

(2014) 11 MAD CK 0172

In the Madras High Court

Case No : Writ Petition Nos. 13601 and 23060 of 2014, M.P. Nos. 1 to 3 of 2014 and M.P. No. 1 of 2014

S. Gunasekar

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 MAD CK 0172

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Judgement

M.M. Sundresh, J.—W.P. No.13601 of 2014 is filed challenging the charge memo dated 19.2.2014 bearing Dis/CON/1171 issued by the 1st respondent and the consequential order dated 30.4.2014 passed by the disciplinary authority, by which after rejecting the representation of the petitioner dated 21.4.2014, he was asked to attend the enquiry fixed by the Enquiry Officer. A subsequent request was made by the petitioner to refer him to the Medical Board, which was rejected by the respondent. Challenging the said order and seeking consequential direction to refer the petitioner to the Medical Board, W.P. No.23060 of 2014 has been filed.

2. As the second writ petition W.P. No.23060 of 2014 is incidental to the first writ petition W.P. No.13601 of 2014 and the period for which sick leave was sought was also over it is appropriate to decide the first writ petition W.P. No.13601 of 2014.

Background facts:-

3. The petitioner is the General Secretary of State Bank of India Scheduled Caste and Scheduled Tribe Employees Welfare Association as well as State Bank of Ambedkar Trade Union. He is working as a Special Assistant at Chennai Branch in the respondent Bank. Complaints have been given by the petitioner representing

his Union for the alleged improper conduct of the officials of the respondents on various dates i.e. 18.10.2013, 16.11.2013, 4.1.2014, etc. The complaint dated 16.11.2013 was with respect to the mishandling of leave fare concession by the officials of the respondents. The said complaint was also registered by the Central Vigilance Commission as per the letter dated 21.1.2014.

4. The petitioner is said to have distributed handbills to the general public and staff members at the side entrance of the Administrative Office, Chennai Zone-I & II and the main entrance gate of the local Head Office, Chennai on 8.1.2014 between 9.55 a.m. to 10.19 a.m. and on 10.1.2014 between 9.46 a.m. to 10.05 a.m. As the petitioner involved himself in the said activities without obtaining prior permission from the Chief Manager of Branch under whose control he has been working after signing the attendance register on 8.1.2014 and further unauthorisedly remained absent on 10.4.2014 by distributing the handbills, a disciplinary proceeding was initiated by issuance of a charge memo dated 19.2.2014. Prior to the issuance of the charge memo, the explanation of the petitioner was called for and as it was not forthcoming the charges were framed and issued. The following are the charges levelled against the petitioner:

""Charges:

- i. On 08.01.2014 you had left Chennai Branch at 9.50 AM after signing in the attendance register and without obtaining prior permission from the Chief Manager of the Branch under whose control you are working.
- ii. On 08.01.2014 between 9.55 AM to 10.19 AM, you personally distributed the above said handbills to the general public and staff members at the side entrance of Administrative Office, Chennai Zone-I & II (Garage side) with a malafide intention to tarnish the image of the bank and defame the Management/Officials. A copy of the handbills distributed by you is enclosed at Annexure (A)
- iii. On 10.01.2014 between 9.46 AM and 10.05 AM, you distributed the same (Annexure B) handbills to the staff members and members of the public at the main entrance gate of Local Head Office, Chennai with a malafide intention to tarnish the image (reputation) of the bank and defame the Management/Officials.
- iv. You unauthorisedly remained absent on 10.01.2014 and were found distributing the above mentioned hand bills on 10.01.2014 at the main entrance gate of L.H.O, Chennai, during the time-mentioned as above in charge (iii)

The above charges evidenced with records available at the Bank.

2. The above noted charges indicate that you have grossly violated the conduct rules which is tantamount to Gross Misconduct in terms of clauses 5(d), 5(j), 7(b), 7(c) and 7(e) of Memorandum of Settlement dated 10.04.2002.""

5. Along with the charge memo, handbills have been enclosed in Annexures - A and B, which are verbatim the same. For the sake of brevity, this Court makes a simple translation of the said handbills.

Submissions of the Petitioner:

6. Mr. Balan Haridass learned counsel appearing for the petitioner submitted that the charges have been framed in pursuant to the various complaints given by the petitioner on behalf of his association. One of the charge has already been registered by the Central Vigilance Commission. Hence, the Charge memo is tainted with legal malice. The petitioner is entitled for freedom of expression. His intention is to protect the institution. Sub-clause (d) and (j) of Clause 5 of the Memorandum of Settlement dated 10.04.2002 regarding conduct of disciplinary proceedings are not attracted. If that is held to be so, then the remaining charges would attract a minor misconduct. Therefore, the orders impugned in W.P. No.13601 of 2014 will have to be set aside. In support of his contention, learned counsel appearing for the petitioner relied on the following decisions:

- ""(1) Chief of Army Staff and Others Vs. Major Dharam Pal Kukrety, ;
- (2) S.D. Sharma Vs. Trade Fair Authority of India and Others, ;
- (3) B.R. Singh and others Vs. Union of India and others, ;
- (4) D. Thomas Franco Rajendra Dev Vs. The Disciplinary Authority and Circle Development Officer and State Bank of India, ;
- (5) Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, ;
- (6) West Bengal State Electricity Board Vs. Dilip Kumar Ray, ;
- (7) State of Andhra Pradesh and Others Vs. Goverdhanlal Pitti, and
- (8) P.A. Panneerselvam Vs. State Bank of India and another, (Unreported decision of this Court dated 20.3.2013 in W.P. No.6018 of 2012)""

Submissions of the Respondents:-

7. Mr.G.Masilamani, learned Senior Counsel appearing for the respondents submitted that the writ petition as filed is premature. While exercising the power under Article 226 of the Constitution of India, this Court is not required to extend its discretion at the stage of issuance of charge memo. The Enquiry Officer also has given his report. The petitioner was also asked to give his reply by way of issuance of second show cause notice dated 27.8.2014. As the petitioner has acted against the interests of the Bank, the charges have been framed. Therefore, it is submitted that no interference is required. In support of his contention, learned counsel for the respondents has relied on the following decisions:

- ""1. The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, ;
2. Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, ;
3. The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha, ;
4. Railway Board Representing The Union of India (UOI) Vs. Niranjana Singh, ;

5. M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation, .""

Discussion:

8. The facts are not in dispute. The petitioner did go over to the Administrative Office and local Head Office and distributed handbills at the side entrance as well as main entrance gate. The petitioner has not denied these facts. Therefore, this Court is not required to go into the factual matrix governing the case. The only exercise that is required to be gone into is to the applicability of sub-clause (d) and (j) of clause 5 of Memorandum of Settlement dated 10.4.2002, which provide for "gross misconduct". Sub-clause (d) and (j) of Clause 5 are reproduced hereunder:

""5. By the expression ""gross misconduct"" shall be meant any of the following acts and omissions on the part of the employee:

a) to c).....

(d) willful damage or attempt to cause damage to the property of the bank or any of its customers."

.....

(j) doing any act prejudicial to the interest of the bank or gross negligence involving or likely to involve the bank in serious loss.""

9. A perusal of sub-clause (d) of Clause (5) would show that it has got no application, what so ever, to the charges framed with respect to the issuance of handbills. There is no damage or attempt to cause damage to the property of the Bank or any of its customers. Therefore, on the face of it, sub-clause (d) has no application. The only other issue to be considered is as to whether sub-clause (j) would be applied to the case or not.

10. It is not in dispute that the petitioner has made several complaints against the officials with respect to the mismanagement. One of the complaint given by the petitioner on behalf of the association has also been registered. A perusal of the handbills issued by the petitioner would show that no official has been named. It has been issued in order to protect the Institution. In other words, the intention of the petitioner is not to tarnish the image of the Institution and in any case there is no malafide intention to do so. Such an action cannot be termed as an activity which is prejudicial to the interest of the Bank. Therefore, based upon the admitted facts and the materials this Court is of the view that sub-clause (j) of clause 5 is also not made out. Of course, the matter would be different if the petitioner has made allegations against any of the officials by naming them. It is only a legitimate action to remedy the alleged malfunction in the organisation. The petitioner has never sought to ventilate his personal interest.

11. An interesting case came up for consideration in Marvin L. Pickering Vs. Board of Education of Township High School, (391 US 563), wherein a letter was

sent by a teacher to an editor of a local newspaper criticizing the functioning of the School. The teacher was dismissed from service for the said action. A challenge was made that the remarks and comments in the letter were with respect to the policy adopted and not against any individual. It was held in the said judgment that as the letter had made no allegations against any individual official the order passed against the teacher cannot be sustained in the eye of law.

12. Though the learned Senior counsel for respondents has made reliance upon a judgment of the Supreme Court in *M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation*, , it was with respect to a direct public attack on the Head of the Organisation. The allegations were also made against various Officers. Therefore this Court is of the view that the said decision does not have any application to the case on hand. The petitioner has merely stated about the proposed action and he stopped from proceeding further. It is nobody's case that the petitioner's action has caused disturbance to the banking operations or to the customers entering the Bank.

13. Considering the charge memo issued by the respondents against an employee who is said to have committed irregularities in instigating the Officers to hold demonstrations within the Bank premises and shouted slogans with deliberate intention to tarnish the image of the Bank which he was required to protect, a Division Bench of this Court in *D. Thomas Franco Rajendra Dev Vs. The Disciplinary Authority and Circle Development Officer and State Bank of India*, was pleased to hold that such a charge cannot be sustained in the eye of law. Incidentally, even in the said case, the interference was made by this Court at the stage of the charge memo.

14. In a recent pronouncement, the Supreme Court in *Vijay Shankar Pandey Vs. Union of India (UOI)*, , while dealing with the charge to the effect that the delinquent officer has filed writ petition against the irregularities said to have been committed by the Government was pleased to hold that the said action by itself cannot be a ground to initiate disciplinary proceedings. The following passages of the said decision are apposite:

""40. We are at a loss to comprehend how the filing of the writ petition containing allegations that the Government of India is lax in discharging its constitutional obligations of establishing the rule of law can be said to amount to either failure to maintain absolute integrity and devotion to duty or of indulging in conduct unbecoming of a member of the service.

....

44. The respondents consider that a complaint to this Court of executive malfeasance causing debilitating economic and security concerns for the country amounts to inappropriate conduct for a civil servant is astounding.....""

The said reasoning of the Apex Court does have its application to the present

case as well.

15. As discussed earlier, there is no controversy surrounding the facts. Though as a matter of rule, this Court is not required to interfere at the stage of the charge memo, considering the legal issue, sans the factual adjudication, the impugned order is interfered with. Accordingly, charges for the alleged violation of sub-clause (d) and (j) of clause 5 of Memorandum of Settlement dated 10.4.2002 are set aside. Insofar as the other charges with respect to leaving the working place after signing and without getting permission from the appropriate authority as well as unauthorisedly absenting without permission, they are not interfered with. Accordingly, the respondents are at liberty to proceed with the petitioner for the charges that would attract sub-clause 7(b), 7(c) and 7(e) of the Memorandum of Settlement dated 10.4.2002. In view of the order passed in first writ petition W.P. No.13601 of 2014, no adjudication in the other writ petition W.P. No.23060 of 2014 is required, more so, when no arguments have been addressed in that writ petition coupled with the further fact that the period mentioned therein is also over. Accordingly, the first writ petition W.P. No.13601 of 2014 stands allowed in part and the other writ petition W.P. No.23060 of 2014 is closed. No costs. Consequently, the connected miscellaneous petitions are closed.