial loss caused to the Bank and on the contrary a decision was taken by the appellant to reduce the loan amount from Rs 1,50,000 to Rs 75,000 in the case of Karamjeet Singh — the complainant, which can be said to be the decision in the bank's interest. Moreover, the fact that the appellant had worked for 28 years and during those 28 years there are no allegations against him. In the facts and circumstances of the case, we are of the opinion that the punishment of removal for the charges proved and the misconduct established, is too harsh and*

disproportionate. However, considering the fact that it can be said to be a case of loss of confidence in the employee by the Bank, we deem it just and proper to substitute the punishment from that of removal from service to that of compulsory retirement."

27. In the present case, the respondent's husband who had also worked as a Chief Manager in the appellant bank was dismissed from service and the respondent herein has also been issued with an order of dismissal from service. It is true that when the respondent has admitted to all the three accounts, both individually and jointly with her son and daughter, she cannot simply plead ignorance and give reply that she had no knowledge, as her husband had done the transactions. But however the fact remains that there is no financial irregularities or misappropriation or any loss caused by the respondent to the appellant bank. Further, the charge is not in respect of any illegalities or irregularities done by the respondent in the bank branch where she worked, or did her actions or omissions lead to any financial loss or affected the name of the bank.

28. Even though, there were huge credits and debits made in the three bank accounts of the respondent in other bank which cannot be simply brushed aside as it is beyond the known source of income of the respondent, however there is no direct nexus or any irregularities in her discharging her official duty at the branch of appellant bank with the transactions done in her personal and dependents account in other bank. There has been no

monetary loss caused to the appellant bank or any irregularities committed by the respondent within the branch of the bank where the respondent worked. Further the respondent has an unblemished record of service for the past 20 years without any complaints against her. Under these circumstances, the punishment of removal from service is too harsh and not proportionate.

29. Further, taking into account that she has been under suspension from the year 2006 and has also attained the age of superannuation, this Court feels that the order of the learned Single Judge can be interfered to the extent of modifying the punishment of dismissal from service to any other punishment as enumerated under the head of major penalties in the United Bank of India Officer and Employees, (Discipline and Appeal), Regulations 1976, Clause 4(h) prescribes the major penalty of compulsory retirement.

30. Taking into consideration of all the circumstances stated supra, we find that the order of dismissal from service can be modified to that of compulsory retirement as envisaged under clause 4(h) of the United Bank of

India, Officer and Employees, (Discipline and Appeal), Regulations 1976. To that extent the order of the learned Single Judge can be interfered with and accordingly interfered by modifying the order of dismissal from service into that of compulsory retirement.

31. In the result, this Writ Appeal is partly allowed to the extent indicated above by modifying the punishment of dismissal from service into that of compulsory retirement. However, there will be no order as to costs. Consequently, connected Miscellaneous petition is closed.

[R.S.K., J] **[G.A.M., J]**

29.02.2024

Index : Yes/No
Speaking / Non-speaking order

drl

To:

1.The General Manager (RRB & Lead Banks)
and Disciplinary Authority,
United Bank of India, Regional Office,
118, Ramakrishna Mutt Road,
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<u>R.SURESH KUMAR, J</u>

<u>AND</u>

<u>G.ARUL MURUGAN, J.</u>

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