IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-03-2025

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

WP No. 18262 of 2018
and W.M.P.Nos.21582 & 21583 of 2018

P.Kamalakannan
H7, Mohana Apartments,
No.96, Arcot Road,
Virugambakkam, Chennai – 600 092.

Petitioner(s)

Vs

1. The Chairman of Repco bank
cum The Principal Secretary,
Public & Rehabilitation Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.

2. R.S.Isabella,
Managing Director i/c. Cum Executive
Director,
Repco Bank Ltd.,
Head Office,
No.33, North Usman Road,
T.Nagar, Chennai – 600 017.

3. S.Sankar
General manager & Inquiry Authority,
Repco Bank Ltd.,
Head Office,
No.33, North Usman Road,
T.Nagar, Chennai – 600 017.

4. The Chairman for Remuneration
committee & Director,
Repco Bank Ltd.,
Director of Rehabilitation,
Commissionerate of Rehabilitation,
4th Floor, Ezhilagam Annex,
Chepauk, Chennai – 600 005.

Respondent(s)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records from the second respondent dated 12.06.2017 bearing Ref.No.2/Emp.No.482/2017/IR-CA read with the proceedings of the first respondent rejecting the petitioners claim to restrain the second respondent from proceedings with the matter, vide proceedings dated 22.11.2017 bearing Ref.No.Emp.No.482/2017/IR read with the Report dated 24.05.2018 submitted by the third respondent setting petitioner exparte as forwarded by the second respondent vide letter dated 30.06.2018 and letter dated 10.07.2018 both bearing reference No.4/Emp.No.482/2017/IR/DA1 read with the order dated 19.03.2020 bearing Ref.No.2/Emp.No.482/2020/IR/DA-2 issued by the second respondent based on the exparte report of the third respondent and quash the same as illegal arbitrary malafide vindictive without jurisdiction by appointing any independent person to go through the complaints given by the petitioner and the irregularities alleged by the second respondent and take further action if necessary based on the same, pay all monetary, service and other benefits which the petitioner would have been entitled to had the impugned proceedings was not passed by the respondents.

(Prayer amended vide order dated 19.02.2025 made in W.M.P.No.5395/2025 in W.P.No.18262/2018)

For Petitioner(s): M/s.K.Srinivasa Murthy

For Respondent(s): Mr.A.M.Ayyadurai
Government Advocate for R1

Mr.A.Ilangovan for R2

No appearance for R3 and R4

ORDER

The writ petition has been filed to call for the records pertaining to the proceedings of the second respondent dated 12.06.2017 bearing Ref.No.482/2017/IR-CA proceedings of the second respondent dated 22.11.2017, enquiry report of the third respondent dated 24.05.2018 and the order of punishment passed by the second respondent dated 19.02.2020.

2. The petitioner was working as a 'Junior Assistant' in the first respondent bank and was promoted to Scale-I Officer in the year 2010 and he

was posted at Dharmapuri in the year 2014. The second respondent was posted as the Managing Director of the first respondent bank in the year 2016. A complaint has been sent by the Employee's Welfare Association of the first respondent bank to the Chief Vigilance Officer about the second respondent alleging that she is misusing her powers. In the said complaint dated 23.02.2017 the petitioner has signed as the General Secretary of the Association. The petitioner has also filed various RTI (Right To Information) applications seeking the details of the appointment of the second respondent as the Managing Director. The second respondent has transferred the petitioner from Dharmapuri to Madurai on 26.04.2017. The petitioner's representation to cancel the transfer order has been rejected. Thereafter, the petitioner has been issued with an order of suspension on 12.06.2017. On 19.06.2017 the petitioner has sent a representation to revoke the suspension. However he was issued with a charge memo on 01.07.2017 and the second charge memo on 21.07.2017.

3. The petitioner has sent his representation on 17.09.2017 to the first and second respondent that he was not given with reasonable opportunity to verify the entire records in connection with the charges issued against him. On 28.09.2017 the third respondent has been appointed as an Enquiry Officer and he conducted the enquiry proceedings in the absence of the petitioner. The petitioner's request to the Enquiry Officer was also not considered by the first respondent. Despite the petitioner gave the same representation to the fourth respondent, *ex parte* findings have been made in the enquiry report submitted

by the third respondent. The petitioner was issued with the copy of the enquiry report by the second respondent. The petitioner made representation to extend time to submit his explanation on the enquiry report. As the petitioner has been given with the punishment of dismissal from service, he has filed a Miscellaneous Petition to amend the prayer challenging the order of punishment and that has been allowed.

4. Mr.K.Srinivasa Murthy, the learned counsel for the petitioner, submitted that the petitioner has been given with the charge just as a retaliatory measure by the second respondent. The petitioner has given several complaints and exposed the second respondent's abuse of power. Hence these action have been taken just for avenging the revenge and the petitioner was dismissed from service.

5. Mr.A.Ilangovan, the learned counsel for the second respondent, submitted that despite repeated opportunity was given to the petitioner he did not appear before the Enquiry Officer in order to proceed with the enquiry proceedings. Sufficient opportunities have been given to the petitioner to peruse the records and it is his fault that he did not submit his explanation for the charges issued against him. In fact the petitioner has given a false complaint against the second respondent and his conduct would only show that he only intended to delay and thereby frustrate the disciplinary action initiated against him. The petitioner was in the habit of issuing several false allegations against

several officers in order to thwart the disciplinary proceedings and criminal investigation.

6. The petitioner has been issued with the serious charges of sanctioning loan to ineligible borrowers; allowing diversion of funds by impersonation; misutilization and misappropriation of funds by the third party. It is further alleged that the petitioner has not processed the loan application on merits but he has sanctioned loan in a very casual manner by violating the norms and allowing misutilization of funds. In view of the petitioner's short-sightedness, many accounts have turned non-performing or have become inoperative in the PA accounts. In some of the loan accounts the petitioner did not demarcate the collateral security through the appropriate authority. As the area and dimension of the mortgaged property cannot be ascertained it remained as a non-enforceable / non-marketable security. The petitioner omitted to make preimposed sanction limit and loans are sanctioned beyond the jurisdiction of the petitioner without getting proper approval from the Head Office. He was also very casual in completing loan documentation including EMI registration. The petitioner extended a clean insecured advance without proper documentation and thereby caused financial loss to the bank.

7. On the above serious allegations the petitioner was given with the charge memo which contains the statements of charges on case to case basis. The petitioner has claimed that he was denied with the proper opportunity to

peruse the documents for submitting his explanation. It is submitted by the learned counsel for the petitioner that even before the petitioner completed the perusal of the relevant documents, he was forced to endorse that perusal is completed.

8. The petitioner submitted that on 25.07.2017 he was asked to contact the Joint General Manager (JGM (IR)) for fixing a convenient date and time for verification of documents. In the said letter it is stated that the petitioner was permitted to verify the documents in the presence of JGM (IR). On 01.09.2017 the JGM (IR) has issued a proceeding showing that the petitioner has verified the documents and the rest of the documents will be perused by him on 05.09.2017. However the petitioner did not peruse the documents on 05.09.2017 instead he was pursuing a Criminal Original Petition in Crl.O.P.No.18029/2017 for seeking direction against the Inspector of Police, Pondy Bazaar Police Station to register his complaint dated 01.08.2017. In the said Criminal Original Petition an order has been passed on 07.09.2017 to register the FIR if the complaint made by the petitioner discloses the commission of a cognizable offence. The complaint referred in the above order contains the allegation made by the complainant against the Managing Director and other officers alleging misappropriation.

9. Once again the petitioner has filed another Criminal Original petition in Crl.O.P.No.19090/2017 seeking direction to register his complaint dated

22.08.2017. In the said Criminal Original Petition an order has been passed on 13.09.2017 by giving direction to conduct a preliminary enquiry in order to find out whether the allegations made by the petitioner against the Managing Director and other officers is true before registering the FIR. It is not known why the petitioner did not make himself present on 05.09.2019 when he was asked to peruse the remaining documents. However, it appears from the proceedings and document verification dated 16.09.2017 that the petitioner had completed the verification of all documents as mentioned in Annexure III of the Charge sheet. According to the petitioner it was returned by the respondent themselves and he was compelled to affix his signature.

10. The petitioner who used to file several complaint against the officers including issuance of legal notices to several of them, would not have quietly signed the proceedings indicating completion of verification of documents in case the same has not been completed truly. On the next day the petitioner has sent a communication dated 17.09.2017 to the disciplinary authority stating that he was not allowed to peruse the documents freely and some of the documents have not been shown to him. The tenure of the language adopted by the petitioner in his letter dated 17.09.2017 would show that the petitioner is in a quarrelsome mood and his request does not appear to be purposeful or serious. Though the petitioner had chosen to file 'N' number of proceedings against various officers on various allegations and seeking direction to register FIR against them, he did not choose to offer any explanation for the charge memo

issued to him.

11. In fact the enquiry Officer has been appointed and intimation was given to the petitioner by the second respondent on 28.09.2017. The enquiry officer has conducted his proceedings from 20.10.2017 onwards. On 20.10.2017 the petitioner was present but he left the enquiry hall abruptly without any reason. However, the enquiry officer has adjourned the proceedings to 27.10.2017 on which date the petitioner was not present. On 04.11.2017 the petitioner was present but he again abruptly left. On the said day after completing the preliminary enquiry the matter has been adjourned to 27.11.2017. On that date the petitioner was absent and in order to give further opportunity to the petitioner the enquiry proceedings were adjourned to 04.12.2017. On that day also there was no progress as the petitioner was absent. On 18.12.2017 also there was no progress because the petitioner was not present. When the matter was adjourned from 18.21.2017 to 20.12.2017 the petitioner was not present and on that day alone the petitioner was set *ex parte.* On 06.03.2018 the enquiry was completed and the enquiry officer submitted his report on 23.03.2018. The petitioner was not present for any of the above said hearings and the proceedings got progressed after he was set *ex parte*. During the relevant point of time the petitioner was busy pursuing certain criminal proceedings against various officers of the respondent bank and harassing them.

12. Apart from the earlier criminal original petition filed for seeking direction to register FIR against various officers, the petitioner has also filed Crl.O.P.No.24604/2017 in which an order has been passed on 15.11.2017. He also filed another petition in Crl.O.P.No.25763/2017 in which an order has been passed on 13.03.2018 on the observation that the petitioner had been in the habit of sending various other complaints to the police officers on various dates. It is also observed that those complaints and the proceedings initiated to register the complaint are all attempts to thwart the disciplinary proceedings and criminal action pending against the petitioner and that would amount to abuse of process of law. The petitioner's complaint given to Home Secretary dated 16.11.2017 also found to be an abuse of process of law. By observing the background in which the petitioner continues to give complaint against the officers, this Court has dismissed the writ petition.

13. As stated already the criminal case is registered against the petitioner in Cr.No.9/2017 on the file of Inspector of Police, District Crime Branch, Dharmapuri, on the allegation that he has misappropriated a sum of Rs.6.67 Crores. The anticipatory bail sought by the petitioner by filing Crl.O.P.No.25128 of 2017 was also dismissed. The petitioner has filed Crl.O.P.No.15875/2018 to quash the above FIR in which an order has been passed on 28.06.2018 and that has been dismissed on the observation that the petitioner is taking shelter under the umbrella of caste in order to stifle the ongoing domestic enquiry and criminal investigation against him. So the

conduct of the petitioner would only show that the petitioner has been busy filing various proceedings before the High Court for quashing the criminal case pending against him and also to register a false case given by him against many of the officers on various allegations including the allegation that he was abused by 'caste calling'.

14. In the order dated 13.03.2018 in Crl.O.P.No.25763/2017 it is observed that the SC / ST (Prevention of Atrocities) Amendment Act, 2015 has been enacted by the Parliament with a pious intention to prevent the commission of offences against the members of SC/ ST communities. The petitioner has also got some complaints against the respondents and he also played an active role in publishing the matter.

15. The disciplinary authority has made a holistic appreciation of the materials available on record and chosen to impose the punishment of dismissal on 19.03.2020. Thereafter, the petitioner has not chosen to file any writ petition to challenge the order of dismissal and he has only filed a petition recently to carry out the amendment by including the relief by challenging the dismissal order.

16. Even though the petitioner has stated that he was not given with any reasonable opportunity, the records would show that it was the petitioner who did not avail the opportunity given to him. He had taken the risk of allowing the

enquiry proceedings to be conducted in his absence. The petitioner's attitude was also just to delay the proceedings or if possible, to thwart the proceedings by constantly keeping the superior officers and other officers busy facing various litigations filed by him before the High Court seeking to register FIR on the false complaints made by him.

17. The learned counsel for the second respondent cited the decision of the Hon'ble Supreme Court in ***Bank of India Vs. Apurba Kumar Saha reported in (1994) 2 SCC 615***. In the said case it is held that if an employee had refused to avail the opportunities provided to him in the disciplinary proceedings by defending himself against the charges of misconduct, he cannot be permitted to complain later by saying that he was denied with a reasonable opportunity for defending himself in the disciplinary proceedings. The relevant part of the said judgment is extracted hereunder:

> *" ... 4. Having regard to the arguments addressed by learned Counsel on both sides we have gone through the papers and seen that the High Court's view that there was violation of principles of natural justice, in conducting the disciplinary proceedings against the respondent, was wholly unjustified. The records of the disciplinary proceedings show that the respondent had avoided filing of the written explanation for the charges of misconduct levelled against him and also had for no valid reason refused to participate in the disciplinary proceedings. A Bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceeding of defending*

himself against the charges of misconduct involving his integrity and dishonesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself of the charges levelled against him and the disciplinary proceeding conducted against him by the Bank-employer had resulted in violation of principles of natural justice of fair hearing."

18. The same point was strengthened by the latest judgment of the Hon'ble Supreme Court in ***State Bank of India and ors. Vs. Atindra nath Bhattacharya and ors., reported in (2019) 8 SCC 134.*** In the said case the Hon'ble Supreme Court has observed that the delaying tactics of an employee cannot be rewarded with setting aside the order of punishment. In the language of the Hon'ble Supreme Court, it is held as under:

"10) The learned Single Bench has set aside the order of punishment as well as the penalty order directing the employer to serve a notice before imposing penalty. The respondent avoided availing the said opportunity when offered on March 24, 2016, April 7, 2016 and April 22, 2016. Once opportunity has been granted to the respondent, he is not entitled to another opportunity on the ground of compassion. The only reasoning given by the Division Bench is 'justice demands' that the respondent be given one last opportunity to place his version. The respondent has lost his chance to put his version before the Competent Authority when called upon by the Authority to do so. Time and again opportunity of hearing cannot be granted on the pretext of justice. The

delaying tactics cannot be rewarded in such a manner. Once the respondent has failed to avail of opportunity of hearing granted, the Bank cannot be directed to give another opportunity for the sake of justice. Therefore, we find that the directions contained in Para 18 of the judgment passed by the Division Bench are not sustainable and the same are set aside.

11) The allegations of financial irregularities against the respondent run into crores of rupees under multiple heads. The inquiry officer has found ten charges proved whereas six charges have not been proved. Because of grave and serious allegations of financial irregularities, the order of removal cannot be said to be unjust.

12) Even though, the judgment of the learned Single Bench finding fault with the order of removal as affirmed in the appeal, cannot be said to be justified in view of the judgment of this Court in the case of Mohammad Badruddin but since the Bank has not filed an appeal against such judgment, therefore, the correctness of the said judgment is not being examined in the present appeal which is directed against judgment of Division Bench of Calcutta High Court."

19. It is a trite law that even if the charged officer is set *ex parte* the enquiry officer has got a bounden duty to decide about the veracity of the charges by considering the materials produced before him. In the instant case the enquiry officer has continued to conduct enquiry on various dates and the

records produced by the Presenting Officer on the side of the department and at the conclusion of the enquiry, the Enquiry Officer has given a detailed report by concluding that the charges have been proved on the basis of the materials produced before him. The Enquiry Officer did not choose to conclude the enquiry by short cutting the proceedings just because the delinquent officer was absent and set *ex parte*. He has made a serious enquiry and perused all the relevant materials and only thereafter he had arrived at a conclusion. Hence the report of the Enquiry Officer cannot be concluded as a report on no evidence. When the documents produced do not prove the charges against the delinquent officer, the oral evidences of the witnesses cannot be mandated.

20. When the charges leveled against the delinquent officer is established on the materials produced by the department and the disciplinary authority has also analysed the enquiry report before accepting the same and thereafter proceeded to pass an order of dismissal, such proceedings has to be considered as a full fledged enquiry. The petitioner who had chosen to abstain from participating in the enquiry proceedings cannot be allowed to complain later that he was not given with any opportunity and it was a revenge taking action. The charges framed against the petitioner were proved to be very serious in nature and in fact a criminal case is also parallely registered by quantifying the loss at Rs.6.67 crores. When the bank was exposed to incur such a heavy financial loss, the person in-charge of affairs cannot be handled lightly.

21. The petitioner has been in the habit of giving various complaints against the officers and initiating proceedings including sending of legal notices just for the purpose of creating a drama that he was charged with malicious intention. Unfortunately, all his attempts did not succeed and they proved to be false. In fact the conduct of the petitioner had invited observation from the Court that he had revealed his intention of frustrating the disciplinary proceedings on the pending criminal investigation against him. So the petitioner did not prove before the Court that he was denied with the fair opportunity and that the charge memo has been given to him only as an revenge taking action. On the other hand the materials would only prove that the petitioner was guilty of charges and he was in the habit of harassing the officers by raising various allegation and intimidating them by raising some imaginary allegations against him. Hence, I do not find illegality or perversity in the impugned orders.

22. In view of the reasons stated above, this Writ Petition is dismissed. No costs. Connected miscellaneous petitions are closed.

12-03-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
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To

1. The Chairman of Repco bank
cum The Principal Secretary,
Public & Rehabilitation Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.

R.N.MANJULA J.

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WP No. 18262 of 2018

12.03.2025