

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

W.P.(C).No.4606 of 2006 (W)

[AGAINST THE AWARD OF THE LABOUR COURT, KOZHIKODE IN
I.D.(C).NO.3 OF 2003 DATED 02.11.2005]

PETITIONER(S):-

PUNJAB NATIONAL BANK,
REPRESENTED BY ZONAL MANAGER, CALICUT.

BY ADVS.SRI.M.P.SREEKRISHNAN
SMT.SHAHNA KARTHIKEYAN

RESPONDENT(S):

1. THE LABOUR COURT, KOZHIKODE.
2. M.VALSALAN, KOTTUKULAM THAZHE HOUSE,
ERANHIPARALAM POST, CIVIL STATION, CALICUT-2.

R1 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL.
R2 BY ADVS. SRI.A.JAYASANKAR
SRI.MANU GOVIND

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-04-2015, THE COURT ON 10-04-2015 DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE FINDINGS OF THE ENQUIRY OFFICER
DATED 23.04.2002.
- EXT.P2 TRUE COPY OF THE CLAIM PETITION FILED BY THE WORKMAN
DATED 18.3.2004.
- EXT.P3 TRUE COPY OF OBJECTION FILED BY THE BANK, DT.19.04.04.
- EXT.P4 TRUE COPY OF REJOINDER FILED BY THE WORKMAN
DATED DEC.2004.
- EXT.P5 TRUE COPY OF AWARD OF THE 1ST RESPONDENT DT.2.11.05.

RESPONDENT'S EXHIBITS:-

- EXT.R2(a) TRUE PHOTOCOPY OF THE DISCHARGE SUMMARY.
- EXT.R2(b) TRUE PHOTOCOPY OF THE PRESCRIPTION RECEIPT OF THE
CALICUT MEDICAL COLLEGE.
- EXT.R2(c) TRUE PHOTOCOPY OF THE ULTRA SOUND SCAN REPORT
OF RESPONDENT NO.2.
- EXT.R2(d) TRUE PHOTOCOPY OF THE ECHO CARDIOGRAPH REPORT.
- EXT.R2(e) TRUE PHOTOCOPY OF THE ELECTRO CARDIO GRAM REPORT.
- EXT.R2(f) TRUE PHOTOCOPY OF THE CT SCAN REPORT OF THE
2ND RESPONDENT.

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[true copy]

K.Vinod Chandran, J.

W.P.(C).No.4606 of 2006-W

Dated this the 10th day of April, 2015

JUDGMENT

The management-Bank impugn the award of the Labour Court, which interfered with the dismissal of a workman, the 2nd respondent herein. The Labour Court directed reinstatement of the workman without any backwages and without any benefit of seniority. The reference made by the appropriate Government was the justifiability of the dismissal order passed by the disciplinary authority on the strength of the findings entered into, in a domestic enquiry conducted against the workman. The charges levelled against the workman, as is evident from Exhibit P1, are the following:-

- “I. With deliberate intention to misappropriate the funds of the bank, the charge sheeted employee indulged in falsification of the vouchers and registers of the bank and misappropriated the funds of the bank to the tune of Rs.581090.00 as detailed under items (1) to (6) above thereby causing wilful damage to the property of the bank to that extent.
- II. By his actions detailed above, the charge-sheeted employee has exposed the bank to a loss of Rs.581090.00 and interest thereon from the respective dates.
- III. The actions of the charge-sheeted employee are subversive of the discipline of the bank and prejudicial to its interest”.

2. The workman, at that point of time, was working in the Mandya Branch of the management as a sub-staff. Due to shortage of employees, the workman had been discharging clerical duties also. The allegations were with respect to the false entries made in the registers of the Bank and falsification of vouchers between July 1999 and October 2001. Specific acts of such falsification were listed out by the management. A total amount of Rs.5,81,090/- was the loss caused to the Bank, as quantified by the management. The allegations raised were with respect to deliberate acts with intent to misappropriate the funds, thereby causing wilful damage to the Bank and such actions having exposed the Bank to a loss of Rs.5,81,090/-.

3. The domestic enquiry held by the management-Bank was found to be proper by the Labour Court. However, the Labour Court found that there was dearth of evidence to find that the charges alleged were proved in the domestic enquiry. The same was found in a preliminary order dated 16.08.2005. The management was permitted to adduce evidence to sustain the charges. Two witnesses were examined by the management to sustain the charges levelled against the workman, as MW2 and MW3. The Labour Court found from the evidence that the registers and vouchers disclosed

manipulations and alterations of entries and many of such alterations were in the hand-writing of the workman.

4. The defence of the workman was that he had noticed certain irregularities and had informed the Branch Manager, who had promised to take action on the same. It was also alternatively contended that without the connivance of other staff members the workman could not have committed such fraud. The Labour Court has in fact found that such an admission of the workman would indicate his complicity in the issue. It was noticed that, at the preliminary stage, the workman had taken a totally different stand, denying any knowledge about the fraudulent entries made. The Labour Court found that "from the overwhelming evidence and circumstances brought out, I have no hesitation to hold that the worker was responsible for making fictitious and false entries in the bank books for personal gain".

5. After having found so, the Labour Court examined the second limb of the charge, which, according to the Labour Court, was as follows:-

"The second limb of the charge is that the worker by such acts and omissions defrauded the funds of the bank to the

tune of more than five lakhs and this was done with the connivance of the concerned customers after making fictitious credit entries in their accounts”.

Immediately, it is to be noticed that none of the charges levelled, as extracted hereinabove, spoke of any connivance with the customers. The specific charges were, falsification of vouchers and registers of the Bank with deliberate intention to misappropriate funds and thus having caused a loss of Rs.5,81,090/- to the Bank. The same has been unequivocally found by the Labour Court; even according to that Court on the basis of the “overwhelming evidence and circumstances brought out”.

6. The Labour Court having listed out the second limb of the charge, as that Court understood it, went on to find that there was no evidence to show that any cheques or withdrawal forms were encashed by the worker. It was also found that there was no evidence to indicate that the workman prevailed upon the customers and received cash; on the strength of the fictitious entries. The Labour Court then relied upon the fact that the Bank has not initiated criminal proceeding and found that management failed in establishing

a charge of misappropriation of Rs.5,81,090/-. It was also found that the workman cannot be pinned down for reason of there being a previous incident of misconduct. The reference by the Labour Court, was to the antecedents of the workman; specifically of the circumstances in which at the earlier point of time, he was demoted from the clerical post to the post of sub-staff, again for charges of misconduct of misappropriation, which stood proved in a domestic enquiry.

7. The Labour Court having found the “second limb” of the charge to be not established, proceeded to consider the efficacy of the punishment imposed under Section 11A of the ID Act and interfered with the same and converted the punishment of dismissal into one of reinstatement into service. The punishment imposed for the proved charges was the denial of the entire backwages and the service benefits during the period in which the workman was kept out of service.

8. The learned counsel for the management would rely on the decisions in ***Disciplinary Authority cum Regional Manager and Others v. Nikunja Bihari Patnaik*** [(1996) 9 SCC 69], ***Karnataka State Road Transport Corporation v. B.S.Hullikatti***

[(2001) 2 SCC 574], *State Bank of India and Another v. Bela Bagchi and Others* [(2005) 7 SCC 435], *Divisional Controller, KSRFTC (NWKRTC) v. A.T.Mane* [(2005) 3 SCC 254] and *Cochin Shipyard Ltd. v. Industrial Tribunal and others* [2006(2) KLT 825], to contend that the Labour Court committed a grave error in interfering with the punishment under Section 11A of the ID Act. The Labour Court further, according to the learned counsel for the management, has gone on a wrong interpretation of the second limb of the charge. The finding of the Labour Court prior to its examination of the second limb itself would establish the misconducts alleged and the dismissal would be an apposite punishment for the gravity of the said charge levelled and proved.

9. The learned counsel for the workman, however, would oppose the same and contend that there is no challenge against the preliminary order and, hence, no reliance can be placed on the evidence at the domestic enquiry. Documents produced by the management and identified by the management witnesses have not been properly marked, no reliance could be placed, hence, on such evidence adduced before the Labour Court, is the plea. With respect

to the findings of the Labour Court as to the fictitious and false entries having been made, the learned counsel relied on the decision in ***Sundaram Industries Ltd. v. Employees Union [(2014) 2 SCC 600]*** to contend that even if such findings are not challenged, the workman could collaterally challenge the said finding; to sustain the order passed under section 11A of the ID Act.

10. The law is fairly well settled that the management has the prerogative to decide on the punishment, especially when the employee holds a position of trust and there is breach of the trust reposed on him. The special powers granted to the Labour Court/Tribunal under Section 11A of the ID Act is to cause interference to the punishment, exercising discretion, looking at the gravity of the offence to decide on whether the punishment is disproportionate or not. The same is not an unbridled power and it has been held by the Hon'ble Supreme Court and this Court that such exercise of discretion cannot be on misplaced sympathies and the power is not one to dole out largesse at the whim of the Court/Tribunal. In a case of misappropriation or loss caused to the employer, it is not the quantum that is relevant, but the act or omission itself which leads to a definite inference of breach of trust

reposed by the employer or one of sheer negligence or yet again, acting beyond the powers conferred on such employee.

11. **Nikunja Bihari Patnaik** (*supra*) related to a series of incidents, of a Branch Manager of a Bank, who unauthorisedly and without any delegation extended and granted overdrafts and permitted withdrawal of funds far in excess of the limits sanctioned. A number of instances were cited on the basis of which various charges levelled against the delinquent employee. The High Court, however, found that the actions of the delinquent would not amount to misconduct and represent only mere error in judgment. It was also found by the High court that out of the various instances, based on which the charges were levelled, many in fact turned out to be profitable to the Bank. The Hon'ble Supreme Court, however, found the findings of the High Court to be wrong, especially on the ground that it was undisputedly proved that the funds of the Bank were placed in jeopardy. The mere fact that some of the actions of the delinquent employee resulted in returns to the Bank, was held to be of no consequence, since acting beyond one's authority was held to be, by itself a breach of discipline and breach of regulation. It was categorically held that no proof of loss is really necessary and on the

evidence adduced it was found that many of the actions of the delinquent officer had resulted in the financial facilities becoming sticky and irrecoverable. The reinstatement ordered by the High Court was set aside and punishment of dismissal affirmed by the Hon'ble Supreme Court.

12. **B.S.Hullikatti** (*supra*) was a case in which again there were many instances of a Conductor having issued tickets with short-fare to as many as 35 passengers. The Labour Court and the High Court found that there was absolutely nothing to show that the Conductor had obtained any financial benefit out of such issuance of short-fare tickets. The Hon'ble Supreme Court, however, found that the large number of instances in which such short-fare tickets were issued would only indicate a conclusive inference that the same was for the financial benefit of the Conductor. It was alternatively found that even if the act does not lead to an inference of dishonesty, then necessarily there could be inference of sheer negligence, which again would commend dismissal of the employee from the services of the employer.

13. **A.T.Mane** (*supra*) was a case in which a Conductor, found to have Rs.93/- in his possession; over and above the amounts

equivalent to the tickets issued by him, was dismissed for violation of the regulation which permitted keeping of Rs.5/- only as personal money, when engaged in duty. The misconduct was proved in the domestic enquiry, the findings of which were not interfered with by the Labour Court. However, the Labour Court directed reinstatement with backwages, on the finding that the order of dismissal was not warranted, since the amount found in possession was relatively small and that the passengers were not examined. The order of the Labour Court was confirmed by the High Court also. The Hon'ble Supreme Court found that the quantum of money found in possession of the delinquent employee was not relevant, since the excess cash found in his possession itself proved the misconduct. The finding of the Courts below that none of the passengers were examined was also frowned upon, since the possession of excess amount had not at all been disputed. Considering the issue of interference to the punishment under Section 11A; it was found that a delinquent found guilty of misappropriation would not have continued confidence of faith of the employer and a punishment of dismissal cannot be said to be disproportionate. Specifically **B.S.Hullikatti** (*supra*) was relied on to find that in causing interference under Section 11A there is “no

place for generosity or misplaced sympathy on the part of the judicial forums and thereby interfere with the quantum of punishment”.

14. **Bela Bagchi** (*supra*) was again a case of misconduct of a Bank employee, wherein fraud was alleged and the account holders, who had initially preferred the complaint, had withdrawn their grievances. The higher standards of honesty and integrity to be displayed by a Bank Officer who deals with the money of depositors and customers was highlighted. It was stated so:

“Every officer/employee of the bank is required to take all possible steps to protect the interest of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in *Disciplinary Authority cum Regional Manager v. Nikunja Bihari Patnaik* (1996 (9) SCC 69, it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself

a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance”.

15. **Cochin Shipyard Ltd.** (*supra*) was a case in which a Division Bench of this Court elaborately considered the power under Section 11A of the Act and it was declared that the powers under Section 11A are not unlimited so as to warrant an interference with the punishment if the misconduct is proved, even in the absence of victimisation or finding the punishment to be shockingly disproportionate to the offence alleged.

16. It is in this context that the aforesaid case has to be considered and the interference to the punishment looked at. If the interference caused is found to be a reasonable one, it is also the accepted position that this Court would not super-impose its opinion on that expressed by the Labour Court. The specific charges levelled against the delinquent employee was extracted earlier. The charge was of falsification of vouchers and registers of the Bank with intent to misappropriate and the management-Bank exposed to a loss of Rs.581090.00. As has been noticed in the above precedents, the

quantum is irrelevant and the fact whether the employee had actually received any of the said amounts would be insignificant, insofar as finding the delinquent employee guilty. After having found the evidence in the enquiry to be not sufficient to sustain the charges, the management was permitted to adduce evidence before the Labour Court.

17. The Labour Court award impugned herein having not disclosed any marking of documents, this Court called for the entire records from the Labour Court. It is a matter of distress that the Labour Court had not forwarded the entire files at the initial stage itself, which resulted in the above matter being kept pending for so long. On going through the lower Court records already forwarded to this Court, it was found that the documents produced by the management-Bank after the enquiry was set aside, was not enclosed with the records. The reading of the deposition of the management witnesses showed that certain vouchers and extracts of ledgers were put to the witnesses, wherein the witnesses identified the specific entries made by the delinquent employee leading to the allegation of manipulation of records, resulting in misappropriation of funds. Evidently no documents had been marked by the Labour Court.

Though the learned counsel for the respondent raises a contention with respect to such non-marking of documents, it is trite that the strict rules of procedure does not regulate the proceedings before the Labour Court/Tribunal constituted under the ID Act. It is also pertinent that the respondent had never, at any point of time, raised an objection with respect to such non-marking of documents before the Labour Court. Hence, the contention with respect to such documents having not been marked before the Labour Court has to be negated.

18. Since the list of documents filed by the petitioner and the documents were not enclosed along with the records, this Court by order dated 27.01.2015 directed the Labour Court to forward the documents produced by the management-Bank after setting aside of the enquiry. Even then only the list of documents were forwarded. Hence, again another order was issued on 27.02.2015 directing forwarding of the entire documents. It was only then the documents were forwarded by the Labour Court. This Court has not perused each and every document due to the voluminous nature of the same and this Court is not expected so to do in the above writ petition, where the Labour Court has considered the evidence on record. But

the fact remains that the attested copies of the Clearing Day Book (34 sheets), Pay-in-Slips for clearing cheques (36 sheets), withdrawal forms/cheques (40 sheets), statement of affairs of the branch (38 sheets), debit slips (6 sheets), ledger sheets (13 sheets), Balancing Register 31-03-2000 (1 sheet), RID Balancing Register (6 sheets), Balancing Register (7 sheets), specimen signature forms and account opening forms (18 sheets), complaints received from customers (5 sheets) are available in the files, which are proved by the management witness. The evidence led by the management remains unshaken in cross-examination and not even a suggestion exists as to the veracity of the same.

19. The Labour Court having considered the entire evidence, categorically found that there are manipulations and alterations of entries in the books maintained by the Bank. The delinquent employee himself had admitted that the entries were made in his hand. The contention raised by the delinquent employee was only that he had noticed some irregularities and informed the Branch Manager and that he made the false entries, since the Branch Manager had directed him so to do. The defence raised, on the face of it, is fallacious and in fact reveals the guilt of the

delinquent employee, which the Labour Court found on the basis of such admission. This is accentuated by the fact that the delinquent went onto contend that other employees too were involved in the fraud; conceding that in fact there was a fraud perpetrated.

20. The evidence was found to establish the delinquent employee's misdemeanor and it was clearly found that the overwhelming evidence and circumstances would commend a finding that the worker was responsible for "making fictitious and false entries in the bank books for personal gain". The said finding would itself indicate that the misconduct alleged and proved against the delinquent employee is very serious in nature, shaking the very foundation of the trust reposed by the management on the delinquent employee.

21. The Labour Court after finding the misconduct of making false entries to have been established, looked at the purported second limb of the charge, as extracted herein above. As was noticed, the charge of connivance of the concerned customers was never levelled against the delinquent employee. The Labour Court then found that there is no evidence to show that the cash book was handled by the delinquent employee; nor is the worker

alleged to have encashed any cheques or withdrawal forms. It was also found that if a sizeable amount was swindled, there is no explanation for not filing a criminal complaint or making a searching investigation. It was found that the management had failed to establish the charge of misappropriation of Rs.581090.00. Assuming for a moment that even if there was no finding that the delinquent employee had misappropriated such amounts, it was clearly found that fraudulent entries were made in the ledgers and vouchers and the Bank was exposed to a loss of more than Rupees five lakhs. The charge levelled too was making false entries with **intent to misappropriate.**

22. Considering the issue of gravity of punishment under Section 11A, the dismissal of the delinquent employee was found to be one for making false and fictitious entries in the Bank accounts and swindling sizeable funds of the Bank. Since misappropriation of funds were alleged and the misconduct having been spread over a period of two to three years, an enquiry at the proper time could have revealed the misconduct earlier, is the finding. The fact that the delinquent employee was a physically handicapped person, deserving maximum sympathy, was taken into consideration and the

punishment was found to be excessive and shockingly disproportionate. The punishment was converted into forfeiture of the entire backwages and seniority and the workman was directed to be reinstated.

23. Evidently it was sympathy which prevailed upon the Labour Court to set aside the order of dismissal. Even if the delinquent employee was found to have obtained no monetary benefit, the fact remains that the finding with respect to fraudulent entries being made in the books of the Bank, maintained in the regular course of business, itself is a very serious charge. The observations made by the Labour Court with respect to no criminal complaint having been filed and the management-Bank having failed to conduct routine enquiry are all in the realm of fanciful speculations, which cannot regulate the exercise of discretion under Section 11A. True, every management could devise measures to avoid loss to itself. But, there cannot be any fool-proof mechanism and necessarily some delegation has to be made to the employees for smooth functioning of any business, especially in banking business. The Bank deals with the money of its customers and depositors through its employees and it is not too much to expect absolute integrity and

impeccable honesty from its employees in discharge of their function. The Bank deals with the money of the general public and despite checks and balances, the deviation of one employee could lead to huge loss to the Bank. In such circumstance, there could be no continued confidence reposed by the management-Bank on such employee.

24. Though irrelevant, the loss caused to the Bank is not negligible and the instances in which the delinquent employee caused manipulations in the books of the Bank were numerous. No prudent person could cause interference under Section 11A of the ID Act on the finding that the order of dismissal is shockingly disproportionate. It is trite that in awarding punishment with respect to allegations of misconducts; only the misconducts proved could be taken into account; and not any previous incident of a misconduct. However, in considering interference under Section 11A that would also be a relevant aspect. In the present case, admittedly the workman was earlier too proceeded against, on charges of misappropriation and demoted on the said charges being proved in an enquiry. A second instance of a similar nature would further fortify the decision of the Bank to dismiss the delinquent from the services

of the Bank.

25. Though the learned counsel would argue that even without challenging the award, the delinquent employee could make a collateral challenge to the findings against him to sustain the interference made by the Labour Court, this Court does not find anything to commend interference to such findings made by the Labour Court with respect to the first limb of the charge. Even going by the award, the Labour Court has found that false and fictitious entries were made by the delinquent employee in the books of accounts, causing loss to the Bank. The fact that there is no evidence to show that such amounts were misappropriated by the delinquent employee is inconsequential insofar as even the charges being not to that extent. Whether such manipulations in the books were made for the benefit of the employee would not be a relevant consideration at all and in any event, there could be no discernible reason otherwise. The misconduct which is found to be proved by the Labour Court itself would not warrant an interference to the punishment of dismissal. The loss of confidence in the delinquent employee on the basis of the finding of guilt of the delinquent employee, as affirmed by the Labour Court alone, would indicate that

the punishment cannot at all be said to be shockingly disproportionate to the gravity of the offence. The allegations levelled against the workman stand proved and the gravity of such proved charges warrant the punishment of dismissal.

The writ petition would stand allowed, modifying the award of the Labour Court, to the extent it has found the 'second limb' of the charges levelled to be not proved and the interference caused to the order of dismissal under Section 11A of the ID Act, being set aside⁰ . Parties are left to bear their respective costs.

Sd/-
K.Vinod Chandran,
Judge

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