
(2016) 08 MAD CK 0109

In the Madras High Court

Case No : W.A. No. 984 of 2016 and C.M.P. No. 12714 of 2016

State Bank of India

APPELLANT

Vs

S. Viswanathan

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 CLR 1109

Hon'ble Judges : Mr. Huluvadi G. Ramesh and Mr. M.V. Muralidaran, JJ.

Bench : Division Bench

Advocate : Mr. N.G.R. Prasad for M/s. Row and Reddy, Advocates, for the Respondent No. 1; Mr. S. Ravindran, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Huluvadi G. Ramesh, J. - Heard the learned counsel appearing for the parties.

2. This writ appeal is filed by the Bank against the order of the learned Single Judge in directing the Bank to permit the writ petitioner to engage a lawyer to represent his claim in the domestic enquiry.

3. Perused the order passed by the learned Single Judge. In paragraph 13 of the order, the learned Single Judge referred to the factual position. It appears that to enquire into the misconduct alleged to have been committed by the writ petitioner, the bank appointed the second respondent herein as Enquiry Officer. On the strength of clause 12 of the Bipartite Settlement dated 10.4.2002, the writ petitioner requested for a lawyer's assistance, however, the enquiry officer, did not accede his request, but, sought for the view of the disciplinary authority and the disciplinary authority, in turn, by order dated 18.8.2014, declined the request of the petitioner. In the writ petition in W.P.No.23000 of 2014 filed challenging the said order, the Bank was directed to consider the matter afresh and take a decision in the light of clause 12 of the Bipartite Settlement dated 10.4.2002 and pending suit in O.S.No.124 of 2013, a suit filed by the present

writ petitioner against the Union and the Bank, but, however, the request of the writ petitioner was rejected once again, by order dated 12.3.2015.

4. In the circumstances, after referring to some decisions, the learned Single Judge has held that the enquiry officer as well as the disciplinary authority failed to exercise their discretionary power properly and setting aside the impugned order dated 12.3.2015, directed the Bank to permit the writ petitioner to engage a lawyer to represent his claim in the domestic enquiry.

5. The learned Single Judge held that there is a provision either to engage a Member of the Union or a lawyer at the discretion of the Management to defend the writ petitioner and found that such a discretion has not been properly exercised. The learned Single Judge has also referred to the judgment reported in *Indian Airlines Corporation v. N. Sundaram* (1992(2) LLN 811), wherein although the Standing Orders of the Indian Airlines Corporation expressly prohibited outside representation in departmental enquiries, this court has held that the anxiety and vigil of the court must be to keep the balance and not to countenance the bringing in and perpetuation of an imbalance in the conduct of disciplinary proceedings and by any act of the employer, the employee should not be put to disadvantage in the conduct of disciplinary proceedings and that is the cardinal rule that must prevail, and guide and there cannot be prosecution of disciplinary proceedings in derogation thereof.

6. The learned counsel appearing for the appellant has referred to a judgment of the Apex Court in the case of *Harinarayan Srivastav v. United Commercial Bank And Another* and sought to contend that refusal to allow the assistance of an advocate is not violative of principles of natural justice.

7. It appears that the case on hand differs from that of referred to in the judgment relied by the learned counsel for the appellant. In the case relied on, the allegations against the employee were very simple in nature and not complicated and the presenting officer of the Bank was not a legally trained person and hence, it was held by the High Court as well as the Apex Court that denial of assistance of an advocate is not violative of principles of natural justice. But, in the case on hand, the employee is constrained to face a legally trained person and he had already filed a suit as against the Union and therefore, he could not accept the assistance of a Member of the Union and therefore, a justification could be found in the request of the writ petitioner. Moreover, the very Bipartite Settlement provides for engaging a counsel at the permission of the bank but, the disciplinary authority is shown to have taken a decision contrary to the general principles and also acted upon the prejudicial view taken by the enquiry officer.

8. Therefore, we are of the view that there is no illegality or irregularity committed by the learned Single Judge in directing the Bank to permit the writ petitioner to engage a counsel. We do not find any merit or scope for interference with the order of the learned Single Judge. The writ appeal is

dismissed. No costs. The connected miscellaneous petition is closed.