IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(C).No. 15053 of 2010 (F)

AGAINST THE AWARD IN ID 11/2007 of LABOUR COURT, ERNAKULAM

PETITIONER(S):

M.P.RAVEENDRAN, MUNDAPALLIYAL HOUSE,
ELAMKULAM, KUNNAKKAVU P.O., PIN-679 340
MALAPPURAM DISTRICT.

BY ADVS.SRI.T.RAMPRASAD UNNI
SRI.J.R.PREM NAVAZ

RESPONDENT(S):
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1. THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, KARSHAKA ROAD, ERNAKULAM.

2. THE SOUTH MALABAR GRAMIN BANK
REPRESENTED BY ITS CHAIRMAN, HEAD OFFICE, MALAPPURAM.

R2 BY ADVS. SRI.DEVAN RAMACHANDRAN
SRI.K.M.ANEESH
SRI.SANTHOSH KUMAR.K
R1 BY ADVS. SRI.C.RASHEED, CGC
SRI.N.NAGARESH,ASST.S.G OF INDIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 15053 of 2010 (F)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1	:	TRUE COPY OF CHARGE SHEET DATED 29.04.2005 ISSUED BY R2 BANK
EXHIBIT P2	:	TRUE COPY OF ENQUIRY REPORT DATED 10.9.2005 SUBMITTED BY THE ENQUIRY OFFICER OF R2 BANK
EXHIBIT P3	:	TRUE EXTRACT OF DEPOSITION OF DW1 SRI.M.P. SURESHKUMAR
EXHIBIT P4	:	TRUE EXTRACT OF DEPOSITION OF DW2 SRI.HIDAYATH
EXHIBIT P5	:	TRUE EXTRACT OF DEPOSITION OF DW3 SRI. M.P. KUNHUBEERAN
EXHIBIT P6	:	TRUE COPY OF ORDER DATED 8.10.2005 ISSUED BY R2 BANK
EXHIBIT P7	:	TRUE COPY OF ORDER DATED 13.01.2006 ISSUED BY R2 BANK
EXHIBIT P8	:	TRUE COPY OF AWARD DATED 8.10.2009 IN I.D. NO.11 OF 2007 PASSED BY R1

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 15053 of 2010

Dated this the 22nd day of January, 2015

JUDGMENT

When the matter was taken up, the learned counsel for the petitioner, submitted that the 2nd respondent has now been merged with the North Gramin Malabar Bank and is now called the Kerala Gramin Bank. The petitioner seeks impleadment of the said Bank in the above proceedings. However, the above Writ Petition is one filed against the Award of the Labour Court, by an employee of the 2nd respondent. Any Order passed would necessarily bind the successor Bank, which has been formed on merger of the erstwhile respondent with another. In such circumstance, this Court does not see any necessity for substitution to be made. The respondent herein is also duly represented by counsel. Both parties were heard.

2. The learned counsel for the petitioner impugn Ext.P8 Award on the ground that the evidence adduced at the enquiry would not substantiate the charges, leveled against the petitioner; which is alleged to have been proved at the domestic enquiry. The learned counsel would, in fact, submit that the petitioner had been merely helping the customers of the Bank and in that process he had filled up certain vouchers and cheques, which alone is the evidence placed against him. The petitioner also relies on his unblemished service to seek interference under section 11A of the Industrial Disputes Act.

3. The issue referred was the justifiability of the dismissal of the petitioner, from the 2nd respondent Bank. The 2nd respondent proceeded departmentally, by initiation of a charge sheet, wherein five charges of misconduct were levelled against the petitioner. The same are evident in Ext.P1. All of the charges related to the petitioner having

had money transactions with customers of the Bank, and the petitioner having misappropriated, at least for a period, amounts entrusted by the said customers, and then having repaid the same to the customers themselves. The Industrial Tribunal on an elaborate consideration of the evidence found that the charges levelled at item nos. 1, 2, 4 and 5 were proved as held by the Enquiry Officer. Charge no.3 was found to have been not proved by the Enquiry Officer itself and the disciplinary authority concurred with the said finding.

4. The petitioner obviously did not challenge the validity of the enquiry, before the Industrial Tribunal-cum-Labour Court. The Tribunal, however, looked into the same and found that there is no infringement of any legal right or violation of the principles of natural justice in the enquiry conducted. The issues raised for consideration were whether the findings of the Enquiry Officer was sustainable,

and the proportionality of the punishment imposed. On both counts the Tribunal found against the workman and hence the Order passed by the Tribunal has resulted in the dismissal of the workman; as imposed by the disciplinary authority of the 2nd respondent.

5. It is trite that a re-appreciation of evidence is not called for in a Writ Petition under Article 226 challenging the Award of the Tribunal wherein the issue of dismissal, based on the findings of an enquiry, was considered. This court has examined the Tribunal's Award with reference to the enquiry report and the charges levelled, to understand whether there is any infirmity, so blatant and perverse, as to make any interference of the Award.

6. The allegations raised, all of them related to the transactions by the petitioner - a Bank employee with the customers of the Bank; which transactions were routed through the accounts maintained by such customers with

the employer Bank. The first charge levelled against the petitioner was with respect to availing a loan from one customer and then assuring him that the same has been repaid to his account, and the said customer having issued a cheque on the basis of such assurances. On such cheque being presented to the Bank by the payee, another customer; the petitioner is said to have undertaken to encash the cheque and credit the same to the account of the father of the said customer. However, the cheque which was handed over to the petitioner was not presented as promised, and the petitioner deliberately waited till the drawee of the cheque had sufficient funds in the account and then presented the same for encashment. The charge hence was that the petitioner failed to deposit amounts to the drawer's account, as undertaken and when a cheque was presented in that account, the payee was assured encashment, which was not done within time. The drawer's account when credited with other amounts, the cheque was encashed, causing further loss to the drawer of the cheque.

7. The second charge related to the period, when the above mentioned payee of the cheque had approached the Bank and the petitioner had sent him back on the premise that there was no sufficient cash balance at the Branch. To further facilitate such fraud, the petitioner had also made false entries in the pass book of such customers so as to ensure that the customers themselves did not know about any of these malpractices.

8. The entire transactions had come out in the domestic enquiry, which circumstances are elaborately dealt with by the Tribunal. The contention of the petitioner before the Tribunal was that the customer from whom he is said to have availed a loan had filed a letter, produced as Ext.P11, before the Enquiry Officer wherein the said complainant had expressed that he was withdrawing the complaint. The

complainant himself, according to the petitioner, had appeared before the Enquiry Officer and deposed in favour of the petitioner.

9. In this context, it is to be emphasized that the complaint was withdrawn specifically for the reason that the petitioner had paid up the loan amounts to the complainant. Hence, despite the fact that the complainant had withdrawn his complaint, the fact remains that the transactions which were the basis on which the charges were levelled, stood proved. In such circumstance, relying upon the decision of the Honourable Supreme Court in **State Bank of India and Another v. Bela Bagchi and Others - (2005) 7 SCC 435**, it cannot be said that merely for the reason of withdrawal of the complaint, the petitioner could be exonerated of the charges levelled, especially when the petitioner is a Bank employee and the allegations raised are transactions privately entered into with the Bank's

customers. The charge of making false entries in the pass books and sending back the payee of a cheque, on the pretext of there being no sufficient cash balance, are all serious misconducts, which do not stand effaced on the mere withdrawal of a complaint.

10. Further, the said allegation was not the only solitary charge against the petitioner. There were two other charges of like nature which were also proved in the domestic enquiry. The fourth charge related to a loan having been availed by another customer which is said to have been used by the petitioner for settling a relative's gold loan account. The loanee, a relative, naturally appeared before the Enquiry Officer and submitted that he had closed the account on his own. The Tribunal rightly found that no reliance can be placed on the interested testimony of the said loanee. Reference was made to the vouchers which indicated that the loan disbursal to a

customer, of Rs.2 lakh, was encashed by the petitioner and remittance was made to the gold loan account. The vouchers on that count were examined by the Enquiry Officer, as also noticed by the Tribunal. Further, there was also evidence to show that the petitioner himself had deposited the amount to the gold loan account and then later to the account of the customer, in repayment of the diversion of loan amounts, encashed by the petitioner.

11. The fifth charge also related to a specific deposit in a Savings Bank account, which as per the complaint of the customer was not made on the date on which the amount was entrusted to the petitioner. The petitioner had also, on the date of entrustment itself, made entries in the pass book showing the credit made. The entries made in the pass book, as also that in the ledger; which was latter to the entry in the pass book, established the complicity of the petitioner in the said incident also.

12. Looking at the findings of the Tribunal, as to the evidence recorded before the Enquiry Officer, this Court does not find any reason to defer from the same. There is absolutely no unreasonableness or perversity in the findings of the disciplinary authority. The misconducts levelled against the petitioner stood proved beyond a shadow of doubt. The Tribunal was justified in finding the enquiry to be valid and the findings therein to be sustainable.

13. What remains is the issue of interference to be made under section 11A of the Act. The Labour Court having examined the gravity of the offence, and also specifically the position of trust held by the petitioner as an employee of the Bank, found that the dismissal is not shockingly disproportionate to the gravity of the offence. No interference can be made on that count also, relying on the judgment of Honourable Supreme Court in **Regional Manager, U.P.SRTC, Etawah and Others v. Hoti Lal and**

Another - (2003) 3 SCC 605.

For all the above reasons the Writ Petition is devoid of merits and is dismissed.

Sd/-
K.VINOD CHANDRAN,
JUDGE

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