

(2004) 04 MAD CK 0186

In the Madras High Court

Case No : Writ Petition No. 5936 of 2004, W.P.M.P. No. 6943 of 2004 and
W.V.M.P. No. 622 of 2004

Ravikumar P.

APPELLANT

Vs

Chief Manager (Credit) and Disciplinary Authority, Bank of
India

RESPONDENT

Date of Decision : 26-04-2004

Acts Referred:

Citation : (2004) 3 LLJ 652

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : S. Venkataraman, for the Appellant; F.B. Benjamin George, for the
Respondent

Judgement

A. Kulasekaran, J.—This writ petition has been filed for issuance of a writ of certiorarified mandamus, to call for the records of the respondent in this proceedings Ref. ZO:DA:AS-235:646, dated February 26, 2004, quash the same and consequently, direct the respondent to permit the petitioner to take the assistance of a lawyer as per Clause 12(a)(iii) of the Bipartite settlement dated April 10, 2002, in the enquiry proceedings held into the charge memo No.ZO:DA:AS:235:412, dated November 19, 2003.

2. Petitioner is working as a Staff Head Cashier (Category F) with the respondent- bank's Royapetta branch. On August 13, 2003, while he was working in the branch, a surprise inspection was made. In the said inspection, a shortage of cash to the tune of Rs. 75,900 was found. Thereafter, a chargesheet, was given to the petitioner and the petitioner also submitted his explanation. Enquiry officer was appointed by the management. Petitioner submitted an application on February 16, 2004, seeking for assistance of a lawyer which was rejected. Hence the present writ petition.

3. Sri Venkataraman, learned counsel appearing for the petitioner, relying on the statement made in the counter filed by the respondent-management that "the

petitioner is facing a serious charge of misappropriation of bank money" has submitted that when such a serious charge is contemplated, it is absolutely necessary to seek the assistance of a well legally trained person, namely, a lawyer.

4. Sri Benjamin George, learned counsel appearing for the respondent-management, has submitted that the petitioner cannot claim the assistance of a lawyer as a matter of right; the charge against the petitioner is a shortage of funds to the tune of Rs. 75,900; as the cashier, he could very well explain and while so, the assistance of a lawyer is not required.

5. A copy of the Bi-partite settlement is also enclosed in the typed set of papers, wherein Clause 12 is relevant to the present case. Sub-clause (a)(iii) of the said clause read "with the bank"s permission by a lawyer." Of course, the defaulter has no right to seek the assistance of a lawyer but it is the duty of the respondent-bank to exercise discretion judicially.

6. I have perused the impugned order. In Para 5 of the impugned order, it is stated that "as regards your request for permission to be defended by a legal practitioner in the departmental enquiry proceedings to be held against you, the undersigned considering the nature of the case, and taking into account the fact that the Presenting Officer is neither a legally trained person nor a legal practitioner, does not see any reason or necessity for you to be defended by a legal practitioner during the enquiry." Of course, the Presenting Officer may not be a legally trained person, but the person well versed in conducting the enquiry, whereas the petitioner may not have sufficient experience in facing the enquiry. While so, without properly weighing the capacity of the petitioner and the Presenting Officer, the rejection order has been passed by the respondent.

7. Hence, I set aside the rejection order and direct the respondent-bank to permit the petitioner to have the assistance of a lawyer.

8. Learned counsel for the respondent-management requests the Court to give liberty to the management to engage a lawyer, if warranted. Such a request, I feel, is just and proper, and the same is accepted.

9. Considering the circumstances of the case, I direct the enquiry officer to complete the enquiry within a period of one month from the date of receipt of copy of this order.

10. Writ petition is disposed of accordingly. No costs. Consequently, the connected W.P.M.P. and W.V.M.P. are closed.