

A. Raju Vs. the Assistant General Manager, Regional li, State Bank of India and the Enquiry Officer Cum Chief Manager, State Bank of India

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Court : Chennai

Decided On : Mar-31-2006

Reported in : (2006)2MLJ325

Judge : N. Paul Vasanthakumar, J.

Acts : Indian Penal Code (IPC) - Sections 403, 415, 489 and 498

Appeal No. : Writ Petition No. 40417 of 2005 and W.P.M.P. Nos. 43359 and 43360 of 2005

Appellant : A. Raju

Respondent : The Assistant General Manager, Regional li, State Bank of India and the Enquiry Officer Cum Chief Ma

Advocate for Def. : K. Shankaran, Adv.

Advocate for Pet/Ap. : M.M. Sundresh, Adv.

Judgement :

ORDER

N. Paul Vasanthakumar, J.

1. Prayer in the writ petition is to call for the records of the first respondent in proceedings Nos. DIS/CON/552 dated 8.11.2005 and 30.11.2005 and that of the enquiry report of the second respondent dated 28.11.2005 and quash the same.

2. The petitioner was appointed as Head Messenger in the State bank of India and while working in Rasipuram branch, a complaint has been given by the Chief Manager, Rasipuram on 18.5.2005 before the Rasipuram Police Station for the alleged offences under Sections 403, 403, 415, 498(a) and 489 IPC on the ground that during the quality check, it was found that counterfeit notes have been placed in the place of the original notes and there is a misappropriation committed by the petitioner. In this regard, FIR was registered against the petitioner in crime No. 551 of 2005 and a disciplinary proceeding was also initiated by the first respondent on 10.6.2005. Pending disciplinary proceedings, petitioner was kept under suspension on 18.5.2005. Petitioner submitted his explanation on 20.6.2005, but the same was rejected by the first respondent on 22.6.2005.

3. An Enquiry officer was appointed to conduct the disciplinary proceeding and the petitioner was informed that he will be given opportunity to defend his case either by himself or through a representative. Petitioner submitted his representation on 26.9.2005 through his counsel and requested the respondents to permit his counsel to be his representative. When the petitioner's counsel appeared for Enquiry as representative of the petitioner, he was informed that he cannot represent the petitioner, as the Presenting Officer is not a legally qualified person. When the respondents refused such a permission even though there is no bar for getting assistance of a counsel instead of a co-employee, and having regard to the nature of the charges, petitioner submitted a representation to the respondent to permit his counsel to represent him in the enquiry. As the same having not been considered, petitioner filed W.P.No.34206 of 2005 praying for a mandamus forbearing the respondents from proceeding with the enquiry without completing the criminal case and without permitting the counsel to represent the petitioner. This Court by order dated 25.10.2005 directed the respondents to consider the representation dated 26.9.2005 seeking legal assistance of a lawyer and pass orders on the representation before commencement of the enquiry.

4. According to the petitioner, petitioner informed to the respondents orally and also sent telegram on 29.10.2005 stating that this Court passed an order and therefore orders may be passed on his representation before commencement of the enquiry. However, on 8.11.2005, petitioner received a reply stating that the enquiry has been closed *exparte* on 29.10.2005 and the request for considering the representation for the appearance of the counsel in the enquiry cannot be acceded to and that the nature of the case does not warrant presence of an advocate. Petitioner also stated that the first respondent by his proceeding dated 30.11.2005 informed the petitioner that the second respondent submitted his report dated 28.11.2005 and also called upon the petitioner to give his explanation for the proposed punishment and at this stage, the present writ petition has been filed.

5. The learned counsel for the respondent pointing out the averments contained in paragraph 13 of the counter affidavit argued that since the enquiry was over on 29.10.2005, petitioner's request was rejected by order dated 8.11.2005. For proper appreciation of the averments, paragraph 13 is extracted hereunder,

13. In W.P. No. 34206/05 this Honourable Court passed an order dated 25.10.2005 directing the Bank to pass orders on the representation of the petitioner before the commencement of enquiry. This order was communicated to the Bank by telegram dated 29.10.2005. In the hearing fixed on 6.10.2005 the petitioner did not attend. The enquiry was posted to 15.10.2005 and 17.10.2005 on which dates the prosecution witnesses were examined. In the said hearing dates the petitioners did not participate even though the enquiry officer advised the petitioner by his letter dated 07.10.2005 about the dates of enquiry. The enquiry officer vide his letter dated 18.10.2005 advised the petitioner about the final hearing to be held on 29.10.2005 and enclosed the proceedings of the enquiry dated: 15.10.2005 and 17.10.2005. The petitioner acknowledged the receipt of the letter by his letter dated 20.10.05. The petitioner did not attend the final hearing and the enquiry was concluded before the receipt of the telegram and in fact the copy of the order of this Honourable Court was received only on 2.11.2005. The disciplinary authority passed orders again vide his proceedings dated Dis/Con/496 - dated 8.11.2005.

6. I have considered the rival submissions of the learned counsels appearing for the petitioner as well as the respondents.

7. The point in issue is whether the respondents are justified in proceeding with the enquiry before complying with the order of this Court dated 25.10.2005.

8. It is an admitted case that this Court by order dated 25.10.2005 directed the respondents to pass orders on the representation of the petitioner dated 26.9.2005 for engaging a counsel to represent his case before commencement of the enquiry. The learned counsel submitted that the petitioner sent telegram on 29.10.2005 and intimated the Enquiry Officer that this Court passed the above referred order. The case of the respondents is that the petitioner reported to the office only at 12.00 noon and at 11.30 a.m. itself enquiry proceedings were over. The minutes of the proceedings dated 29.10.2005 reads as follows,

Time : 11.30 AM

Date : 29.10.2005

Venue : State Bank of India, Namakkal

Present: 1) Shri A.Mounasamy, Enquiry Officer, (EO),

2) Shri N.Mohamed Farook,

Presenting Officer (PO)

Shri A.Raju (charge sheeted Employee) has not turned up. He has also not attended the hearings held on 6.10.05, 15.10.05 & 17.10.05. The Enquiry proceedings have, therefore, been concluded. The Presenting Officer, has been requested to submit his brief on or before 10.11.2005.

From a perusal of the above proceedings it is clear that the enquiry proceeding was not concluded and the presenting officer was directed to submit his brief on or before 10.11.2005 and the enquiry report was submitted by the enquiry officer only thereafter.

9. Even according to the respondents, the order of this Court was received by the respondents as early as on 2.11.2005 apart from receiving the telegram sent by the petitioner at 12.00 noon on 29.10.2005. Hence the respondents are bound to pass orders as ordered by this Court in the above referred writ petition and thereafter only can conclude the enquiry proceedings and submit a report. On the contrary, after partly concluding the enquiry before submitting brief statement of the Presenting Officer, petitioner's request was rejected. The same is unsustainable in view of the orders in the above referred writ petition.

10. Therefore, I am of the view that the action of the respondents in not passing orders before finalising the enquiry proceeding is unsustainable and the impugned orders are set aside and the respondents are directed to reopen the enquiry and pass orders as directed by this Court in W.P.No.34206 of 2005 and thereafter proceed with the enquiry and pass final orders on merits and in accordance with law.

The writ petition is ordered in the above terms. No costs. Connected WPMPs are closed.