

2023 LAB. I. C. 1117
: AIROnline 2023 MAD 31
(MADRAS HIGH COURT)
(MADURAI BENCH)

S. SRIMATHY, J.

S. Alagarsamy (Died) v. Appellate Authority/ Deputy General Manager, Chennai.

W.P.(MD) No. 12477 of 2014, D/- 2-2-2023.

Constitution of India, Art.311 — Dismissal from service — Ground — Misappropriation of money — Petitioner was Head cashier in Bank at relevant point of time — Charges against petitioner that he had kept challans and other seals belonging to Bank in a place easily accessible to

UID : 538771

Group Coordinator who had filled payment challans and affixed stamp /seal of Bank and misappropriated money — Petitioner might have acted in a negligent way by not protecting seal and letter head of Bank, which made Group Coordinator to misuse office of the Bank — However, this cannot be considered as misappropriation — Further, Group Coordinator misused counterfoils without remitting amount in Bank, without knowledge of petitioner and hence for same petitioner cannot be blamed — Punishment of dismissal from service was disproportionate and modified to compulsory retirement — Authorities directed to implement punishment of compulsory retirement and disburse monetary benefits to wife of deceased petitioner. (Paras 7, 8, 9)

Sailendra Babu for G.Sankaran, for Petitioner; T.M.Hariharan, for Respondents.

ORDER :— This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order dated 31.03.2012 passed by the 2nd respondent and confirmed in the Appeal by the 1st respondent, dated 24.05.2012 and consequently, to direct the respondents to reinstate the petitioner into service with all consequential and other attendant benefits.

2. The brief facts of the case are that the petitioner was appointed as Subordinate Staff (Peon) in Central Bank of India at Tirunelveli Junction Branch on 02.02.1981. Thereafter, he was transferred to various places and promoted to various posts. Finally, the petitioner was promoted as Computer Terminal Operator (CTO) at Kodai International Hotel Extension Counter in the year 2000. Thereafter, he was transferred to Kambiliyampatti Branch as Head Cashier 'E' in the year 2005. While the petitioner was working in the Kambiliyampatti Branch of Central Bank of India, loans were sanctioned to the members of Self-Help Groups based on the authority/recommendation. The money will be collected by Group Coordinator who would remit the money in the respective account maintained in the bank periodically. Accordingly, loans were sanctioned for the members of one such group by name

Kalanjiam. The Kalanjiam Group Coordinator namely P. Latha Maheswari would remit the amount collected in the respective accounts of the members in the Bank. Since Kambiliyampatti Branch comprised of limited staffs i.e. one Manager, one Cashier and one Clerk alone, the Self Help Group Coordinators would have close proximity in the bank and free movement in the Bank premises. The said Latha Maheswari has misused the challan available in the Bank, by filling up the counterfoil and affixing the bank seal on the same as if the money was remitted to the bank account and accordingly created records as if the loan amount has been repaid for several individual members, by creating records in the Self Help Group. The malpractice committed by the said P. Latha Maheswari Group Coordinator came to light when a member came to the bank and requested for disbursement of further loan by showing that the entire earlier amount has been remitted. On Verification of the loan account, it was found that the loan installments have not been paid in the account and the said Group Coordinator has committed misappropriation. The petitioner informed the misappropriation to the Manager but the Manager refused to give complaint by stating if a complaint is preferred, the other Self Help Group who were granted loan amount would be affected and in turn the same would affect the interest of the bank. Thereafter, an enquiry was conducted by Scheme Administrator in which the said Latha Maheswari admitted that she has taken a sum of Rs.4,83,000/-. However, from the said amount she had remitted Rs. 1,40,000/- and further stated that she would make the balance payment. Thereafter, the petitioner was transferred from Kambiliyampatti Branch, South Gate, (Madurai) Branch on 01.07.2011. But, the petitioner was placed under suspension, vide order, dated 13.08.2011, by stating that the cash remitted in various savings and loan accounts pertaining to Kalanjiam Group of Self Help Groups have not been accounted, as reported by the customers and other similar charges. The petitioner had acted with mala fide intention and misutilization of public money resulting financial loss to the bank. The petitioner submitted a reply, dated 16.08.2011, refuting all the charges. One more charge of misappropriation

tribution of Rs.1,000/- was added in the case of one Mrs.N.Deivalakshmi Savings Bank Account. The petitioner submitted suitable reply on 29.10.2011. On 10.11.2011, the petitioner was given another memo stating that the reply was not satisfactory and therefore, further action would be taken against the petitioner.

3. On 16.11.2011, the 2nd respondent issued Addendum to the memo stating that one Alagarasamy had handed over the Letter Heads of the Bank sealed and signed by him to the staff of Kalanjiam Group. The said charge was also specifically denied by the petitioner vide letter, dated 18.11.2011. A charge sheet, dated 22.11.2011, with four charges, for which Departmental Enquiry was ordered. The enquiry went on for five sittings. The Enquiry Officer was due to retire in February 2012. Therefore, the Enquiry was conducted by him in farce manner without following any procedure. The Enquiry Officer has submitted the report stating that the Charge No.2 is not proved and other charges are proved. Again, the petitioner submitted the explanation on 11.02.2012. The respondents, vide Administrative Order, dated 31.03.2012, imposed punishment of 'dismissal without notice'. Further, the respondents have stated that the suspension from 13.08.2011 to 30.03.2012 would not be counted as service. The petitioner preferred an Appeal and the same was also dismissed on 24.05.2012. Aggrieved over the same, the present writ petition is filed.

4. The 2nd respondent has filed a counter-affidavit and has stated that the said Latha Maheswari misused the challan available in the Bank and she has admitted the same in the enquiry proceedings. The said Latha Maheswari should have obtained the signature of the petitioner on the premises that he has failed to sign the same or must have forged the signature of the petitioner. The allegation that the entry has been made by the Manager on the savings book of account of N.Deivalakshmi, it has been admitted in the enquiry that corrections have been made in MEX9 Savings Pass book and MEX 10 A37 pay-in-slip. The claim that the same was done with the concurrence of the Branch Manager is untenable. If the claim were true the signature of the Branch Manager ought to have been

obtained. Further, it is relevant to note that in the pay-in-slip the description of the amount in words has not been altered. The further claim that though there were two remittances for Rs.1000/- (MEX9), the petitioner had received the cash for one remittance only is untenable. If so, the Petitioner ought not to have released both the counter foils. Further, if the claim were true the petitioner ought to have cancelled the other pay-in slip with the authorization of the Branch Manager and if this had been done, there would have been no need or occasion to alter the amount of Rs.53,000 to Rs.52,000. Though the compliant has been made by the customer after 17 months, the complaint is real and the charge has been duly established in the enquiry. The Claim that it is the practice for the petitioner, the Head Cashier to keep blank letter heads with rubber stamp and seal and signed on the previous day for preparing the letter for cash withdrawal is untenable. The said letters are issued regularly in the normal course of business. The contention in the enquiry is contrary to the reply to the memo wherein the petitioner contended that he neither used the Bank Letter nor gave it to anyone. However, the enquiry officer has rightly concluded the charges as proved against the petitioner. The petitioner cannot be held guilty of the charges are unfounded for the following reasons:

a) The Scheme Administrator has no disciplinary control over the petitioner and charges framed against the petitioner have been duly enquired into.

b) At the enquiry 10A1 to MEX 10A36 being the statements of Accounts of customers have been marked to show that the remittances have not been given credit to the accounts of the customers.

c) MEX 2 series is counter foils of pay-in-slips handed over to the customers. It is admitted that the petitioner has received cash on 22.02.2010 as per MEX10A37. It is also admitted that MEX9 counter foils have been issued by the petitioner. It has been brought out in the enquiry that the initials in MEX9 match/ tally with the initials in most of counterfoils in MEX 2 series.

5. The petitioner was the Head cashier at the relevant point of time and the charge of the embezzlement is clearly established against him. In the circumstances the further allegation that Latha Maheswari ought to have been examined at the enquiry is self-serving. The charge has been proved beyond doubt by the statement of accounts of the customers MEX 10A1 to MEX10A36, MEX9 counter foils series and MEX2 Counter foils series. There was no need or occasion to examine Latha Maheswari. Further, it is relevant to note that Bank has preferred a complaint against the petitioner, Latha Maheswari and Murugeswari and the same is pending in Crime.No.88 of 2012 on the file of the Vadamadural Police Station. In the circumstances, the allegation that no complaint has been preferred against the petitioner as it would be adverse to the interest of the bank is incorrect. In the light of the above, the claim that Latha Maheswari has filled up the payment challans and affixed the stamp/seal of the Bank and the petitioner is not to be blamed is baseless. Again, the claim that the signature of the petitioner is not found in the counter foils, that only 6 counter foils contained his signature and the same is in the handy work of said Latha Maheswari and she has obtained the signature of the petitioner on the premises as he failed to sign the same are untenable. Therefore, the charges have been proved and the respondents prayed to dismiss the writ petition.

6. Heard Mr.Sailendra Babu, learned Counsel appearing for the petitioner and Mr.T.M.Hariharan, learned Counsel appearing for the respondents.

7. The charge against the petitioner is that he has kept the challans and other seals belongings to the Bank in a place easily accessible to the said Latha Maheswari. It is an admitted fact by the respondents also that the said Latha Maheswari has misappropriated the money. It is the case of the act of negligence of the petitioner. As far as the allegation of misappropriation is concerned, the transactions as narrated supra cannot be considered as misappropriation. It may have the traces of negligence and definitely not misappropriation. The petitioner might have acted in a negligent way by not protecting the seal and letter head

of the Bank, which made the said Latha Maheswari to misuse the office of the Bank. However, this cannot be considered as misappropriation as held supra. Hence, the punishment is disproportionate.

8. The next allegation against the petitioner is that the petitioner has issued counter foils without remitting the amount in the Bank. The respondents submitted that since the petitioner is the Head Cashier, he is responsible for the entire act. But the Learned Counsel appearing for the petitioner submitted that the said Latha Maheswari has misused the same without the knowledge of the petitioner and hence for the same the petitioner cannot be blamed. After hearing the arguments, this Court has given its anxious consideration. It is seen that the allegation against the petitioner is that he has signed in some of the counter foils, which would indicate that the petitioner has received the amount, but has not made any entry. But the said Latha Maheswari has admitted that she has taken a sum of Rs.4,83,000/- from the members, but had remitted Rs. 1,40,000/-, which means for the amount remitted the petitioner has issued counter foils and for the amount not remitted the said Latha Maheswari is responsible. Moreover the said Latha Maheswari has further stated that she would make the balance amount. In such circumstances the petitioner has embezzled cannot be accepted. Therefore, this Court is of the considered opinion, the respondents have not conducted the enquiry properly and hence, this Court is inclined to remit the matter back.

9. At this juncture, the learned Counsel for the petitioner submitted that the petitioner died in the year 2018. The wife of the deceased petitioner had substituted herself as legal heir through W.M.P.(MD)No.9977 of 2020. This Court allowed the said substitution petition, vide order, dated 17.09.2021. Therefore, this Court is of the considered opinion that dismissal from service is a harsher punishment and is disproportionate to the facts and circumstances of the case. Therefore, this Court is inclined to modify the punishment as compulsory retirement fixing the date as 24.05.2012. The respondents are directed to implement the punishment of compulsory retirement and disburse the monetary benefits

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to the wife of the deceased petitioner. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Order accordingly.
