

(2016) 09 MAD CK 0118

MADRAS HIGH COURT

Case No: Writ Petition Nos. 17966 & 37590 of 2015 and M.P. Nos. 1 to 4 of 2015 in W.P. No.17966 of 2015 and M.P. No. 1 of 2015 in W.P. No. 37590 of 2015.

B. Lakshmikanth - Petitioner
@HASH The General Manager
(Net Work-II), Appointing
Authority, State Bank of India -
Loal Head Office, Circle Top
House, Aparna Complex, No.16,
College Lane, Chennai-600 006

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 29, 2016

Acts Referred:

- State Bank of India (Officers Service) Rules, 1992 - Rule 68(1)(i), Rule 68-A(1)

Citation: (2016) 2 CWC 689 : (2016) 4 LLN 458

Hon'ble Judges: R. Subbiah, J.

Bench: Single Bench

Advocate: Mr. R. Sankarasubbu, Advocate, for the Petitioner; Mr. S. Ravindran, Advocate, for the Respondents

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mr. R. Subbiah, J. - Writ Petition No. 17966 of 2015 has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records of the order passed by the 1st respondent bearing number in VIG/KE/30, dated 16.06.2015 and also the charge sheet issued by the 2nd respondent bearing in No.DIS/CON/1108, dated 05.02.2014, and to quash the same and further, to direct the 2nd respondent to reinstate the petitioner in service with full back wage, continuity of service and all other attendant benefits.

2. Writ Petition No. 37590 of 2015 has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order of suspension in No. DIS/CON/27, dated 09.04.2013 on the file of the 2nd respondent and to quash the same as illegal and to direct the respondents to re-instate the petitioner into service.

3. Since the petitioner in both the writ petitioner is the same person and also the issues involved in both the writ petitions are interrelated to each other, both the writ petitions are disposed of by way of this common order.

4. In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows :

4-1. The petitioner is hailing from Schedule Caste community and he obtained B.Sc., (Agri) and MBA degrees. He was appointed as Officer Marketing & Recovery in the respondents" Bank in the year 2007 at Krusilapattu Branch. Thereafter, by an order dated 20.08.2010, the petitioner's service as Rural Marketing & Recovery Officer (RMRO) has been confirmed by the respondents and he was posted at BHEL, M.R. Puram Branch.

4-2. While so, the petitioner was working as RMRO at Vaniyambadi, he was issued with a show cause notice on 09.04.2013 alleging 17 numbers of irregularities against him and he was suspended from his service by the 2nd respondent. Subsequently, the 2nd respondent issued a memorandum of charges against the petitioner by his letter dated 05.02.2014, altering the 17 charges into 9 charges. According to the petitioner, the allegations levelled against him are baseless and without any material proof. The 2nd respondent did not supply any document to the petitioner regarding the charges against him. It is further stated by the petitioner that he was placed under suspension on 09.04.2013, but a memorandum of charges was served on him only on 12.02.2014 after a long period of delay without any reasons for the delay. The petitioner has submitted his explanation by his letter dated 01.03.2014, demonstrating as to how the allegations are baseless. But, without considering the explanation given by the petitioner, the 2nd respondent ordered for domestic enquiry regarding the allegations made against the petitioner. The petitioner denied all the allegations made against him. According to the petitioner, he was not supplied with the basic documents regarding the allegations against him. Further, the petitioner had requested to permit him to have a defence assistant; but, the said request of the petitioner was not considered by the Enquiry Officer. After completing the enquiry, the Enquiry Officer submitted his report on 17.02.2015, holding that out of the 9 charges, 8 charges were proved. The report of the Enquiry Officer was served on the petitioner on 20.02.2015. Thereafter, the 1st respondent issued the second show cause notice dated 16.06.2015 to the petitioner, informing that the punishment of dismissal is proposed to be imposed on the petitioner and calling upon the petitioner to give his explanation in person on 22.05.2015. Now, aggrieved over the same, the petitioner has filed the writ Petition No.17966 of 2015

seeking to quash the charge-memo and to reinstate him service. Challenging the order of suspension, the petitioner has also filed W.P.No.37590 of 2015.

5. When the matter is taken up for consideration, the learned counsel appearing for the petitioner, by inviting the attention of this Court to the 2nd show cause notice dated 16.06.2015, submitted that the 2nd show cause notice is very bald in nature and it simply says that the punishment of "dismissal" is proposed to be imposed on the petitioner. Further, the learned counsel appearing for the petitioner, by drawing the attention of this Court to the charge memo as well as the suspension order, submitted that the charge memo & suspension order were issued by the 2nd respondent - Deputy General Manager (disciplinary authority), who is subordinate officer to the 1st respondent - (Appointing Authority-General Manager). According to the petitioner, the 2nd respondent is not a competent authority to issue the charge memo as well as the suspension order. In this regard, the learned counsel appearing for the petitioner relied upon the decisions reported in **(1980) 3 SCC 734 [Steel Authority of India v. Presiding Officer]** and **(2014) 1 SCC 351 [Union of India v. B.V. Gopinath]** and submitted that the subordinate officer to the competent authority cannot issue the charge memo. Thus, it is the submission of the learned counsel for the petitioner that on this sole ground alone, the impugned suspension order is liable to be quashed.

6. It is further submitted by the learned counsel appearing for the petitioner that when the petitioner made a request to permit him to have a defence assistant, he was not allowed to have the defence assistant. In this regard, the learned counsel for the petitioner relied upon the decisions reported in (i) **2011 Writ L.R. 734 [M/s.Chidambaram Shipcare Pvt. Ltd., v. The Presiding Officer, Principal Labour, Chennai & Others]** (ii) **(2001) 2 MLJ 140 (Gnanasambandam v. Tamil Nadu Cements Corporation)**, (iii) **1972 (3) SCC 542 (C.L.Subramaniam v. Collector of Customs, Chochin)**. Thus, the learned counsel for the petitioner sought for quashing the impugned orders and to direct the respondent to reinstate the petitioner into service.

7. Per contra, the learned counsel appearing for the respondents, by filing a detailed counter would contend that in terms of Rule 68(1)(i) and Rule 68(A)(1) of the State Bank of India Officers" Service Rules, 1992, the Deputy General Manager (2nd respondent herein), as a Disciplinary authority, is empowered to issue the charge memo as well as suspension order. In this regard, the learned counsel for the respondents has also produced a copy of the State Bank of India Officers" Service Rules, 1992.

8. So far as the 2nd show cause notice dated 16.06.2015 is concerned, it is submitted by the learned counsel for the respondents that it is incorrect to state that the 2nd show cause notice is bald in nature. Further, through the 2nd show cause notice, the explanation was called for from the petitioner by the Appointing Authority, by concurring with the findings of the Enquiry Officer. Hence, the 2nd show cause

notice has been issued in accordance with the principles laid down by the Hon'ble Supreme Court in various decision. In this regard, the learned counsel for the respondents has also relied upon the decision reported in **1996 (4) SCC 708 [Director General, ESI v. T. Abdul Razak]**, wherein it has been held that the legal position is well settled that it is not necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings and the proceedings can be initiated by any superior authority who can be held to be the controlling authority who may be an officer subordinate to the appointing authority. Thus, the learned counsel for the respondents sought for dismissal of the writ petition.

9. Heard the submissions made on either side and perused the materials available on record.

10. It is the main submission of the learned counsel for the petitioner that the 2nd respondent herein, Deputy General Manager, is the subordinate to the 1st respondent herein, General Manager (Appointing Authority); therefore, the 2nd respondent is not competent authority to issue the charge memo & suspension order. But, it is seen that by virtue of the Rules 68(1)(i) and 68(A)(1) of the State Bank of India Officers" Service Rules, 1992, the 2nd respondent herein (disciplinary authority) is competent to issue charge memo & suspension order. Rules 68(1)(i) and 68(A)(1) of the said Rules read as follows-

"68(1)(i)- The Disciplinary Authority may itself, or shall when so directed it its superior authority, institute disciplinary proceedings against an officer.

68.(A)(1)- An officer may be placed under suspension by the Disciplinary Authority :

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial."

From a reading of the above Rules, it is clear that the 2nd respondent-Deputy General Manager (disciplinary authority) is competent to issue the charge-memo & suspension order.

11. The 2nd show cause notice was issued by the 1st respondent, concurring with the findings of the Enquiry Officer. By the 2nd show cause notice, it was informed to the petitioner that the punishment is proposed to be imposed on him and he was directed to give his explanation in person. Under such circumstance, it cannot be said the 2nd show cause notice is bald in nature.

12 .The other submissions made by the learned counsel for the petitioner that his request for a defence assistant was rejected, is also not legally sustainable, since only as per the procedure and practise followed by the respondent-Bank, the enquiry has been conducted by the Enquiry Officer. Considering the facts and circumstances of the case, I do not find any merit in both the writ petitions and the

same are liable to be dismissed.

13. In fine, both the writ petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.