(2011) 01 MAD CK 0046

In the Madras High Court

Case No : Writ Petition (MD) No''s. 11693 of 2009 and 9573 of 2010 and M.P. (MD) No''s. 1 of 2009 and 1 of 2010

V. Mathivanan APPELLANT

Vs

The Regional Manager, State Bank of India
G. Karthigaichamy Vs The Assistant General Manager (Administration), Disciplinary Authority and The Regional Manager RESPONDENT

Date of Decision : 22-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0046

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T. Lajapathiroy, in W.P. MD No. 11693 of 2009 and P. Mahendran, in W.P. MD No. 9573 of 2010, for the Appellant; S. Sethuraman, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—W.P. (MD) No. 9573 of 2010 is filed by an Assistant, working in the State Bank of India, seeking for a direction to the

first Respondent to defer the departmental proceedings initiated against him vide Charge memo, dated 5.6.2010 until the disposal of the criminal

case registered in Crime No. 26 of 2009, dated 22.9.2009 by the District Crime Branch, Madurai. The writ petition was admitted on 27.7.2010.

Pending the writ petition, this Court granted an interim stay on the ground that in an identical circumstances, an another writ petition in W.P. (MD)

No. 11693 of 2009, an interim order was also granted and it is pending.

2. On notice from this Court, the Respondent State Bank of India has filed a counter affidavit, dated 9.11.2010. When the said matter came up for

hearing, in view of the earlier order, this Court directed the previous writ petition, i.e. W.P. (MD) No. 11693 of 2009 to be posted along with this

writ petition.

3. In W.P. (MD) No. 11693 of 2009, the Petitioner was the Senior Assistant. He had sought for setting aside the charge memo, dated 11.9.2009

relating to forged signature of the members of 64 Self Help Groups under the brand Seva Trust and also fabricated the loan documents for 64 non-

existent Self Help Groups. He was also accused for morphing the photographs of Self Help Groups and the faces of the President and Treasurer

of each Self Help Groups. He had also colluded with G. Karthigaichamy, an Assistant of Saptur Branch (Petitioner in W.P. (MD) No. 9573 of

2010) in fabricating rubber stamps relating to Moon, Star, Vannila Self Help Groups from the Hathiya Plastics, Town hall Road, Madurai with a

view to affix the rubber stamps in the loan documents relating to these three self help groups in order to derive pecuniary benefit from the loan

amounts. Therefore, the Petitioner along with Kathigaichamy was suspended and charge sheeted accordingly. In that writ petition, the court held

that in the light of the settlement between the workers and the State Bank of India, dated 1.8.2002 more specifically as per Clause 3(c) even if in a

criminal case, the employees got acquitted, it was open to the management to proceed against them in terms of Clauses 11 and 12. Since that

opportunity is available to the management and that departmental enquiry and the criminal proceedings are based on identical charges, a status quo

order was granted pending the writ petition. In that writ petition, the Respondent Bank has filed a counter affidavit, dated 22.09.2010.

4. The short question that arises in both the writ petitions was whether the Petitioners are entitled to get departmental enquiry forestalled only on

account of the pendency of the criminal investigation?

5. It is claimed in the counter affidavit that though criminal investigation is in progress, there is no bar in proceeding with the departmental

proceedings inspite of the criminal case. Since the criminal case is likely to take long duration, there is no bar in proceeding with the departmental

enquiry. Reliance was placed upon a judgment of the Supreme Court in Indian Overseas Bank v. P. Ganesan reported in (2008) 1 SCC 650. It is

necessary to refer to the following passages found in the said judgment in paragraphs 23 and 24, which are as follows:

23... What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also

required to take into consideration the question as to whether the charges leveled against the delinquent officers, both in the criminal case as also

the in disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non-stay of

the disciplinary proceedings shall not only prejudice the delinquent officers but the matter also involves a complicated question of law.

24. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the delinquent

officers including the charges of damaging the property belonging to the Bank which was not the subject-matter of allegations in a criminal case, the

departmental proceedings should not have been stayed.

6. With reference to apprehension of prejudice to the Petitioners, it is stated that in the counter affidavit that the Petitioners have already submitted

a reply to the show cause notice and there cannot be any prejudice. In the counter affidavit filed in W.P. (MD) No. 11693 of 2009 in paragraphs

16 and 19, it was averred as follows:

16. Further this Respondent submits that para 7.5 of the Special Chapter on Vigilance Management in Public Sector bank since ratified by the

Central Vigilance Commission Act, 2003:

... No Bipartite Agreement should stand in the way of disciplinary action continuing parallel with criminal investigation/trial. This is necessary in the

interest of speedy action in vigilance case. ....

19. The Special chapter on Vigilance Management in Public Sector Banks since ratified by the Central Vigilance Commission Act, 2003, states

that no bipartite agreement should stand in the way of disciplinary action continuing parallel with criminal investigation/trial. This is necessary in the

interest of speedy action in vigilance cases.

7. It was also claimed that there is no complicated question of law of facts involved in the departmental enquiry so as to await the proceedings in

the criminal case. Even in the bipartite settlement quoted by the Petitioner, there is no bar in conducting departmental enquiry.

8. This Court has also gone through the charge memo and finds that there is no case made out for stalling the charge memos and the departmental

enquiries pending the so-called criminal proceedings in which even the charge sheet is yet to be filed by the department. In the light of the Indian

Overseas Bank case (cited supra), there is no case made out to entertain both the writ petitions. Hence both the writ petitions will stand dismissed.

However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed.