

In the High Court of Judicature at Madras

Dated: 04.07.2013

Coram:

The Honourable **Mrs.JUSTICE CHITRA VENKATARAMAN**  
and  
The Honourable **Ms.JUSTICE K.B.K.VASUKI**

Writ Appeal Nos.431 and 432 of 2013  
& Writ Petition No.16746 of 2013  
& connected Miscellaneous Petitions

**W.A.Nos.431 & 432 of 2013:**

D.Thomas Franco Rajendra Dev  
Deputy Manager,  
State Bank of India, RBU, LHO,  
Chennai.

.... Appellant in W.A.No.431 of 2013

D.Suresh Kumar  
Chief Manager,  
State Bank of India, RBU, LHO,  
Chennai.

.... Appellant in W.A.No.432 of 2013

Vs.

1. The Disciplinary Authority and  
Circle Development Officer,  
State Bank of India, Circletop House,  
Aparna Complex, 16, College Lane,  
Chennai – 600 006.

2. State Bank of India,  
rep. by its Chairman,  
having Corporate Office at  
Madam Cama Road, Mumbai – 400 021.

.... Respondents in both W.As.

APPEALS under Clause 15 of the Letters Patent against the order dated 08.02.2013 made in W.P.Nos.33731 and 33732 of 2012 on the file of this Court.

**W.P.No.16746 of 2013:**

D.Thomas Franco Rajendra Dev  
Deputy Manager,  
State Bank of India, RBU, LHO,  
Chennai.

.... Petitioner

Vs.

1. State Bank of India,  
rep. by its Chairman,  
having Corporate Office at  
Madam Cama Road, Mumbai – 400 021.
2. The Disciplinary Authority and  
Circle Development Officer,  
State Bank of India, Circletop House,  
Aparna Complex, 16, College Lane,  
Chennai – 600 006.

.... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Mandamus calling for the records of the third respondent in proceeding No.DIS/CON/40 (Dec0 dated 30.05.2013 and quash the same and consequently direct the second respondent to reopen the enquiry as per the order in Writ Petition No.10794 of 2013 dated 17.4.2013.

For Appellant in W.A.No.431 of 2013 : Mr.R.Vijay Narayan, S.C.  
& Petitioner in W.P.No.16746 of 2013: For M/s. R.Syed Mustafa

For Appellant in W.A.No.432 of 2013 : Mr.P.S.Raman, S.C.  
For M/s.R.Syed Mustafa

For Respondents in both W.A.s : Mr.G.Masilamani, S.C.  
& W.P.No.16746 of 2013 : For M/s.P.D.Audikesavalu  
C.K.Chandrasekar

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**COMMON JUDGMENT**

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

The Writ Petitioners in W.P.Nos.33731 and 33732 of 2012 are the Writ Appellants before us challenging the common order of the learned single Judge dated 08.02.2013 dismissing the Writ Petitions filed to quash the charge memo issued, alleging misconduct.

2. It is seen from the facts narrated and the documents enclosed that eversince 2006, the State Bank of India Officers' Federation objected to the Management's proposal for 7 days working of the Bank. The Management is stated to have replied that the grievance of the staff, as prescribed in their memorandum, would be looked into. Since the deliberations did not have the desired effect, the All India State Bank Officers' Federation issued a strike notice vide their letter dated 02.11.2011 on 8th and 9th of November, 2011, to insist on five day banking, which was in accordance with the

International Banking Practice adopted by the Reserve Bank of India. It is averred in the affidavit that based on the assurance given by the Management at that point, the strike notice was withdrawn. However, the Chairman of the respondent-State Bank of India gave a press statement on 25.8.2012 about the Bank's proposal to keep open the Banks on Sundays in all its 14,000 and odd branches and it would be 7 days' banking. Thus, when the proposal was reiterated by the Chairman of the Bank on 25.8.2012, the Officers' Association decided to hold lunch hour demonstration on 28.8.2012 in front of the local Head Office and in all the Administrative Offices of the Bank.

3. The Petitioner in W.P.No.33731 of 2012 is the Manager - Rural Business in the Local Head Office and the petitioner in W.P.No.33732 of 2012 is the Chief Manager at RBU, Local Head Office. Admittedly, both these petitioners are members actively involved in the State Bank of India Officers' Association, a registered Trade Union affiliated to the National Body, namely, All India State Bank Officers' Federation. As on the date of the proceedings taken by the Management, Writ Petitioner in W.P.No.33731 of 2012 - D.Thomas Franco Rajendra Dev was the General Secretary of the Association, Chennai Circle, from 01.08.2012. The Writ Petitioner in W.P.No.33732 of 2012 - D.Suresh

Kumar is the elected President of the Association from 09.07.2008.

4. As already pointed out in the preceding paragraph, as decided by the Apex Body, the members of the Federation, including the Writ Petitioners, participated in the demonstration held in the local Head Office on 28.8.2012 between 2.00 p.m. and 2.10 p.m. It is averred in the affidavit that at least 250 members participated in the demonstration. It was stated to be peaceful and had not disturbed any customer, or for that matter, anyone either from going into or coming out of the Bank. The members who participated in the dharna, did not coerce anyone to participate in the demonstration. The Circle Security Department reported to the Circle Development Officer in their report dated 31.8.2012 that the State Bank of India Officers' Association (Chennai circle) SBIOA in short, had held the demonstration as part of their All India Programme in the Bank's premises during lunch hour without obtaining prior permission from the Bank. The note read that slogans were raised against the Chairman's alleged pronouncement of 7 day banking. The demonstrations demanded 5 day banking and regulated working hours. The report further pointed out that D.Suresh Kumar, as President of SBIOA Chennai Circle and D.Thomas Franco Rajendra Dev

as General Secretary, led the demonstration and they addressed the gathering, shouting slogans at the Local Head Office premises. It is also evident from the Circle Development Officer's report dated 31.8.2012 that they had sent Letter No.HR:1895 dated 31.08.2012 to the General Secretary, SBIOA (Chennai Circle), advising them to desist from such behaviour and not to repeat it in future.

5. While the matter stood thus, the Writ Petitioners were issued with a charge memo dated 27.9.2012 in terms of Rule 68(1)(i) of the State Bank of India Officers' Service Rules to initiate disciplinary proceedings against the Writ Petitioners. Thus, in terms of Rule 68(2)(iii) of the State Bank of India Officers' Service Rules, (hereinafter referred to as the 'Rules'), the Articles of charges and statement of imputation of misconduct were enclosed. The Articles of charges, which is Annexure I to the letter dated 27.9.2012, are identical in both the Writ Petitioners' case. The charge in W.A.No.431 of 2013 reads as under:

"Shri D.Thomas Franco Rajendra Dev while working in the Bank failed to discharge his duties with utmost devotion and diligence, failed to take all possible steps to protect the interest of the Bank and acted in a manner unbecoming of a Bank Official. He has instigated other officers to commit

misconduct by not maintaining good conduct and discipline. He has violated Rules 50(4), 50(5) and 50(6) read with Rule 66 of State Bank of India Officers' Service Rules as detailed in the enclosed statement of imputation of misconduct."

The statement of imputation of misconduct against the Writ Petitioners, which are identical, reads as follows:

"Shri D.Thomas Franco Rajendra Dev, while working as Deputy Manager has allegedly committed the following irregularities.

(i) On 28.08.2012 he instigated officers of the Bank to hold demonstrations within the Bank's premises/compound at Local Head Office, Chennai and also shouted slogans. He himself participated in these demonstrations and also shouted slogans. This behaviour on his part has disturbed the peace within the Bank's premises and there was hindrance in Bank's working and disturbance in the regular business activity of the Bank.

(ii) Instead of protecting the Bank's interest and guiding the other officers of the Bank, he wrongfully instigated the other officers of the Bank to misbehave by shouting slogans and demonstrating with intention to disturb peace, disrupt the Bank's operations and discouraged Bank's officers from performing their lawful duties with ulterior motive to lower the image of the Bank in the eyes of the customer and the public at large.

(iii) He has organized and designed the demonstrations with deliberate intention to tarnish the image of the Bank which he is required to protect and enhance as an officer of the Bank."

6. In the background of the imputation and the charges made, the Writ Petitioners filed their respective objections, contending that the charges levelled were beyond the scope of Officers' Service Rules; that the Management was orally informed about the proposed demonstration during lunch hour on 28.08.2012 and that the demonstration was done by the Officers in their capacity as General Secretary of the State Bank of India Association, in the case of D.Thomas Franco Rajendra Dev and as President of the Association in the case of D.Suresh Kumar. Pointing out that all the registered Trade Unions in the country have right to demonstrate peacefully and that the said right flows from Article 19(1)(c) of the Constitution of India, the Writ Petitioners denied that they instigated the Officers of the Bank to hold the demonstration.

7. The sum and substance of the objections was that there was no misconduct, as had been imputed in the notice during the demonstration; the members were apprised of the issue and there was



no provocative speech made against any officials of the Bank. The action of the office bearers of the registered Association could not be mixed up with duties as Officers of the Bank, especially when the conduct of demonstrations were in accordance with the rights conferred under the Trade Union Act. Thus the Writ Petitioners stoutly denied the allegation that they had committed misconduct demanding disciplinary proceedings. In the face of the reply thus given, the Writ Petitioners pointed out that the notice issued were stereotyped as regards the allegations common to all the participants; apart from it being of a determined nature, there was no application of mind. In this background, the petitioners approached this Court for quashing of the disciplinary proceedings.

8. The petitioners contended that as per the decision reported in **(1973) 3 SCC 597 (P.R.Kulkarni V. State of Mysore)**, the impugned charge sheet was totally vindictive, lacking in bona fides and fraud on power. Pointing out to Rule 54(1) of the Rules, which prohibited engaging in or participation in demonstrations in the circumstances stated therein, the petitioners relied on the decision reported in **AIR 1962 SC 1166 (Kameshwar Prasad V. State of Bihar)** that Rule 54 of the Rules did not prohibit any peaceful

demonstration. Quite apart, Rule 54(1) of the Rules, even read along with Rule 50(4), 50(5) and 50(6), would not constitute any misconduct for the purpose of initiating disciplinary action. The petitioners contended that when the demonstration, per se, is not prohibited and the business of the respondent – Bank was not affected, on the facts which are available, the charge memo was liable to be quashed.

9. The contention in the Writ Petitions were, however, countered by the respondents herein. Expressing the need for seven day banking, the counter stated that apart from disturbing peace in the work place, the act of the petitioners and other Officers holding demonstration within the Bank's premises caused hindrance to the Bank's working and the image of the Bank was lowered in the eyes of the public. Thus, when the conduct of the petitioners as Officers of the Bank was contrary to Rules 50(4), 50(5) and 50(6) of the Rules, the petitioners had instigated and brought nearly 250 Officers working in different branches in the city to come to the local Head Office to conduct the demonstration. In the circumstances, when the petitioners' effective remedy of defence was there before the Enquiry Officer, the question of quashing the charge memo, at this stage, did not arise.

10. It may be pointed out herein that the petitioners made a specific allegation that one of the participants in the demonstration, namely, the Vice President of the Federation, who was similarly charge-sheeted, on his being nominated to the Board of the Bank by the Government, was exonerated of the charges by dropping the proceedings against him accepting his explanation, while the respondents proceeded with the charge-sheeting against the petitioners and others. The counter, however, is silent as to the respondents adopting double standards.

11. On the issues raised before this Court, learned single Judge rejected the writ petitions, holding that the Court could not interfere at the stage of charge memo on the basis of the defence pleaded by the petitioners. Pointing out that the charge memo could be set aside only on the ground of want of jurisdiction or where there was mala fide action on the part of the employer, learned single Judge held that it was for the petitioners to lead appropriate evidence before the disciplinary authorities to substantiate their case.

12. Referring to the decisions reported in **(1987) 2 SCC 179**

**(State of U.P. V. Brahm Datt Sharma); (2004) 3 SCC 440 (Director V. Mohd.Ghulam Ghouse) and (2006) 12 SCC 28 (Union of India V. Kunisetty Satyanarayana)**, learned single Judge held that Writ jurisdiction being one of discretionary jurisdiction, which could be exercised only in exceptional cases, the show cause notice or charge sheet not being one of those exceptional cases, the same was liable to be dismissed. This Court further pointed out that unless there were merits to show that the show cause notice was wholly without jurisdiction, normally, this Court should not interfere with such show cause notices. Thus, following the dictum of the Apex Court, the Writ Petitions were dismissed. Aggrieved by this, the present Writ Appeals have been filed by the Writ Petitioners.

13. Mr.R.Vijay Narayan, learned senior counsel appearing for the appellant in W.A.No.431 of 2013 (W.P.No.33731 of 2012), submitted that there is no denial of the fact that the demonstration was held in the Local Head Office. Given the fact that the right of demonstration, which is distinguished from strike, has been held to be a constitutionally recognised form of freedom of expression, Rule 54 of the Rules prohibited only such of those which are specified therein. Pointing out those specified cases are as enumerated in Article 19(2)

of the Constitution of India, he placed reliance on the decisions reported in ***AIR 1962 SC 1166 (Kameshwar Prasad V. State of Bihar)***; ***AIR 1984 SC 1361 (A.L.Kalra V. The Project and Equipment Corporation of India Ltd.)***; ***AIR 1963 SC 812 (O.K.Ghosh and another V. E.X.Joseph)*** and ***(1994) 3 SCC 357 (Union of India and others and Upendra Singh)*** and submitted that on a general allegation, the charge memo, as such, could not be sustained. The charge made against the Writ Petitioners thus lacking in bona fide and the case not falling under any of those prohibited categories given under Rule 54 of the Rules, the respondents totally lacked jurisdiction in issuing a charge memo. He further pointed out that the Writ Appellants are office bearers of the Association. However, when the Bank is aware of their membership in the Association and their holding the posts as President as well as Secretary in the Association, the contention made that as an Officer of the Bank could not hold any demonstration or that holding demonstration would be against the status of an Officer of the Bank and hence would amount to misconduct, ignores the fundamental right guaranteed under the Constitution. Thus, the official post held has nothing to do with the right to hold demonstration to express their view point. Such holding of the demonstration to voice ones views or

criticism could not be viewed as one bringing disrepute to the Bank or maligning the reputation of the Bank.

14. Making specific reference to the withdrawal of the charges against one of the participants in the demonstration, namely, the Vice president, on his appointment to the post of Director of the Board, learned senior counsel submitted that dropping of the charges as not amounting to misconduct as against one officer who participated in the demonstration but persisting with the rest who participated in the demonstration, clearly showed the mala fide intention with which the present proceedings are taken up as against the appellants. If, in the case of one of the participants, the demonstration is treated as not amounting to misconduct, the insistence of the respondents to proceed against the appellants would clearly indicate the mala fide attitude of the respondents and being an arbitrary exercise of power, the same would be violative of Article 14 of the Constitution of India.

15. Mr.P.S.Raman, learned senior counsel appearing for the Appellant in W.A.No.432 of 2013 (W.P.No.33732 of 2012), taking the arguments further, pointed out that a cursory reading of the charge memo would indicate that there was absolutely no independent application of mind as to whether the alleged act offended any of the

Service Rules of the respondents. He pointed out that the issuance of cyclostyled copy of the charge memo itself is an indication of non-application of mind. Referring to the manner of service of the charge memo as narrated in page 21 of the affidavit, he pointed out to the high-handed behaviour of the respondents in serving the notice in the middle of the night in the case of some of the officers. In the case of one of the officer bearers - K.D.Thoakar at Aurangabad, who was to retire on 29.09.2012, the service was effected by sending an officer by air. The specific allegation of mala fide was levelled against the Chairman too. When the report on the demonstration revealed that the slogans raised were only objections to the proposed policy of the Bank, it being a freedom of expression, the proceedings now taken alleging misconduct is clearly indicative of the mala fide intention of the respondents to somehow punish the appellants and directly in conflict with the right guaranteed under the Constitution. In the circumstances, in the light of the various decisions of the Apex Court, the misconduct alleged cannot be sustained. He further pointed out to the suit filed by the Bank before the Mumbai High Court claiming damages for a sum of Rs.100 Crores against the Association on the holding of the demonstration. Specifically pointing out that the counter carried no averment as regards the discrimination meted out

to the appellants, he submitted that the charge memo issued based on Rule 50(4), 50(5) and 50(6), read with Rule 66 of the Rules, is contrary to law and against the constitutional prescription.

16. He pointed out that Rule 54 clearly prohibited demonstration on stated circumstances like the demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the State, friendly relationship with foreign state, public order, decency or morality, or which involves contempt of the Court, defamation or incitement to an offence. The imputation made as regards instigating the members to participate, not falling under any of the prohibited categories under Rule 54 of the Rules, the proceedings itself lacked jurisdiction. Thus, on the admitted facts, when there could be no proceedings against the appellants even under Rule 54 of the Rules, the charge memo now sought to be made on the allegation that the petitioners, being Officers of the Bank had committed violation of Rule 50(4), 50(5) and 50(6) by organising the dharna amounting to misconduct, clearly show the mind set of the respondents to somehow bring the case of the appellants under the general provision alleging misconduct. When Rule 54 itself recognised the demonstration consistent with Article 19(1) of the Constitution of India, Rule 50 being



a general one, the prescriptions under Rule 50(4), 50(5) and 50(6) have to be necessarily read down to fit in with Rule 54 of the Rules. In other words, if the conduct of an Officer falling under Rule 50(4), 50(5) and 50(6) is of such nature to fall under such of those demonstrations of prohibited categories, then certainly, there could be a case to charge against the participant. But when the facts are otherwise and that the respondents are fully aware that no case could be made out under Rule 54 of the Rules, the respondents had, with a mala fide intention, brought the conduct under Rule 50(4), 50(5) and 50(6) of the Rules. He pointed out that Rule 50(4), 50(5) and 50(6) are general in nature, which is expected to be observed by every Officer functioning in an organisation, holding a demonstration, which is recognised as a freedom of expression and speech under the Constitution of India, by itself, would not make it as violative of the above Rule. More so, in the context of demonstration raising slogans, which is admitted even in the report sent by the Circle Development Officer, the charge memo issued is totally without jurisdiction.

17. Countering the claim of the appellants, Mr.G.Masilamani, learned senior counsel appearing for the respondents – Bank pointed

out that the question whether there was a misconduct even as per Rule 66 of the Rules is a matter, which requires enquiry into questions of fact. Thus the facts necessary for proceeding further could be established only in a domestic enquiry. The affidavit makes no secret of the fact that 250 persons participated in the demonstration. The demonstration, which was held within the Bank's premises near the portico, affected not only the normal functioning of the Bank, but also affected the personal banking branch as well as the SBI capital markets, where there was sufficient number of customer interface. Thus, when the conduct of the appellants as Officers of the Bank was unbecoming of the post held by them and the demonstration was held within the Bank's premises, rightly proceedings were initiated against the appellants. He emphasized that whatever be the right that the appellants may claim with regard to the demonstration as a form of freedom of expression and speech, when the conduct of the appellant is contrary to the one contained under Rules 50(4), 50(5) and 50(6) and 54 of the Rules, rightly show cause notices were issued by the respondents. He pointed out that the appellants had no right to hold demonstration within the Bank's premises and if allowed, it would only disturb the peaceful functioning of the Bank. Thus, given the status of the appellants/Petitioners as Officers of the Bank, the conduct of the

appellants in holding the demonstration within the Bank's premises is, in fact, in conflict with their status as Officers of the Bank, who are expected to uphold the dignity and prestige of the institution.

18. Pointing out to the conduct of the appellants in inviting the Officers to participate in the demonstration in the afternoon, he submitted that even de hors the words used in the slogan shouting, if the conduct is one offensive of Rule 50(4), 50(5) and 50(6) of the Rules read with Rule 66 bringing every act as one in violation of the Rules in Chapter I as misconduct, the proceedings now taken is not an unconstitutional one. He further pointed out that withdrawing of the charges against one participant who was subsequently appointed to the Board, however, would not absolve the charges against others.

19. The sum and substance of the submission of the learned senior counsel appearing for the respondents is that whatever be the constitutional right to hold a demonstration, holding it within the office premises and in office hours by the petitioners who are officers of the bank, amounted to misconduct; hence violative of Rule 50(4), 50(5) and 50(6) of the Rules. For this, one need not take recourse to Rule 54 of the Rules. The appellants, who were appointed as Officers of the Bank, have to ensure and protect the interests of the Bank and

discharge their duty with utmost devotion and diligence and should not do anything which is unbecoming of an Officer. Thus, when an Officer is expected to maintain good conduct and discipline and is to attend to his office work, participation in the demonstration or holding a demonstration inside the Bank's premises, even if it be during the lunch hour, goes against the tenor of Rule 50(4), 50(5) and 50(6); consequently, the charge memo has to be upheld.

20. Referring to the reliance placed by the learned senior counsel appearing for the Appellants on the decision reported in ***AIR 1984 SC 1361 (A.L.Kalra V. The Project and Equipment Corporation of India Ltd.)***, learned senior counsel appearing for the respondents placed reliance on the decisions reported in ***(1997) 3 SCC 387 (Secretary to Government and others V. ACJ.Britto)***; ***(2006) 3 SCC 743 (Chairman & M.D., Bharat Pet. Corpn. Ltd., and others V. T.K.Raju)*** and submitted that when the decision reported in ***AIR 1984 SC 1361 (A.L.Kalra V. The Project and Equipment Corporation of India Ltd.)*** was distinguished in the other decisions, there is no gain saying that holding a demonstration is a constitutional right and that the same may be permitted to be held within the campus of the office. He pointed out that apart from

regulating the venue of demonstration, the conduct of the employee with reference to the post held also required to be regulated in the best interests of the institution. He further submitted that while Rule 50 of the Rules is regulatory in character with regard to the conduct of the Officers vis-a-vis the reputation of the Bank, Rule 54, in effect, is prohibitory in nature, which specifically mentions the circumstances under which demonstration would not be held. In the background of the decisions of the Apex Court reported in **(1997) 3 SCC 387 (Secretary to Government and others V. ACJ.Britto) and (2006) 3 SCC 743 (Chairman & M.D., Bharat Pet. Corpn. Ltd., and others V. T.K.Raju)**, there is no such thing as an unregulated right to hold demonstration within the office premises contrary to Rule 50(4), 50(5) and 50(6) of the Rules. He further extended his argument to say that even if the demonstration is to be held outside the office premises, it must fit in with Rule 50(4), 50(5) and 50(6) of the Rules. On the question of maintainability of the Writ Petitions as against the charge memo, he referred to the decisions reported in **(2004) 3 SCC 440 (Special Director V. Mohammed Ghulam Ghouse; (2006) 12 SCC 28 (Union of India V.Kunisetty Satyanarayana); AIR 2012 SCC 2250 (Secretary, Ministry of Defence V. Prabhash Chandra Mirdha; (2012) STPL (Web) 685 SC (life Insurance Corporation**

***of India V. A.Masilamani and AIR 1969 SC 966 ( Railway Board V. Niranjan Singh).***

21. Replying to the above question, Mr.P.S.Raman, learned senior counsel appearing for the Appellant in W.A.No.432 of 2013, brought to our attention the decision reported in ***1982-1-LLJ 123 (Indian Bank V. Federation of India Bank Employees Union and another)***, wherein, the Indian Bank sought for an order of injunction against the Union holding any meeting or staging any demonstration or resorting to any other similar form of direct action within the premises of the Bank's Central Office or any of its offices and branches in Tamil Nadu. This Court followed the decision reported in ***1962 - I L.I.J. 294 (Kameshar Prasad V. The State of Bihar)*** and distinguished the decision reported in ***AIR 1969 SC 966 ( Railway Board V. Niranjan Singh)*** and held that if such an order to restrict the venue of the demonstration was to be given, then it would virtually stand in the way of exercise of the statutory rights conferred on unions to hold demonstrations and meetings within the scope of Trade Union Act, 1926. Demonstrations like pendown strike, refusal to work, though inside factory or office, wearing badges, etc., were permissible under the Act and found acceptance in the decisions of the Apex Court.

In the circumstances, going by the decision of this Court reported in **1982-1-LLJ 123 (Indian Bank V. Federation of India Bank Employees Union and another)**, rejecting the similar plea in the case of Indian Bank on holding a demonstration within the Bank's premises, the contention of the respondents – Bank based on the demonstration held in the portico as amounting to misconduct, merits to be rejected. Thus the absence of jurisdiction to issue notice writ large and there being no case to be laid on the general provisions under Rule 50(4), 50(5) and 50(6), the Writ Appeals have to be allowed and the order of the learned single Judge has to be set aside.

22. Heard Mr.R.Vijay Narayan, learned senior counsel appearing for the appellant in W.A.No.431 of 2013; Mr.P.S.Raman, learned senior counsel appearing for the appellant in W.A.No.432 of 2013 and Mr.G.Masilamani, learned senior Counsel appearing for the respondents in both the Writ Appeals and perused the materials placed before this Court.

23. We have already extracted in the preceding paragraph, the charge memo issued and the terms of allegations made. There is no dispute of fact the that the demonstration was held in the Bank's

premises at the Local Head Office during lunch hours between 2.00 pm and 2.10 pm; the report of the Circle Security Officer stated that in the demonstration held, the participants raised slogans against the Chairman's announcement of 7 day working and the participants demanded 5 day week with regulated working time. The report contained no allegation of the demonstrators' conduct, preventing anyone from entering the Office or behaving in such a manner to obstruct the functioning of the Bank.

24. Leaving that aside, 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.

25. As far as the first of the imputations is concerned, the allegation is that while working as a Deputy Manager – D.Thomas Franco Rajendra Dev had committed irregularities; that he himself participated in these demonstrations and shouted slogans; he instigated officers to hold demonstration within the Bank's premises/compound at Local Head Office, Chennai. This disturbed the peace within the premises and hindered the Bank's working and the



regular business activity of the Bank. The second allegation is that instead of protecting the interests of the Bank, he instigated the other Officers to misbehave by shouting slogans and demonstrating with an intention to disturb peace, disrupt the Bank's operations and discourage Bank's officers from performing their lawful duties with an ulterior motive to lower the image of the Bank in the eyes of the customer and the public at large. The third charge is that the appellant had organised and designed the demonstrations with a deliberate intention to tarnish the image of the Bank, which he is required to protect and enhance as an Officer of the Bank.

26. As far as these imputations are concerned, the Rules relating to good conduct of an Officer, as given under Rule 50(4), 50(5) and 50(6) in Chapter XI relating to Conduct, Discipline and Appeal, read as under:

"50(4) Every officer shall, at all times, take all possible steps to ensure and protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an officer.

50(5) Every officer shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.

50(6) Every officer shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority."

27. Recognising the fact that holding demonstration is a form of expression guaranteed under the Constitution of India, Rule 54(1) bodily incorporated Article 19(2) of the Constitution of India and it specifically pointed out that no Officer shall engage himself or participate in any demonstration which is prejudicial to 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, defamation or incitement to an offence. Rule 66 defines 'misconduct' as breach of any of the provisions of the Rules and shall be punishable under Rule 67.

28. A reading of Rule 50(4), 50(5), 50(6) thus show that it is concerned about the conduct of an Officer of the Bank, that he shall

behave at all times with a sense of responsibility, integrity, honesty, devotion and diligence, to ensure that the interests of the Bank are protected. The Rule also enjoins the responsibility on the officer to ensure that others also behave with a sense of devotion. The code of conduct thus prescribed cannot be read as something special to an organisation like a big institution, but one of universal application to every employee employed in an institution, so that the conduct of the business goes in a disciplined way, that there is orderliness to inspire third parties to transact business with them. Thus, an act which causes a dent in or a damage to the reputation or image or goodwill of the bank to undermine the confidence of people having business or proposed to have business in the institution, is certainly an act of misconduct. But, could holding of a demonstration, per se, amount to a misconduct? 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.

29. In the decision reported in **AIR 1962 SC 1166** (**Kameshwar Prasad and others Vs. State of Bihar and another**), dealing with Rule 4A of the Bihar Government Servants' Conduct Rules (1956), which prohibited any form of demonstration for the grievance of the Government Servant, the Apex Court pointed out that the said Rule was violative of the fundamental rights guaranteed under Article 19(1)(a) and 19(1)(b) of the Constitution of India and was therefore to be struck down. The Apex Court pointed out that the Rule, in so far as it prohibited a strike, could not be struck down, since there is no fundamental right to resort to a strike. It pointed out that the vice of the rule consisted in this that it laid a ban on every type of demonstration -- be it however innocent and however incapable of causing a breach of public tranquillity and the Rule did not confine itself to those forms of demonstrations which might lead to that result. Thus, demonstrations which are offensive to the interests of public order, public safety and tranquility, were held to be against Article 19(1)(a) and 19(1)(b). The Supreme Court considered the argument that the said Rule was intended to ensure proper discipline among the Government Servants, since maintenance of public order itself was directly dependent on the existence of the body of Government

Servants who were themselves subject to strict discipline. The argument was that if the Government servants were to engage in demonstration, it would be a mark of indiscipline and this would lead to demoralisation of the public and would be reflected in the disappearance of public order. Negating this contention of the State, the Apex Court pointed out: "The threat to public order should therefore arise from the nature of the demonstration prohibited. No doubt, if the rule were so framed as to single out those types of demonstration which were likely to lead to a disturbance of public tranquillity or which 'Would fall under the other limiting criteria specified in Article 19(2) the validity of the rule could have been sustained. The vice of the rule, in our opinion, consists in this that it lays a ban on every type of demonstration--be the same however innocent and however incapable of causing a breach of public tranquillity and does not confine itself to those forms of demonstrations which might lead to that result. " The Supreme Court rejected the contention of the State that persons in the service of Government form a class apart to whom the rights guaranteed by Part III did not, in general, apply. 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. At the most, the rights and duties may come for certain restrictions such as those which come under Article 19(1)(e) and 19(1)(g). Thus, public exhibition by a section is the peaceful manifestation of the feelings and sentiments of an individual or a group. It is thus an indication of ones ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression, because speech need not be vocal, since signs made by a dumb person would also be a form of speech. 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 a 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).

30. Given the fact that the Staff Association is a registered

Association and that holding of the post in the Association even by an Officer is not an anathema to holding of the post of a General Manager or an Officer of high order in a Bank, such post in the Union being recognised by the Management itself, in the face of the 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.

31. It is not denied by the appellants that the demonstrations were held in the lunch hour. Even going by the note sent by the Circle Development Officer, Manager (Security), Deputy Manager (Security), Fire Officer and the Circle Security Officer dated 31.08.2012, the demonstration was peaceful. The note reads:

" On 28.08.2012, a lunch time demonstration was held in LHO portico wef.2.00 pm to 2.10 pm by SBI Officers Association (Chennai Circle), without obtaining prior permission from the Bank. The

demonstration was addressed by General Secretary of State Bank of India Officers' Association (Chennai Circle), Shri.Thomas Franco Rajendra Dev and Shri.D.Sureshkumar, President of State Bank of India Officers' Association (Chennai Circle) from LHO Unit participated in the demonstration. They raised slogans on the following issues:

1. Against the Chairman's alleged announcement of 7 Day banking.
2. Demanding 5 Day week
3. Demanding regulated working hours

2. The LHO security staff were instructed to be extra vigilant while on duty in LHO Lobby at the ground floor. The Circle Security Officer, Manager (Security), LHO, Deputy Manager (Security) and the Fire Officer were present in the LHO Lobby throughout the demonstration till dispersal of the gathering to ensure that nothing untoward happened towards the Bank's property as per CDO's instruction."

Evidently, the demonstration caused no untoward incident to breach the peace to amount to misconduct.

32. Without going into the subject matter of demonstration held, the fact remains that as per the Circle Development Office's report, the demonstrator raised slogans as against the Chairman's announcement



of 7 day banking, demanded 5 day banking and of regulated working hours. Thus the demonstration was against the policy and the report given dated 31.8.2012, which is the first information given, makes no reference to any disturbance alleged to have been caused to the customers or that the conduct of the petitioners even as Deputy Manager was of such nature to bring disrepute to the Bank.

33. 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?

34. 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.

35. 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. By so holding, we do not propose to make a wide proposition that all demonstrations are protected. Ultimately, what is misconduct on the holding of the demonstration depends on the facts and circumstances of the case. Yet, a healthy expression or the opposition to a policy or criticism of the policy could only be read as voicing of a view point by a segment of employees and with Article 19 recognising such right as a guaranteed right, 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. The contention of the respondent that a decision could be arrived at only by a fact-finding body is too far fetched an argument. On the facts available and going through the allegation, we do not find any ground to hold that such decision requires any further enquiry into the facts and that this Court should not interfere at the stage of the notice but leave it to the authorities to proceed. Thus, going by the decision of the Apex Court, the materials available are sufficient enough to hold that the status of the demonstrators as Officers of the Bank does not make their conduct violative of Rule 50(5), 50(6) and 50(7) of the Rules.

36. This takes us to the place of demonstration as a mark of misconduct. It is no doubt true that the demonstration was held in the premises of the Local Head Office during lunch hour. Nevertheless, except for a bald allegation, there is nothing to counter what is stated in the Circle Security Department's note dated 31.08.2012. In fact, the note is pronouncedly silent on this, which means, there was no disturbance at all either to the banking operation or the customers entering the Bank.

37. As rightly pointed out by the learned senior counsel appearing for the appellants, with the right recognised by the respondents to form an association of the Officers and the Officers holding post as office bearers, if the place of demonstration alone is projected as the ground for alleging misconduct, even that contention is rightly answered by the decision of this Court reported in **1982-1-LLJ 123 (Indian Bank V. Federation of India Bank Employees Union and another)**. The decision was rendered in the interlocutory application made on the original side of this Court by the Indian Bank seeking an order of injunction against the Union from holding a meeting or staging a demonstration or resorting to any other similar form of action within the premises of the plaintiff Bank's Central Office

to injunct the defendant therein from obstructing any member/officer of the Bank from entering the premises and to injunct the defendants from preventing the officers of the Bank from attending to their normal duties. Learned Single Judge pointed out that it is not the place of demonstration which would be a matter of concern to the Bank. The concern actually should be as to whether such a demonstration, in fact, falls for consideration under any of the enumerated heads under the Rules. A reading of the judgment of this Court shows a reference to the decision reported in **1962 – I L.L.J. 294 (Kameshar Prasad Vs. The State of Bihar)**, which dealt with the expression 'demonstration'. Referring to this, this Court held that holding of a demonstration or meeting are within the ambit of trade union activities. Thus, if they are carried out peacefully in the premises of the established Union, the same would not call for grant of any interim injunction against the trade union. This Court pointed out that holding demonstration would fall within the freedom guaranteed by Article 19(1)(a) or 19(1)(b) of the Constitution of India and from the very nature of things, a demonstration may take various forms. This Court pointed out:

" 24. The workmen are conferred with statutory rights to have freedom of expression in making known to others their feelings and

to convey to the public and to the management as to how they are affected. In *Kameshar Prasad v. The State Of Bihar* [1962-I L.L.J. 294], while, dealing with the expression, "demonstration", it was held.

"Without going very much into the niceties of language it might be broadly stated that a demonstration is advisable manifestation of the feelings or sometime of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect therefore, a form of speech or of expression because speech need not be vocal since signs made by a dumb person would also be form of speech. It has, however, to be a recognised that the argument before us is confined to the rule prohibiting demonstration which is a form of speech and expression or of a mere assembly and speeches therein and no other forms of demonstration of which do not fall with the content of the Art, 19(i)(a) or 19(1)(b). A demonstration might takes the form of an assembly and even then the intention is to convey to the person or authority to whom the communication

is intended the feelings of the group which assembles. It necessarily follows that there are form of demonstration which would fall within the freedoms guaranteed by Arts. 19(i)(a) and 19(i)(B) It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Art. 19(i)(a) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances."

Hence holding of a demonstration or meeting within the ambit of trade union activities, if carried out peacefully, it would then be improper to restrain such activities by an order of injunction, but it has to be left to be decided only under the special enactments made for securing relief. "

38. 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. We may point out, for holding that the demonstration was peaceful, we need not search for any material. The report of the Local Security Officer dated 31.08.2012 amply shows that it made no reference to the disturbance of the normal activity to hold that staging the dharna inside the campus amounted to misconduct.

39. 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, one of whom happened to be the Vice President of the Union and who was holding the post of General Manager in the Bank 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. There is absolutely no explanation to that, except to say that exonerating one person,

however, would not make the conduct any the less, a misconduct. The respondents submitted that making such a member was the decision of Government of India. There is no doubt on this; but then, the decision to drop the proceedings was certainly that of the respondents alone. 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.

40. As far as the reliance placed by the learned senior counsel appearing for the respondents on the decisions reported in **(2004) 3 SCC 440 (Director V. Mohd.Ghulam Ghouse)** and **(2006) 12 SCC 28 (Union of India V. Kunisetty Satyanarayana)** which were referred to by the learned single Judge in his order, as well as **AIR 2012 SC 2250 (Secretary, Ministry of Defence V. Prabhash Chandra Mirdha; (2012) STPL (Web) 685 SC (life Insurance Corporation of India V. A.Masilamani and AIR 1969 SC 966 (Railway Board V. Niranjan Singh)** are concerned, it is no doubt true that normally on the charge memo issued, the Court should be



hesitant to interfere under Article 226 of the Constitution of India, given the fact that a delinquent Officer will always have a right of defence in the departmental proceedings. 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. On the admitted facts that the respondents had dropped the proceedings on the self same charge, this Court feels, this is a fit case for interference at the stage of charge memo itself. The respondents have not shown any exceptional circumstances to accept the reply by those persons to drop the proceedings, particularly in the context of the fact that the demonstration was an All India demonstration by all the Officers who were members of the Association. Thus, we do not think, there could be better ground than this to disturb the order of the learned single Judge dismissing the writ petitions on the ground of the remedy available on the proceedings of the charge memo issued.

41. As far as the decisions relied on by Mr.R.Vijay Narayan, learned senior counsel appearing for the appellant in W.A.No.431 of 2013 reported in ***AIR 1962 SC 1166 (Kameshwar Prasad V. State of Bihar); AIR 1984 SC 1361 (A.L.Kalra V. The Project and Equipment Corporation of India Ltd.)*** and ***AIR 1963 SC 812 (O.K.Ghosh and another V. E.X.Joseph)*** are concerned, principally, the respondents do not dispute the law laid down by the Apex Court and hence, it is not necessary to deal with them in extenso. However, for the purpose of this case, we are bound to point out that in the decision reported in ***AIR 1984 SC 1361 (A.L.Kalra V. The Project and Equipment Corporation of India Ltd.)***, the Apex Court pointed out that when the employer makes an allegation of misconduct which, when proved, entails penal consequences, it is obligatory on the employer to specify and if necessary, define it with precision and accuracy, so that any expost facto interpretation of some incident may not be camouflaged as misconduct. Referring to the decision reported in ***AIR 1984 SC 505***, the Apex Court pointed out:

"that 'everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not

prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty.'

In paragraph No.26, the Apex Court pointed out that if what is alleged as misconduct did not constitute misconduct not by analysis or appraisal of evidence, but per se under the Rules, the respondent had neither the authority nor the jurisdiction nor the power to impose any penalty for the alleged misconduct. The Apex Court pointed out to Rule 4 styled as general, which specified a norm of behaviour that every employee shall, at all times, maintain absolute integrity. The Apex Court further pointed out that a general expectation of a certain decent behaviour in respect of employees, keeping in view the culture of the employer, may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company, by itself, cannot constitute misconduct, unless the specific conduct falls in any of the enumerated misconduct in Rule 5 of the Rules. The Apex Court pointed out that

Rule 4 being of generic nature, any attempt to telescope Rule 4 into Rule 5 which specified, misconduct must be looked upon with apprehension and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. The Apex Court cautioned as follows:

"In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order or is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty.' Rule 4 styled as 'General' specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be per as a misconduct in the sub-clauses of Rule 5 which specifies misconduct. It would therefore appear that even if the facts alleged in two heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. It may as well be mentioned that Rule 25 which prescribes penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct."

We are quite aware of the fact that Chapter XI of State Bank of India Officers Service Rules, 1992, deals with conduct, discipline and appeal and Rule 66 deals with what is misconduct. It reads as follows:

" A breach of any of the provisions of these rules shall be deemed to constitute misconduct punishable under Rule 67. "

42. As rightly pointed out by Mr.P.S.Raman, learned senior counsel appearing for the appellant in W.A.No.432 of 2013, Rule 50(4), 50(5) and 50(6) of the Rules, as pointed out by the Apex Court, are general in nature, expecting of every officer to ensure and protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an officer; that:

"50(4) Every officer shall, at all times, take all possible steps to ensure and protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an officer.

50(5) Every officer shall maintain good conduct and discipline and show courtesy and attention to

all persons in all transactions and negotiations.

50(6) Every officer shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority."

43. 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. In the context of the view that we have taken, there being absolutely no material to the alleged misconduct to fit in with the decision reported in ***AIR 1984 SC 1361 (A.L.Kalra V. The Project and Equipment Corporation of India Ltd.)***, we have no hesitation in allowing the Writ Appeals.

44. We may point out that the decision reported in ***AIR 1984 SC 1361 (A.L.Kalra V. The Project and Equipment Corporation of India Ltd.)***, no doubt, was distinguished in the decision reported in ***(1997) 3 SCC 387 (Secretary to Government and others V. ACJ.Britto)***, holding that the said decision did not lay down as a general rule that if an act is not specified by rules to be a misconduct, then it cannot be regarded as such and such an employee cannot be punished for committing such an act. On facts, the Apex Court pointed out that not obeying the legitimate order of the superior by a member of the police force has to be regarded as an act of indiscipline, which would certainly provide a good and sufficient reason for initiating disciplinary proceedings. Thus the act of insubordination or disobedience of an order of the superior officer was viewed seriously and in that context, the Apex Court rejected the contention of the delinquent Officer, contending that in the absence of any rule treating

the non-compliance with the order of superior officer or appearance before the Medical Board as an act of misconduct, the disciplinary proceedings could not be upheld. The decision reported in **(1997) 3 SCC 387 (Secretary to Government and others Vs. ACJ.Britto)** is factually distinguishable. The contention of the respondents is that holding of demonstration was offensive of Rule 50(4) 50(5) and 50(6). The appellants are admittedly members of the recognised Union and they are holding office as Vice President or Secretary. If such holding of office or membership in the Union was not held by the respondents as offensive of Rule 50(4), 50(5) and 50(6), we do not know how holding a demonstration on a policy of the Bank would go against the policy of the Bank or go against Rule 50(4), 50(5) and 50(6), constituting misconduct. Thus on the strength of the Rules that are available before us in Rule 50(4), 50(5) and 50(6), the grounds on which proceedings are initiated being one of holding a demonstration and raising slogans inside the office premises by a person holding the post of General Manager, would not, satisfy even the decision reported in **(1997) 3 SCC 387 (Secretary to Government and others V. ACJ.Britto)**, to sustain the plea of the respondents herein. The allegations that discouraging the other officers from performing their lawful duties and raising slogans with the intention to disturb peace or



disrupt the Bank's operation, are contrary to what is stated in the report of the Circle Security Department dated 31.08.2012. We do not find any good ground to accept or hold that there could be any embargo imposed on any employee to voice his/her view on the policy of the employer through a peaceful demonstration and such right cannot be scuttled by naming it "misconduct", thereby punishing a staff being a member of the Association. 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. The reason given by the Chairman for condoning this, as is evident from his speech dated 08.10.2012, reads as follows:

" We think this action of the Officers' Federation has ruined the image of the Bank and brought humiliation. That is why we decided to chargesheet 28 office-bearers Secretary and President in such of the 14 Circles for penalty that why have you acted in this manner and brought disrepute.

Subsequently one charge-sheet has been taken back that was served on the Vice President of Federation because subsequently this gentleman has been nominated to the

Central Board of Directors of the Bank and we are deeply committed to officer's representative being on the Board of the Bank and therefore, we decided in order to facilitate smooth functioning we should withdraw the charge-sheet."

We need not elaborate further, since the decision reported in ***AIR 1984 SC 1361 (A.L.Kalra V. The Project and Equipment Corporation of India Ltd.)*** provides complete answer to the situation like the one on hand.

45. 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. No costs. Consequently, connected Miscellaneous Petitions are closed.

46. W.P.No.16746 of 2013 is filed by the Writ Petitioner – D.Thomas Franco Rajendra Dev seeking issuance of writ of

Certiorarified Mandamus to quash the proceedings dated 30.5.2013 on the file of the Enquiry Officer as violative of principles of natural justice as well as in violation of the order of this Court and to direct the second respondent, namely, Disciplinary Authority, to reopen the enquiry as per the order passed in W.P.No.10794 of 2013 dated 13.4.2013.

47. We find that in M.P.No.1 of 2013 in W.A.Nos.431 and 432 of 2013, while considering the interim prayer of the appellants, having regard to the initiation of the enquiry made on 11.12.2012, this Court directed that the same be continued; however the respondents were directed not to pass final order without the permission of the Court.

48. 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. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index :Yes/No  
Internet:Yes/No

(C.V.,J) (K.B.K.V.,J)  
04.07.2013

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To

1. The Disciplinary Authority and  
Circle Development Officer,  
State Bank of India, Circletop House,  
Aparna Complex, 16, College Lane,  
Chennai – 600 006.
2. The Chairman, State Bank of India,  
having Corporate Office at  
Madam Cama Road, Mumbai – 400 021.

**CHITRA VENKATARAMAN,J.**  
**AND**  
**K.B.K.VASUKI,J.**

SI

Writ Appeal Nos.431 and 432 of 2013  
& Writ Petition No.16746 of 2013  
& connected Miscellaneous Petitions

04.07.2013