
(2015) 02 MAD CK 0208

In the Madras High Court

Case No : Writ Petition No. 23000 of 2014 and M.P. No. 1 of 2014

S. Viswanathan

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Citation : (2015) 3 MLJ 796

Hon'ble Judges : K.K. Sasidharan, J.

Bench : Single Bench

Advocate : N.G.R. Prasad for Row and Reddy, for the Appellant; T.R. Rajagopalan, Senior Counsel for Malarvizhi Udayakumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.K. Sasidharan, J.—This writ petition is directed against the order dated 18 August 2014, whereby and whereunder the Disciplinary Authority concurred with the views expressed by the enquiry officer that it is not possible to agree with the request made by the petitioner for permission to engage a lawyer to defend him in the disciplinary proceedings initiated by the Bank.

The facts:

2. The petitioner is an employee of State Bank of India. While he was working as Head Cashier attached to Sowcarpet Branch, the Bank issued a memo dated 16 April 2014 followed by a charge sheet dated 10 June 2014 alleging that the petitioner indulged in fraudulent acts of assessing Bank accounts of a large number of home as well as non-home constituents including many of the staff members of the Bank by using CIF/Account Numbers/Mobile Numbers and thereby committed acts of serious misconduct. The petitioner submitted his explanation to the charge sheet. The first respondent appointed the second respondent as enquiry officer. The petitioner made a request before the enquiry officer to permit him to engage a lawyer to represent him. The request was

based on clause 12 of the Bipartite Settlement dated 10 April 2002 providing for assistance of lawyer. The petitioner made a mention before the enquiry officer that it would not be possible for him to get the assistance of members of Union on account of his initiation of a Civil Suit in O.S. No. 124 of 2013 before the Small Causes Court, Chennai against the office bearers of the Union. The second respondent vide order dated 13 August 2014 rejected the said request. The enquiry officer agreed to cite the attention of the disciplinary authority with regard to the request made by the petitioner. Thereafter by way of the impugned order, the disciplinary authority approved the decision taken by the enquiry officer. Feeling aggrieved by the said order, the petitioner is before this Court.

3. The first respondent in his counter affidavit contended that the Bank will consider the request made by the charge sheeted employee to engage a lawyer only in case the Presenting Officer is a legally qualified person. According to the first respondent, the Presenting Officer is only a General Officer not having any legal qualification. It was further contended that both the enquiry officer and the Presenting Officer are working under Circle Development Officer and they are not from Vigilance Department as alleged by the petitioner and as such the request for engaging lawyer was rightly rejected. The first respondent pleaded ignorance of the pending suit in O.S. No. 124 of 2013 filed by the petitioner against the Bank and its Staff Union. The first respondent took a specific stand that there is no vested or absolute right to engage the services of a lawyer to defend the charge sheeted employee in the disciplinary proceedings.

Rival Contentions:

4.(a) The learned counsel for the petitioner contended that the provisions of the Bipartite Settlement dated 10 April 2002 provides for assistance of a lawyer, of course with the permission of the Bank. According to the learned counsel, it is open to a charge sheeted employee to take the assistance of a representative of the registered Union of which he is a member. However in the case of the petitioner, he has already filed a suit against his own Union and as such none of the Union members would come forward to assist him in the pending enquiry proceedings. The learned counsel contended that this material fact was omitted to be considered by the disciplinary authority. The learned counsel further contended that the petitioner is not in a position to withstand the enquiry for hours together on account of his poor health condition. The learned counsel finally submitted that no attempt was made by the disciplinary authority to consider the request made by the petitioner on merits and as such the impugned order is liable to be set aside.

(b) The learned counsel placed reliance on a Division Bench judgment of this Court dated 10 July 2014 in W.A. No. 280 of 2014 (D. Inbavalli v. State Bank of India and another) and a Division Bench judgment of the Bombay High Court in V. Sambamurthy v. Union of India, 1996 (2) LLN 349 in support of his contention that legal assistance to a delinquent employee should be considered in the light of the statutory regulations governing the issue.

5.(a) The learned Senior Counsel for the Bank contended that the question of permitting the charge sheeted employee to engage a lawyer would arise only in case the Presenting Officer is a legally trained personnel. According to the learned Senior Counsel, nothing prevented the petitioner from taking the assistance of a representative of the bank employees Union. The learned Senior Counsel further submitted that the suit in O.S. No. 124 of 2013 is in respect of the election conducted by the Union and the same has nothing to do with the members of the Union and as such the petitioner was not correct in his contention that none of the trade union members would assist him to conduct the enquiry. The learned Senior Counsel contended that the petitioner is involved in a serious misconduct and as such he should thank the Bank for appointing an enquiry officer, who is thorough with the procedure instead of taking exception to the action taken by the Bank denying him assistance of lawyer.

(b) The learned Senior Counsel placed reliance on the judgment of a Division Bench of this Court dated 8 February 2012 in W.A. No. 1436 of 2011 (V.Mathivanan v. State Bank of India) in support of his contention that under similar circumstances the Division Bench rejected the request made by the employee of State Bank of India to take the assistance of a lawyer.

Analysis:

6. The petitioner is facing disciplinary proceedings initiated by the first respondent. The Bank appointed the second respondent, who is functioning as Chief Manager (Enquiry) to enquire into the charges. The petitioner has produced details of the enquiry conducted by the second respondent earlier to substantiate his contention that the enquiry officer is an expert in the matter of departmental enquiry. The Presenting Officer is stated to be an officer of the Bank and he is not a legally trained personnel.

7. The petitioner made a request to provide him assistance of a lawyer in the light of clause 12 of the Bipartite settlement dated 10 April 2002. Clause 12 of the Bipartite settlement reads thus:-

The procedure in such cases shall be as follows:-

(a).....He shall also be permitted to be defended-

(i) (x) by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry.

(y) where the employee is not a member of any trade union of bank employees on the aforesaid date, by a representative of a registered trade union of employees of the bank in which he is employed:

or

(ii) at the request of the said Union by a representative of the state federation or all India Organisation to which such union is affiliated.

(iii) with the bank's permission, by a lawyer."

8. The Bipartite Settlement permits the charge sheeted employee to engage the services of a representative of a registered trade union of Bank employees of which he is a member. It also gives him an option to engage a lawyer with the permission of the Bank.

9. The petitioner filed a suit in O.S. No. 124 of 2013 before the Small Causes Court, Chennai against the Union, of which he is a Member. The Bank is shown as second defendant in the said suit. The petitioner in his plaint in O.S. No. 124 of 2013 contended that the State Bank Staff Union deliberately flouted the bye laws and caused him monetary loss. The pendency of a Civil Suit filed by the petitioner against the Union is taken as a ground to contend that he is not in a position to take the assistance of a representative of his Union to appear before the enquiry officer. The petitioner therefore wanted the enquiry officer to permit him to engage a lawyer.

10. The proceedings of the enquiry officer dated 13 August 2014 shows that the attention of the enquiry officer was drawn to the pending civil suit filed by him against the Union. The order passed by the enquiry officer rejecting the request made by the petitioner for engaging a lawyer reads thus:

"Permission to have a lawyer as DR:

I understand that you are fighting a case against SBSU (CC) in the court of law. But as that matter is not relevant to this enquiry, your request to engage a lawyer as DR cannot be acceded to. However, the matter would be brought to the knowledge of the Disciplinary Authority (AD) to have a view in the matter. I hope to advise you in this regard during the next sitting of the Enquiry."

11. The order passed by the Enquiry Officer shows that he is aware of the suit filed by the petitioner. According to the enquiry officer, the initiation of civil suit is not relevant to the enquiry and as such his request to engage a lawyer cannot be acceded to. The enquiry officer further stated that the issue would be referred to the disciplinary authority to have its view. It was only thereafter the first respondent passed the impugned order dated 18 August 2014 concurring with the decision taken by the enquiry officer.

12. The petitioner made a specific request on the basis of a provision contained in the Bipartite settlement to engage a lawyer. The petitioner has given his own reasons which actually weighed with him for making such a request. It is not as if the petitioner has not given any reason justifying such appointment. The enquiry officer was in the know of things with regard to the suit filed by the petitioner. Neither the enquiry officer nor the disciplinary authority made any genuine attempt to consider the request made by the petitioner in the light of the suit filed by him against the Union and the benefit given to him by the Bipartite Settlement.

13. When a request is made to engage a lawyer in accordance with the Bipartite

Settlement, such request should be considered objectively.

14. The learned Senior Counsel for the Bank contended that the suit in question was instituted only against the Union and it would not show that even the members are against the petitioner. The said contention has no factual basis. The impugned order passed by the Bank does not contain any indication that effort was made to consider the plaint in O.S. No. 124 of 2013 in the light of the Bipartite settlement before rejecting the request made by the petitioner.

15. The enquiry Officer is holding the post of Chief Manager (Enquiry). It is therefore very clear that he is an expert in the field of domestic enquiry. However, that is not the case of Presenting Officer. It is also true that the Presenting Officer is not from vigilance department. However that alone would not give a right to the Bank to reject the request in view of the additional reason given by the petitioner that he is fighting against the Union and as such he would not be in a position to get the assistance of a representative of his Union. Neither the enquiry officer nor the disciplinary authority made genuine efforts to look into the grievance projected by the petitioner with regard to his inability to get the assistance of a representative. In fact the first respondent in his counter affidavit pleaded that he is not aware of the details regarding the suit in O.S. No. 124 of 2013.

16. The decision cited by the learned counsel for the petitioner in W.A. No. 280 of 2014 relates to the claim for representation to a charge sheeted employee by a trade union representative. The request made by the employee to engage the services of a member of another trade union was rejected. It was only under such circumstances, the Division Bench quoted clause 12 of the Bipartite Settlement dated 10 April 2002 permitting the employee to take the assistance of a representative belonging to another trade union to represent him before the enquiry officer.

17. Similarly the judgment in *V. Sambamurthy v. Union of India*, 1996 (2) LLN 349 would not be of any help to the petitioner in deciding the question raised in this writ petition. In the said case, the employee was not in a position to understand the local language. He was relying on the translation made by the co-delinquent. It was only under such circumstances, the Division Bench held that the delinquent was pitted against the prosecutor whose experience in domestic enquiries totally eclipsed the total lack of experience of the charge sheeted employee.

18. The learned Senior Counsel for the Bank placed heavy reliance on a Division Bench judgment of this Court in *V. Mathivanan v. State Bank of India rep. by Assistant General Manager* (judgment dated 8 February 2012 in W.A.(MD) No. 1436 of 2011. The Division Bench in the said judgment considered the earlier decisions on the point and observed that in case neither the enquiry officer nor the representative of the Bank are legally trained persons, the charge sheeted employee has no right to engage a legal practitioner.

19. The question herein is not as to whether the petitioner has got a right to engage a lawyer without the consent of Bank. The core question is whether it was correct on the part of the Disciplinary authority to reject the request made by the charge sheeted employee on the basis of the provision contained in the Bipartite settlement, without making a bona fide and sincere attempt to consider the grounds raised to justify the engagement of legal practitioner.

20. The first respondent should have considered the issue taking into account the civil suit filed by the petitioner. The first respondent simply endorsed the views expressed by the enquiry officer.

21. Right to reason is a valuable right. In case a particular authority is given power to decide the matter on merits the order passed by such authority should contain reasons. The parties should not be put in darkness. The order should be a self speaking one. It is all the more necessary in case the orders are appealable or revisable by higher authorities.

22. The Supreme Court in Maya Devi (dead) through Lrs. Vs. Smt. Raj Kumari Batra (dead) through Lrs. and Others, , indicated the necessity of giving reason by a body or authority in support of its decision. The observation reads thus :-

"28. It is in the light of the above pronouncements unnecessary to say anything beyond what has been so eloquently said in support of the need to give reasons for orders made by courts and statutory or other authorities exercising quasi-judicial functions. All that we may mention is that in a system governed by the rule of law, there is nothing like absolute or unbridled power exercisable at the whims and fancies of the repository of such power. There is nothing like a power without any limits or constraints. That is so even when a court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well-recognised and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity.

29. What then are the safeguards against an arbitrary exercise of power? The first and the most effective check against any such exercise is the well-recognised legal principle that orders can be made only after due and proper application of mind. Application of mind brings reasonableness not only to the exercise of power but to the ultimate conclusion also. Application of mind in turn is best demonstrated by disclosure of the mind. And disclosure is best demonstrated by recording reasons in support of the order or conclusion.

30. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate court or the authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own."

23. The enquiry officer as well as the disciplinary authority failed to exercise the discretion properly and in accordance with settled legal principles. I am therefore of the view that the matter requires fresh consideration by the first respondent.

Disposition:

24. In the result, the impugned order dated 18 August 2014 is set aside. The disciplinary authority is directed to consider the matter afresh on merits and take a decision in the light of clause 12 of the Bipartite settlement and pending suit in O.S. No. 124 of 2013. Such exercise shall be completed within a period of one month from the date of receipt of a copy of this order. The enquiry proceedings should be kept in abeyance till the disposal of the matter by the disciplinary authority.

25. The writ petition is allowed as indicated above. Consequently, the connected MP is closed.