



W.A.No.851 & 853 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 02.04.2025

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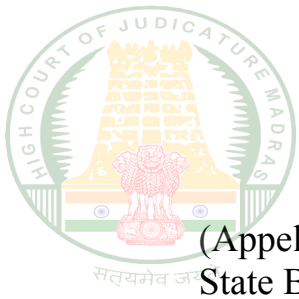
**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

**W.A.Nos.851 & 853 of 2023
and
C.M.P.Nos.8302 & 8317 of 2023**

1. The General Manager,
(Appointing Authority) (NW II),
State Bank of India, Local Head Office,
Circle Top House, 16, College Road,
Chennai - 600 006.
2. The Chief General Manager,
(Appellate Authority),
H.R.Department,
State Bank of India,
Local Head Office,
Circle Top House, 16, College Road,
Chennai - 600 006.
3. The Reviewing Authority,
(Central Office Human Resources Committee),
State Bank of India,
Corporate Office,
Post Box No.12, Mumbai - 21.

... Appellants
in W.A.No.851 of 2023

1. The Chief General Manager,



W.A.No.851 & 853 of 2023

WEB COPY

(Appellate Authority),
State Bank of India,
H.R.Department,
Circle Top House, P.B.No.737,
16, College Road,
Chennai - 600 006.

2. The General Manager,
(Appointing Authority) (New Work 2),
State Bank of India, Local Head Office,
Chennai - 600 001.

... Appellants
in W.A.No.853 of 2023

-Vs-

H.Srinivasan ... Respondent in W.A.No.851/2023

R.Baby Shakila ... Respondent in W.A.No.853/2023

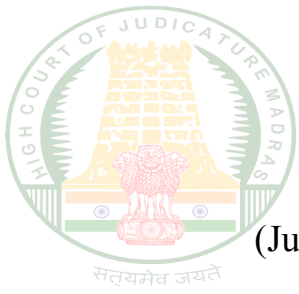
COMMON PRAYER : Appeal under Section XV of Letters Patent against the
order dated 08.02.2023 made in W.P.No.16696 of 2018 & 27783 of 2016.

For Appellants : Mr.Anand Gopalan
in both W.As for M/s.T.S.Gopalan

For Respondent : Mr.Karthik Rajan
in W.A.No.851/23 for Mr.K.Menon

For Respondent : Mr.L.Chandrakumar
in W.A.No.853/23

COMMON JUDGMENT



W.A.No.851 & 853 of 2023

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

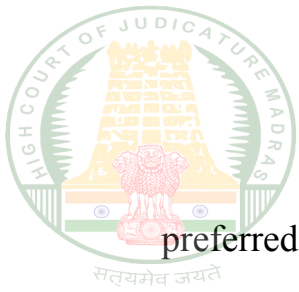
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Since these intra Court appeals arise out of the common order passed by the writ Court dated 08.02.2023 in W.P.No.27783 of 2016 and W.P.No.16696 of 2018, with the consent of the learned counsel appearing for both sides, both these writ appeals were heard together and are disposed of by this common order.

2. That the respondents in both the writ appeals who were the writ petitioners before the writ Court were the employees of the appellant Bank, against whom, two separate charge memos were issued on 18.10.2014 relating to failure to ensure administration on the part of the Branch Manager and serious financial irregularity on the part of the Rural Marketing and Recovery Officer.

3. Two separate enquiries were conducted and during the enquiry, the Enquiry Officer's report finds that, the charges framed against each of the delinquents have been proved and based on the Enquiry Officer's report, the Disciplinary Authority inflicted the punishment of dismissal from service against both of them on 24.08.2015.

4. As against the order of the Disciplinary Authority, the appeals were



W.A.No.851 & 853 of 2023

preferred unsuccessfully and one of the writ petitioner, viz., Srinivasan in

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W.P.No.16696 of 2018 also filed the review unsuccessfully. Therefore, challenging the order of punishment as well as the order passed by the Appellate Authority as well as the Revisional Authority, these two writ petitions were filed by the respondents herein.

5. Mainly the contention that was raised before the writ Court on behalf of the writ petitioners / employees was that, there has been a procedural violation in conducting the disciplinary proceedings which culminated in inflicting the punishment of dismissal from service against them. Elaborating further in this context, the respondents / writ petitioners have raised the ground that their service conditions are governed by Regulations under Regulation 68(2) of the State Bank of India Officers Service Conditions. The Disciplinary Authority was mandated to supply a copy of the articles of charges and statements of imputations of misconducts, together with a list of documents and the list of witnesses, through which the articles of charges are proposed to be substantiated. However, such list of witnesses or list of documents since have not been furnished to the delinquents, there has been glaring violation of Regulation 68(2).

6. Yet another ground was raised by the writ petitioners / delinquents



W.A.No.851 & 853 of 2023

before the writ Court was that, under Regulation 68(6) it has been directed that

if the delinquency is common where more than one persons are involved, the Disciplinary Authority shall conduct a common disciplinary proceedings which includes a common enquiry, however in violation of the said Regulation 68(6), separate enquiry since has been conducted in respect of these writ petitioners / delinquents, on that ground also, the very disciplinary proceedings concluded with a punishment of dismissal from service against these two people has become vitiated.

7. Mainly these two technical grounds since has been raised on the procedural irregularity or violation of Regulations, the writ Court having gone through the said provisions, namely Regulations 68(2) and 68(6) of the Regulation has come to the conclusion that, such violation would go to the route of the matter as such procedural violation which otherwise should have been followed mandatorily would vitiate the disciplinary proceedings, therefore, on the limited ground of technical objection on the procedural violation, the writ Court was inclined to interfere with the disciplinary proceedings, i.e., punishment awarded against the delinquents.

8. Aggrieved over the said order passed by the writ Court dated



W.A.No.851 & 853 of 2023

08.02.2023, the present appeals have been directed at the instance of the

appellant Bank / employer.

9. Mr.Anand Gopalan, learned counsel appearing for the appellant Bank would contend that, insofar as the Regulations 68(2) & 68(6) are concerned, 68(2) does not speak about the procedure to be adopted by the employer in supplying the copy of witnesses as well as documents to be relied upon by the employer at the time of enquiry even along with the charge memo. The only provision that is available is 68(x)(b)(III) wherein it has been stated that 'such copies be supplied with statement of witnesses, if any, recorded earlier and the Inquiring Authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the Inquiring Authority'.

10. This of the procedure in fact has been followed strictly by the appellant Bank as those statements and documents have been furnished to the delinquents three days prior to the starting of the examination of the witnesses by the Enquiry Officer, therefore, only mandateriness that is attached with Regulation 68(2) since has been followed, it cannot be stated that, Regulation 68(2) had not been properly followed, based on which such decision ought not to have been taken by the writ Court.



W.A.No.851 & 853 of 2023

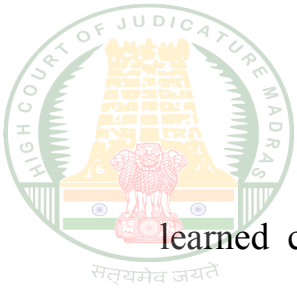
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11. He has also stated that insofar as the Regulation 68(6) is concerned, the language used in the Regulation is that 'where two or more officers are concerned in a case, the authority competent to impose a major penalty on all such officers may make an order directing that disciplinary proceedings against all of them may be taken in a common proceeding'.

12. Therefore, he would submit that, the word 'may' since has been employed in the said Regulation, it can only be taken as directory and not mandatory. This position has been reiterated in some of the judgments after having evaluated the very same Regulation of the State Bank of India. Therefore even on that ground, the interference shown by the writ Court by setting aside the order of punishment for remitting the matter to Bank for denova enquiry is erroneous, he contended.

13. In support of his contention, he has relied upon a decision of the Hon'ble Supreme Court reported in **(2013) 2 SCC 740** in the matter of ***State Bank of India and others Vs. Narendra Kumar Pandey***.

14. We have also heard Mr.Karthik Rajan and Mr.L.Chandrakumar,



W.A.No.851 & 853 of 2023

WEB COPY

learned counsel appearing for the respondents / writ petitioners who would submit that the supply of documents, i.e., list of witnesses and documents to be relied upon by the prosecution side at the time of enquiry must have been supplied well in advance to the delinquents, so that, the delinquents will be in a position to give proper defence statement even at the threshold. As a delinquent if had been given every such documents after having perusal of the same, the delinquent would have been in a position to give proper defence statement, based on which, sometime the employer might have got satisfied with the defence statement and the enquiry itself could have been given up.

15. However if the delinquent has not been placed in such a position to give a proper defence statement because of which the defence statement if at all given by the employee is not accepted by the employer, that would be a prejudice always caused to the employee at the threshold, therefore when a Regulation specifies that kind of documents shall be supplied to the delinquent, it shall be construed only that the documents shall be supplied at the threshold, i.e., at the time of providing the charge sheet seeking defence statement at the first instance.

16. When such a mandatory procedure has not been followed or it is



W.A.No.851 & 853 of 2023

violated, certainly it will go to the route of the matter, by thus, since great prejudice would be caused to the delinquent, there has been every justification on the part of the writ Court to interfere with the impugned order of punishment before the writ Court and remitted the matter back to the authority concerned for de-nova enquiry.

17. The learned counsel would also submit that insofar as the Regulation 68(6) is concerned, though the word 'may' has been employed, it is a settled legal proposition that, the 'may' can be presumed 'shall' and 'shall' can be presumed 'may' depending upon the circumstances where such a word is employed in any legislation. Therefore, there cannot be any strict rule to be followed that the word 'may' only to be construed as a meaning which will give and not the meaning of the word 'shall give'. Therefore, such an interpretation sought to be given by the appellants cannot be accepted, and umpteen number of cases could be cited for such a proposition, the learned counsel for the writ petitioners/delinquents submitted.

18. We have given our anxious consideration to the rival submissions made by the learned counsel appearing for the parties and have perused the



W.A.No.851 & 853 of 2023

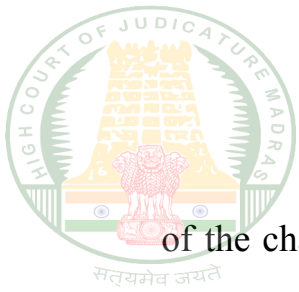
materials placed before this Court.

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19. The admitted facts are that, the writ Court has set side the punishment and remitted the matter back for denova enquiry only on the point of procedural violation of the enquiry. What kind of procedural violation that has been noticed by the writ Court has been explained herein above, where atleast two provisions, namely, Regulations 68(2) & 68(6) have been violated according to the writ Court.

20. We have also gone through the import of the Regulations 68(2) as well as 68(6). Insofar as 68(2) is concerned, the relevant provision as we discussed herein above is 68(2)(x)(b)(III), where the language used is 'it shall be supplied with copies of statements of witnesses, if any, recorded earlier and the Inquiring Authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the Inquiring Authority'. This of the procedure which is mandatory in nature according to the learned counsel for the appellants has been complied with, which is not disputed by the learned counsel appearing for the writ petitioners / delinquents.

21. But at the threshold, i.e., at the initial stage, at the time of supplying



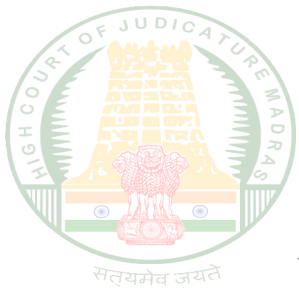
W.A.No.851 & 853 of 2023

of the charge, the procedure is, the articles of charge together with a statement of allegation on which they are based shall be communicated in writing to the officer who shall be required to submit within such time as may be specified by the Disciplinary Authority not exceeding 15 days or within such extended time as may be granted by the said authority the written statement of defence.

22. Therefore, there is a vast difference between the stage at where the charge memo was served, what is the procedure to be adopted and the same at where before the commencement of the actual enquiry the procedure to be adopted insofar as supplying of the copies of the documents as well as list of witnesses.

23. In this context, the learned counsel appearing for the appellants has relied upon the decision of the Hon'ble Supreme Court in **Narendra Kumar Pandey case** cited *supra*, where the Hon'ble Supreme Court has held as follows:

"20. We are of the view that the High Court has committed an error in holding that the charge-sheet should have mentioned about the details of the documents and the names of the witnesses which the Bank proposed to examine and a list to that effect should have been appended to the charge-sheet. We may point out that the charge-sheet need not contain the details of the documents or the names of the witnesses



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W.A.No.851 & 853 of 2023

proposed to be examined to prove the charges or a list to that effect unless there is a specific provision to that effect. Charge sheet, in other words, is not expected to be a record of evidence. Fair procedure does not mean giving of copies of the documents or list of witnesses along with the charge-sheet. Of course, statement of allegation has to accompany the charge- sheet, when required by the Service Rules".

24. According to this judgment, the Hon'ble Supreme Court was of the view that 'the charge sheet need not contain the details of the documents or the names of the witnesses proposed to be examined to prove the charges or a list to that effect unless there is a specific provision to that effect. Charge sheet, in other words, is not expected to be a record of evidence. Fair procedure does not mean giving of copies of the documents or list of witnesses along with the charge sheet. Of course, statement of allegation has to accompany the charge sheet, when required by the Service Rules'.

25. Therefore, it is not mandated in every case that the documents shall be furnished along with the statement of charge. But at the same time, it is to be noted that, when a charge memo is served on any delinquent asking him within a time frame to give defence statement, a full opportunity should have been



W.A.No.851 & 853 of 2023

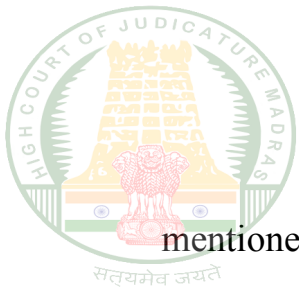
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given to such delinquent to have access over, what are the basis on which such a charge has been framed against him.

26. This is because normally the charge would be only in nutshell consisting of a paragraph or one or two pages, but the reasons for framing such charges would have been a larger one for which the employer could have collected so many materials and documents. Those documents and materials have made the employer to come to such conclusion that the delinquent has violated the code of conduct or the procedure or regulations whatever be regulating the good being of an employee in any organisation.

27. When that being the position, in order to ensure the full opportunity and a fair chance of an employee to give a complete defence statement at the threshold after receipt of the charge memo, whatever the documents which are already made available at the hands of the employer could have been served on the employee.

28. But herein the case in hand, non-serving of documents would be fatal to the enquiry proceedings, that was dealt with by the learned Judge. The reason being because of Regulation 68(2) where there had been two occasions



W.A.No.851 & 853 of 2023

mentioned, in the first occasion though the words 'that the copies to be supplied'

is absent and in the second occasion, such words are available, whether the first occasion can be treated as mandatory or it has only been directory is the question. However, it depends upon the veracity of the charge and depends upon the situation.

29. There cannot be any hard and fast rule that these kind of documents should mandatorily be supplied along with the charge memo in each and every case. But in some cases, which ultimately led the employee to face the major punishment of dismissal from service, certainly each and every stage, such employee shall be given a fair opportunity or full opportunity and that should be ensured by the employer which only would render the substantial justice without violating the procedure by way of fair play and also not in violation of principles of natural justice. Therefore, in the present case, we do not find any error in the approach of the learned Judge in giving such interpretation that non-supplying of documents at the time of charge memo certainly would be fatal for the enquiry and therefore, for the limited purpose of conducting a denova enquiry, that too by way of joint enquiry, the matter can be remitted back was the decision since has been taken by the writ Court, we do approve and endorse the said view of the learned Judge.



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30. Insofar as the next point, i.e., joint enquiry is concerned, the language used in the relevant Regulation, i.e., 68(6) is very clear and unambiguous. It has stated that "all such officers may make an order directing that disciplinary proceedings against all of them may be taken in a common proceeding".

31. Therefore, that discretion has been given under Regulation 68(6) to the employer to conduct a joint enquiry or otherwise. It is only based on the convenience. This provision has been brought in saying that it is for the employer to take a decision to conduct joint enquiry or if a joint enquiry is to be conducted, that is the desire of the employer, there must be an enabling provision to conduct such joint enquiry, only to that extent, Regulation 68(6) can be employed or put in use, but otherwise 68(6) cannot be stated as mandatory one that if more than two employees involved even in the same delinquency, common and joint enquiry alone should be conducted and if at all, no joint enquiry is conducted, that would be fatal to the enquiry conducted cannot be the Rule. Therefore, for conducting a joint enquiry, the direction given by the learned Judge through the order impugned is concerned it may not be justifiable or such view may be an erroneous approach, hence we are not approving the same.



W.A.No.851 & 853 of 2023

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32. In the result, we are inclined to dispose of these writ appeals with the following orders:

(i) that setting aside the punishment and remitting the matter back for denova enquiry ordered by the learned Judge through the impugned order is to be sustained, accordingly, is sustained.

(ii) At the same time, the direction given by the learned Judge to conduct a joint enquiry by giving interpretation to Regulation 68(6) is liable to be set aside, accordingly, is set aside.

(iii) Hence, there shall be a direction to the appellants to conduct enquiry if they are willing to conduct separately or otherwise and complete the denova enquiry by giving full opportunity to the delinquents within a period of three months from the date of receipt of a copy of this judgment.

(iv) It is made clear that except the aforesaid modification, the order impugned passed by the writ Court including the direction to place the delinquents under suspension from 2015, i.e., the date on which, the dismissal order has been passed shall remain unaltered.

33. With these directions and modifications, these Writ Appeals are



W.A.No.851 & 853 of 2023

disposed of as indicated above. However, there shall be no order as to costs.

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(R.S.K., J.) (A.D.M.C., J.)
02.04.2025

NCC : Yes
Index : Yes
Speaking Order : Yes

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W.A.No.851 & 853 of 2023

**R.SURESH KUMAR, J.
and
A.D.MARIA CLETE, J.**

vji

**W.A.Nos.851 & 853 of 2023
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02.04.2025