

ALL INDIA BANK OFFICERS' CONFEDERATION

(Registered under the Trade Unions Act 1926, Registration No.:3427/Delhi)

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Circular No. 2013/36

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For all affiliates/Members

Dear Comrades,

RIGHTEOUSNESS MAY BE ENGULFED BY DECEIT **RIGHTEOUSNESS WILL ULTIMATELY TRIUMPH**

It was on 4th of July, 2013. The undersigned was attending the meeting of UFBU at Chennai. Amidst serious discussions to draw strategy against policies of the Government and for Salary revision exercise, there came a heartening news of victory of justice. Hon'ble High Court of Madras while deploring the action of SBI Management quashed the charge sheets issued to office bearers of SBIOA for holding peaceful demonstration. The full text of the full judgement has since been received.

We are glad to share with you the landmark judgement delivered by the honourable Madras High Court Bench in a case filed by the State Bank of India Officers' Association, Chennai Circle challenging the charge sheets issued to its President and General Secretary for holding a lunch time demonstration against the Bank Chairman's statement to have 7 day banking and demanding 5 day week. The High Court Bench comprising Hon. Jus. Chitra Venkatraman and Jus. Vasuki has quashed the Charge Sheets, set aside the enquiry reports and castigated the SBI Management. We append below the highlights of the Judgement.

EXCERPTS FROM THE JUDGEMENT:

.....the question is as to whether the demonstration held by the appellants, who are officers of the bank within the bank's premises, would amount to misconduct and violation of the Service Rules.

.....The holding of a demonstration is held to be a constitutional right guaranteed under Article 19 of the Constitution of India. Thus, so long as the same is not violative of Rule 54, such holding of the demonstration certainly stands protected by Article 19. *We fail to understand how holding a demonstration, per se, would amount to a misconduct.* The respondents do not dispute that the right to hold a demonstration in a peaceful manner is one within the scope of Article 19 of the Constitution of India. (emphasis added)

.....In other words, the Supreme Court held that the class of servants of Government other than members of armed forces and forces charged with the maintenance of public order are entitled to the same rights with other citizens of the country guaranteed under Part III and they could not be excluded merely by reason of their being Government servants and the nature and the incidence of the duties which they have to discharge in that capacity.

..... A peaceful and orderly demonstration, hence, is not violative of Article 19 (1)(a) or Article 19 (1)(b). Going by the above decision that associating demonstration with the status or a position of member of the group would not amount to misconduct, it is difficult to agree with the submission of the respondents that the status of the demonstrators as officers of the bank would take the case of the appellants as one of misconduct, violative of Rule 50(4), 50(5) and 50(6).

.....in the face of guaranteed right to hold demonstration as a form of free expression and speech, the imputations are of very generic nature and goes against the very concept of forming a Union as well as holding a peaceful demonstration. While the respondents do not deny that the Union is a registered Union recognised by the Bank, *we fail to understand how the participation by an Officer who incidentally holds the post in the*

governing body of the Union, would go against Rule 50(4), 50(5) and 50(6) of the Rules.(emphasis added).

.....In this background, could staging a demonstration be offensive of Rule 50(4), 50(5) and 50(6), that Rule 50(4), 50(5) and 50(6) of the Rules have to be reconciled with Rule 54(1) of the Rules?

As already seen, the Rules do not, in any manner, negative the right of holding a demonstration. Rule 54(1), in fact, negatives only such of those demonstrations which go against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign state, public order, decency or morality, or which involves contempt of the Court.

Thus, if Rule 50(4), 50(5) and 50(6) requires any reconciliation with Rule 54, it is only such of those conduct which are incompatible to the reputation and goodwill of the bank and offensive of Rule 54, could be called as misconduct for initiating action and nothing else.

..... we fail to understand the logic of the respondents that holding of such a demonstration has brought disrepute to the Bank or affected the functioning of the Bank, amounting to misconduct. (emphasis added)

..... Thus, so long as the demonstration did not disturb public tranquility and the working of the Bank, we do not find any justification to hold that the peaceful demonstration held in front of the Local Head Office by the Officers amounted to misconduct.

..... It may also be relevant to point out herein that on the identical allegations made against J.C.Modi, Ahmedabad and S.B.Batel, Ahmedabad, the Bank itself exonerated these participants..... and later on appointed as one of the Board members by the Government of India. Thus, if the charge memo was closed that the conduct of holding demonstration was not a misconduct, we fail to understand any rationale for making such allegation on misconduct to the other participants, particularly the appellants herein.

..... *Whatever be the consideration which led to the dropping of the charges, we feel that given the identical set of circumstances and the charge sheet being of a cyclostyled form, the respondents should have thought twice before proceeding further in this matter. In the circumstances, we have no hesitation in setting aside the order of the learned single Judge.* (emphasis added)

..... However, when on the admitted facts, the proceedings appear ex facie discriminatory in character and that there are no specific complaints of misconduct and that the allegations of misconduct flow only from the general provisions regarding the code of conduct in relation to the official status of the appellants, who incidentally held the post of President and General Secretary of the Union, which is recognised by the respondents too, we do not find any ground to reject the case of the appellants at the stage of the charge memo. (emphasis added)

.....Going by the decisions of the Apex Court referred to in the preceding paragraphs and this Court on the holding of a demonstration inside the campus, we hold that a mere demonstration held, per se, thus cannot be understood as a mark of misconduct under the Rules. It is no doubt true that but for the status of the appellants as Officers of the Bank, they would have no place in the Union which is essentially comprised of the staff in the rank of Officers. Yet, the same official ranking would not, in any manner, disentitle such a person from holding a post in the Union to participate in a demonstration, they being members of a recognised Association. The respondents are the one who granted the recognition to the association, which means, they recognised the Officer holding position in the union as General Secretary or President. When that being the case, with no grievance projected on the holding of office in the Association, we fail to understand how the demonstration held by the Officer would come as in conflict with Rule 50(4), 50(5) and 50(6) to become "misconduct" under Rule 64, inviting disciplinary action. (emphasis added)

..... *Thus, if for the purpose of making the Vice President of the Association a Director of the Bank, the charges could be dropped and that the participation and other*

allegations as contained in the statement of misconduct are not a misconduct, we do not know what one would call the present proceedings against the appellant as nothing but one writ with mala fide. (emphasis added)

..... In the circumstances, even though the proceedings challenged before this Court are at the stage of charge memo, considering the weakness of the allegations made, not fitting in with the misconduct concept, and with discriminatory treatment writ large, we have no hesitation in allowing the Writ Appeals, thereby setting aside the order of the learned single Judge. Accordingly, the Writ Appeals are allowed and the proceedings challenged in the writ petitions are quashed. (Emphasis added)

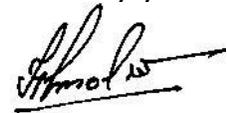
.....Considering the order now passed by us allowing the Writ Appeals, thereby quashing the charge memo, it is not necessary to go further into the allegations made in W.P.No.16746 of 2011. In the light of the observations made in the Writ Appeals, the enquiry report stands set aside and Writ Petition No.16747 of 2011 stands allowed with a direction to the respondents that no further proceedings be taken up in the enquiry. (Emphasis added).

DHARMA HAS TRIUMPHED.

AIBOC congratulates Com. D. Thomas Franco Rajendradev, treasurer, AIBOC, Vice President AISBOF and General Secretary, SBIOA(CC) and Com. D Suresh Kumar, Dy. Gen. Secy, AIBOC and AISBOF and President,SBIOA(CC).

With Revolutionary Greetings,

Comradely yours



(HARVINDER SINGH)
GENERAL SECRETARY