(2011) 04 MAD CK 0395

In the Madras High Court

Case No : Writ Petition No. 2846 of 2011

T. Krishnarajulu — APPELLANT

Vs

The Branch Manager, The Assistant General Manager (Operations) and The Deputy General Manager (NCM) NW-2, State Bank of India — RESPONDENT

Date of Decision : 09-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0395

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. Kathiresan, for the Appellant; K. Sankaran, for RR1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner has filed the present writ petition, seeking for a direction to pay the Petitioner the eligible subsistence allowance for the period of his suspension from 22.5.2007 till 04.10.2008 and also the eligible salary for the month of May, 2007.

2. When the matter came up on 08.02.2011, this Court directed notice to be issued to the Respondent Bank. Accordingly, the Respondent appears through counsel and has also filed a counter affidavit dated Nil (March 2011).

3. It is the case of the Petitioner that he was working as Senior Assistant in the Vanur Branch of the Respondent Bank and had put in 30 years of service. He was placed under suspension on 22.05.2007 in terms of Clause 12(b) of the Memorandum of Settlement dated 10.04.2002 for certain acts of misconduct. He was served with charge sheets dated 12.07.2007 and 03.10.2007. Subsequently, the Petitioner sent a representation dated 07.11.2007 asking for payment of subsistence allowance. In the meanwhile, an enquiry was conducted by the Chief Manager, SBI, Tiruchirapalli Town, who was appointed as the Enquiry Officer. The

findings of the enquiry were communicated to the Petitioner with a covering letter dated 05.06.2008 by the second Respondent. The Petitioner gave his explanation dated 04.07.2008. In the explanation, he had stated that the Manager of Vanur Branch Mr. Unnikrishnan, had quarrelled with the Petitioner when he went to receive his subsistence allowance who has also threatened that he will be arrested. The Petitioner also sent a representation dated 18.10.2008 once again seeking for the payment of subsistence allowance from the date of his suspension. However, by an order dated 04.10.2008, the Petitioner was dismissed from service by the second Respondent without notice in terms of settlement dated 10.04.2002.

4. The Petitioner preferred an appeal to the third Respondent Appellate Authority. In that appeal, he had requested the Appellate Authority to direct the Bank to pay his subsistence allowance from the date of his suspension. The Appellate Authority rejected the appeal by an order dated 18.02.2009. Once again the Petitioner sent a representation dated 04.07.2009 to the second Respondent seeking for payment of subsistence allowance for the suspension period. With reference to the payment of subsistence allowance for the suspension period, the second Respondent did not state anything in his order of dismissal, but only treating the period of suspension in the penultimate paragraph of the dismissal order, he has stated as follows:

I have independently and dispassionately applied my mind to the case. I am of the view that the ends of justice would be met by imposing on the CSE the punishment of ''DISMISSAL WITHOUT NOTICE FROM SERVICE'' with immediate effect in terms of Clause 6 (a) of the Memorandum of Settlement dated 10.4.2002 treating the period of suspension of suspension only for all intents and purposes (ref. Chennai Local Head Office Circular Letter No. Cir. D.O. PER. 46 dated 01.8.2002), I order accordingly.

5. The third Respondent Appellate Authority also did not deal with the non-payment of subsistence allowance. It is in these circumstances, the Petitioner has come forward with this writ petition claiming subsistence allowance.

6. In the writ petition, the order of dismissal passed against the Petitioner is not under challenge. Therefore, it is unnecessary to go into the details of the reasons led to his dismissal. With reference to the non-payment of subsistence allowance, in the counter affidavit, the first Respondent has averred as follows:

8. The Petitioner was paid salary for the month of May 07 by way of Banker''s cheque dated 26.05.2007 for Rs. 6319/-. The said cheque is not collected by the Petitioner till now. In June 07 a sum of Rs. 12276.37/- was paid towards subsistence allowance calculating at the rate of 50% of the salary. The Petitioner is entitled to only 1/3rd of the salary and the mistaken excess payment was adjusted in the month July 2007. Further the compulsory deductions towards Income Tax, Education Term Loan, Consumer Loan, Two Loans against NS Cs and optional deduction towards cooperative societies were made from the subsistence

allowance. In the security documents executed by the Petitioner for the loan availed by him the Petitioner has undertaken to repay the instalments from the salary and allowances.

7. It was also stated in paragraph 11 of the counter affidavit that the suspension order dated 22.05.2007 was merged with the dismissal order dated 04.10.2008. The Petitioner being aware of the deductions made from the subsistence allowance is not entitled for any subsistence allowance. Further, it was stated that the Petitioner had caused huge loss to the bank. In the typed set filed by the first Respondent, the details of the deductions made from the subsistence allowance is furnished for the period from 2007 -2009 including the deductions made.

8. Before going into the rival contentions, it is necessary to refer to the provisions relating to Payment of subsistence allowance and the Deductions permissible as per the Bipartite settlement dated 10.04.2002. Paragraphs 23.4.3 and 23.4.4 may be usefully extracted below:

23.4.3. Payment of subsistence allowance Subsistence allowance during the period of suspension should be granted to an employee on the following scales:

a) For the first three months, one-third of the pay and allowances which the workman would have got but for the suspension; and

(b) Thereafter, (i) where the enquiry is departmental by the Bank, one-half of the pay and allowances for the succeeding months; (ii) where the enquiry is by an outside agency, one-third of the pay and allowances for the next three months and thereafter one-half for the succeeding months until the enquiry is over, and

(c) After one year full pay and allowances if the enquiry is not delayed for reasons attributable to the concerned workman or any of his representatives. Where the investigation is done by an outside agency and the said agency has come to the conclusion not to prosecute the employee, full pay and allowances will be payable after 6 months from the date of report of such agency or one year after suspension whichever is later and in the event the enquiry is not delayed for reasons attributable to the workman or any of his representative.

23.4.4 Deductions from subsistence allowance

All compulsory deductions like income tax and repayment of loans and advances granted by the Bank should be recovered from the subsistence allowance payable to the suspended employee though such allowances may not be treated as part of salary. Further, from the subsistence allowance, it will be in order to effect other optional deductions like insurance premia, dues to co-operative credit societies etc., unless this is objected to by the concerned employee. Provident Fund Contributions should not however, be deducted from the Subsistence allowance.

9. Mr. K. Sankaran, learned Counsel for the Respondent Bank referred to the

judgment of the Supreme Court in Indra Bhanu Gaur Vs. Committee, Management of M.M. Degree College and Others, , for contending that the Petitioner never made an issue regarding the non-payment of subsistence allowance during the period of suspension. He referred to the following passage found in paragraph 7, which is as follows:

7. From the judgment of the High Court, in the writ petition it appears that there is no reference to the alleged infirmity on account of subsistence allowance having not been paid. There was also no specific finding recorded for the question of bias as alleged presently. We find that there was total lack of cooperation from the Appellant as the factual background highlighted above would go to show. Ample opportunity was granted to the Appellant to place his case. He did not choose to do so. It is only a person who is ready and willing to avail of the opportunity given, who can make a grievance about denial of any opportunity and not a person like the Appellant who despite repeated opportunities given and indulgence shown exhibited defiance and total indifference to extending cooperation. Therefore, on that score the Appellant cannot have any grievance. So far as the effect of not paying the subsistence allowance is concerned, before the authorities no stand was taken that because of non-payment of subsistence allowance, he was not in a position to participate in the proceedings, or that any other prejudice in effectively defending the proceedings was caused to him. The Appellant could not plead or substantiate also that the nonpayment was either deliberate or to spite him and not due to his own fault. It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as absolute proposal in law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings.

It is not clear as to how the said passage is of any assistance to the case of the Respondent Bank.

10. The said question will arise for consideration only when the dismissal order is under challenge on the ground of nonpayment of subsistence allowance. As noted already, this Court is not going into the question of validity of the dismissal order on the ground of non-payment of subsistence allowance. However, it is suffice to state that the Petitioner is bound by the terms of settlement provided for subsistence allowance and also the legal conditions made thereunder. The relevant terms of settlement as extracted above shows that the Respondent Bank is at liberty to deduct various deductions and even in other cases, the deductions can be made if not objected to by the concerned employee. In the present case, there is nothing on record to show that the Petitioner has objected to any deductions made from his subsistence allowance and he has also not made an issue before the enquiry proceedings.

11. Under the circumstances, it is unnecessary to go into the larger issue as to whether non-payment of subsistence allowance vitiated the enquiry held against the Petitioner as it is not the issue raised before this Court. Hence, the writ petition stands dismissed. No costs.

