



W.A(MD).No.392 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.03.2024

PRONOUNCED ON : 25.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD).No.392 of 2024
and CMP(MD).No.3510 of 2024

1.The Chief General Manager
State Bank of India
Personnel & HRD Department
Local Head Office
College Lane, Chennai – 6

2.The Regional Manager
State Bank of India
Regional Business Office
15, Rue Suffren, Second Floor
Pondicherry

3.The Branch Manager
The State Bank of India
Perambalur Branch
Perambalur District

...Appellants/Respondents

Vs

R.Varadharajulu (died)

1.Sumithra

2.Bharath Ramakrishnan

....Respondents/Petitioners 2 & 3



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(cause title is accepted vide Court order dated 08.12.2023)

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed by this Court in W.P(MD).No.13838 of 2009 dated 23.01.2023 by allowing the writ appeal as prayed for.

For Appellants : Mr.M.Kannan

For R1 & R2 : Mr.T.Lenin Kumar

J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The instant writ appeal has been filed by the respondents in W.P(MD).No.13838 of 2009. One R.Varadharajulu who was working as a Clerk Cum Cashier in the State Bank of India, Perambalur Branch was imposed with a punishment of dismissal from service. Challenging the same, he had filed the above writ petition.

2.Pending writ petition, the said Varadharajulu had passed away on 13.01.2015. The wife and son of the deceased got substituted themselves in the writ petition. The writ Court after considering the submissions made on either side, had modified the punishment of dismissal as compulsory retirement and directed to pay the terminal benefits to the legal heirs of the deceased within a period of eight weeks from the date of receipt of a copy of the order. Challenging the same, the present writ appeal has been filed by the



Bank management.

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(A).Facts leading to the filing of the present writ appeal are as follows:

3.The original writ petitioner namely Varadharajulu was issued with a charge memo on 12.04.2005. However, he had not participated in the enquiry. The enquiry proceedings got concluded on 05.05.2005. The petitioner was issued with a second show cause notice for which he had not responded. Thereafter, the disciplinary authority had proceeded to impose the punishment of dismissal without notice from service.

4.In the writ petition, the petitioner had contended that he did not receive any notice about the enquiry proceedings and therefore, the order passed in the said proceedings are exparte in nature. The punishment imposed upon him is disproportionate to the alleged charges.

5.The Bank had filed a counter contending that several communications were addressed to the writ petitioner through registered post and courier, but he had dodged to receive the same. Therefore, a paper publication was made intimating about the date of enquiry giving him a final opportunity. Even thereafter, the petitioner had not participated in the enquiry proceedings having full knowledge about the date of enquiry.

6.The allegations as against the writ petitioner are very serious in nature. The petitioner was in the habit of purchasing cheque despite having



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knowledge that there was insufficient funds in the account. He had misused the power as a cashier on 12 occasions. Moreover, the petitioner is in the habit of unauthorized absence on many occasions. The Bank had further contended that the writ petition has been filed after a delay of four years from the date of dismissal order and hence, the writ petition has to be dismissed on the ground of laches.

7.The writ Court had found that though the writ petition has been filed belatedly, since the petitioner had passed away, his family members are before this Court, the writ Court had exercised its jurisdiction. The writ Court had further held that if the punishment is modified, the family members of the deceased person would be entitled to terminal benefits. Taking a sympathetic view, the writ Court had passed an order modifying the punishment of dismissal from service as compulsory retirement from the date of dismissal. This order is under challenge in the present writ appeal.

(B)Submissions of the Counsel for the Appellants

8.According to the learned counsel appearing for the appellants, the charges as against the writ petitioner are very serious in nature relating to the purchase of cheques which amounts to misappropriation. The petitioner is in the habit of unauthorized absence. Though the petitioner was granted several opportunities, through registered post and courier, the petitioner had voluntarily refrained himself from attending the enquiry proceedings.



Therefore, he cannot now complain that the said order is an *exparte* order. He had further contended that the Court ought not to have taken a sympathetic view merely because the delinquent person had passed away, without considering the seriousness of the misconduct.

9.The learned counsel appearing for the appellants had relied upon the judgement of the Hon'ble Supreme Court reported in **(2022) 4 SCC 358 (United Bank of India Vs. Bachan Prasad Lall)** and contended that merely because employee stood superannuated during the pendency of the proceedings, that would not absolve him of misconduct and the said employee would not be entitled to any indulgence. He had further relied upon a judgment of the Hon'ble Supreme Court reported in **(2014) 4 SCC 108 (Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T.Murali Babu)** to impress upon the Court that in a case where an unauthorized absence was for one year and seven months, the punishment of dismissal was not found to be disproportionate to the gravity of misconduct. The learned counsel had further relied upon a judgment of the Hon'ble Supreme Court reported in **(2022) 2 SCC 301 (Chairman, State Bank of India and another Vs. M.J.James)** to contend that where an appeal was filed four years after the order of dismissal, the Hon'ble Supreme Court had found that it to be highly belated and it is liable to be dismissed. Hence, he prayed for allowing the writ appeal.



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10. We have carefully considered the submissions made on either side and perused the material records.

(C).Discussion:

11. The order impugned in the writ petition dismissing the petitioner from service has been passed by the second respondent in the writ petition on 27.07.2006. A perusal of the said order reveals that the writ petitioner was inflicted with 15 charges and all the charges, except Charge Nos.9 and 10 stood proved. It further reveals that various letters sent to the writ petitioner through registered post/ ordinary post/courier to his last known address at Thuraiyur were returned “undelivered”. The order further reveals that paper publication has been made in Dinamalar on 19.10.2005 and in Hindu on 20.10.2005. Therefore, it is clear that the notices sent to Thuraiyur address have been returned “undelivered”.

12. A perusal of the letters addressed by the writ petitioner after imposition of punishment reveals that he is residing at Pudukkottai and not in Thuraiyur. Further paper publication has been issued only in 2005, seeking explanation for the second show cause notice and not at the time of enquiry. It has not been brought on record, whether the notices issued by the Bank to the delinquent were returned as refused or unclaimed or 'no such addressee'. Only if the petitioner had not claimed the said notices or refused to receive the said notices, this Court can come to a conclusion that the delinquent had



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voluntarily abstained from participating in the enquiry proceedings, and not otherwise.

13.The petitioner having been charged with misconduct of unauthorized absence, the Bank ought to have issued paper publication even during the enquiry proceedings. In view of the above said facts, this Court is of the considered opinion that the enquiry is only an exparte enquiry since there are no records to establish that the delinquent had voluntarily abstained himself from participating in the enquiry after having knowledge about the proceedings.

14.The judgment relied upon by the learned counsel appearing for the appellants reported in **(2022) 4 SCC 358 (United Bank of India Vs. Bachan Prasad Lall)** relates to a case of superannuation wherein the Hon'ble Supreme Court has held that mere superannuation will not absolve the delinquent from misconduct. In the present case, the delinquent had passed away and his legal heirs have prosecuted the writ petition. He had further relied upon a judgment of the Hon'ble Supreme Court reported in **(2022) 2 SCC 301 (Chairman, State Bank of India and another Vs. M.J.James)** to contend that where the disciplinary proceedings were challenged after a delay of four years, they should be dismissed on the ground of laches. In the previous paragraphs, this Court has arrived at a finding that the delinquent was not even served with charge sheet and the enquiry was an exparte



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enquiry. We do not find any error in the order of the writ Court. In such circumstances, coupled with the fact that the delinquent had passed away, we do not find any error in the order of the writ Court in entertaining the writ petition. That apart, the writ petition was filed in December 2009 and the same was disposed of in January 2023. At this length of time, the writ Court did not find it proper to dismiss the writ petition on the ground of laches.

15.The writ petition has been filed on 14.12.2009 and the petitioner had passed away on 13.01.2015. Therefore, the writ Court had taken a sympathetic view and has modified the punishment of dismissal from service as compulsory retirement so that the family members of the deceased delinquent would receive the terminal benefits. We do not find any error or illegality in the approach of the writ Court.

16.In view of the above said deliberations, there are no merits in the writ appeal. The writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.,)

(R.V.J.,)

25 .03.2024

Index :yes

Internet :yes

NCC : Yes/No

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**D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR,J.**

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Pre-delivery Judgment made in
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