IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

W.P.(C).No.21759 of 2007 (M)

PETITIONER(S):-

P.A. JOSEPH, S/O. AUGUSTINE, AGED 59 YEARS,
KADATHINAZHIKATHU, KAVANADU P.O.,
KOLLAM.

BY ADVS.SRI.M.R.SUDHEENDRAN
SRI.SURAJ.S

RESPONDENT(S):-

---

1. THE STATE BANK OF TRAVANCORE,
   REPRESENTED BY ITS MANAGING DIRECTOR, HEAD OFFICE,
   POOJAPPURA, THIRUVANANTHAPURAM-1.

2. THE DEPUTY GENERAL MANAGER,
   STATE BANK OF TRAVANCORE, ZONAL OFFICE, P.B.NO.34,
   THIRUVANANTHAPURAM.

3. THE REGIONAL MANAGER III,
   STATE BANK OF TRAVANCORE, ZONAL OFFICE,
   THIRUVANANTHAPURAM-23.

R1 TO R3 BY ADV. SRI.P.RAMAKRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

W.P(C).NO.21759 OF 2007-M

APPENDIX

PETITIOENR'S EXHIBITS:-

EXT.P1	TRUE COPY OF MEMO DATED 10.12.1990.
EXT.P2	TRUE COPY OF ENQUIRY REPORT DATED 23.11.1991.
EXT.P3	TRUE COPY OF REPRESENTATION DATED 28.12.1991 SUBMITTED BY THE PETITIONER.
EXT.P4	TRUE COPY OF PRELIMINARY ORDER DATED 11.04.1992, ISSUED BY THE DISCIPLINARY AUTHORITY.
EXT.P5	TRUE COPY OF FINAL ORDER DATED 21.05.1992 ISSUED BY THE DISCIPLINARY AUTHORITY.
EXT.P6	TRUE COPY OF ORDER DATED 4.9.1992 ISSUED BY THE 3RD RESPONDENT.
EXT.P7	TRUE COPY OF JUDGMENT DATED 4.7.2001 IN O.P.NO.14155/1993 OF THE HIGH COURT OF KERALA.
EXT.P8	TRUE COPY OF PRELIMINARY ORDER DATED 18.2.2006 IN I.D.15/2002 ON THE FILE OF INDUSTRIAL TRIBUNAL, KOLLAM.
EXT.P9	TRUE COPY OF AWARD IN I.D.131/2006 (PUBLISHED BY CENTRAL GOVERNMENT IN THE GAZETTE OF INDIA VIDE NOTIFICATION DATED 8.1.2007).
EXT.P10	TRUE COPY OF JUDGMENT DATED 28.2.2003 IN C.C.207/1997 ON THE FILE OF CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM.

RESPONDENT'S EXHIBITS:-
--- NIL.

Vku/ (true copy)

K.Vinod Chandran, J.

W.P.(C).No.21759 of 2007-M

Dated this the 14th day of January, 2015

JUDGMENT

The petitioner, a workman, is aggrieved by the award passed at Exhibit P9, wherein the punishment of dismissal, for misconduct proved in a domestic enquiry, was found to be sustainable. Prior to Exhibit P9, the Industrial Tribunal had elaborately considered the issue raised on the question of violation of principles of natural justice and held that the enquiry was conducted in a proper manner, by Exhibit P8, a preliminary order.

2. The facts revealed from the records indicate that the delinquent employee, the petitioner herein, was proceeded with, on various allegations and the charges are enumerated in Exhibit P1 show cause notice. Altogether 8 [eight] charges were framed against the petitioner, of which the Enquiry Officer found the 1st and 4th charges to be not proved. The Tribunal, by Exhibit P9 award, found that only the charges 5, 6 and 8 are proved. Since there is no challenge from the part of the management, this Court

would have to consider only whether the charges 5, 6 and 8 levelled in Exhibit P1 show cause notice are proved, on the basis of the evidence recorded and whether the same would warrant a punishment of dismissal.

3. In fact, in the present proceedings under Article 226 of the Constitution this Court would not go on a re-appreciation of evidence, but only look at the findings of the Tribunal on the basis of the evidence adduced, being the enquiry report, files and the deposition of the Enquiry Officer. It is also to be examined as to whether the denial of relief under Section 11A of the Industrial Disputes Act, 1947 [for brevity "the Act"] by the Tribunal was proper in the circumstances of the case.

4. Charges 5 and 6 specifically dealt with an instance of the petitioner having obtained a consumer loan, from the management-Bank, quite possibly a necessary incidence of his service, for purchase of a two-wheeler and the said amount having been misappropriated without purchasing the vehicle. Charge No.6 dealt with identification of a person before the Bank, as the authorised representative of the dealer of the two-wheeler sought to be purchased, one M/s.Sarathy Motors,

and enabling such person to receive encashment of the cheque issued to the dealer, by the Bank in disbursal of the loan amounts. Charge No.8 was with respect to standing surety against loans availed by his wife, in a separate Bank, however without getting prior sanction from his employer, which the Regulations mandated. For the charges levelled at item Nos.5 and 6, the disciplinary authority imposed a punishment of dismissal and for the charge levelled as item No.8, a punishment of censure. The same were confirmed by the Tribunal.

5. Charges 5 and 6 are inter-connected, insofar as the charge No.5 was with respect to misappropriation of amounts granted as consumer loan, without purchasing the vehicle. Charge No.6 was with respect to identification of a person as the authorised representative of M/s.Sarathy Motors, so as to facilitate misappropriation of the cheque issued by the Bank against the consumer loan.

6. The learned counsel for the petitioner submits that the petitioner had 20 years of unblemished service and was dismissed from service on flimsy charges. The learned counsel contends that the petitioner had admitted that there was some

delay in purchasing the vehicle; but had in fact purchased the vehicle and had also cleared the entire liability in the loan account. The allegation that he had set up a person to receive the cheque and encash the same is not sustainable, since the evidence led in the enquiry did not substantiate such allegation. The learned counsel would urge that the order of dismissal has to be set aside on those grounds and that, in any circumstance, the single instance which caused no loss to the Bank, would not warrant a punishment of dismissal. The punishment of dismissal is grossly disproportionate to the gravity of the offence alleged. Alternatively, hence, interference under Section 11A of the Act is sought.

7. With respect to the sustainability of the enquiry, the Labour Court found that the delinquent employee was afforded every opportunity to defend his case. A representative of the Union was permitted to defend the case of the petitioner and was also supplied with documents, produced by the management, and permitted to cross-examine the witnesses. The only contention raised by the delinquent employee was with respect to the delinquent employee not being permitted to avail

of the services of a lawyer. The Bank too having not engaged a lawyer to represent its case, it is trite that such contention would not be sustainable. This Court does not find any reason to interfere with the validity of the enquiry as found by the Tribunal.

8. As to the 5^{th} charge regarding misappropriation, it is to be noticed that the delinquent employee, the petitioner, unequivocally admits of the same. The version of the petitioner before the Enquiry Officer was that he had in fact availed of a loan and to make up the value of the vehicle, which was not entirely covered by the loan amount, the petitioner had availed of another loan from a third-party. Since there was some delay in the vehicle being delivered and the third-party, who had extended a loan, was in urgent need of money, the petitioner approached the dealer M/s.Sarathy Motors for cancellation of the purchase order placed. Since the cancellation was only for reason of the immediate need for money, it is the contention that the dealer offered to handover the money; but, however, retain the purchase order, since there would be further delay in the delivery of the vehicle. The dealer is also said to have promised the petitioner a finance from another finance company, being

Bajaj Auto Finance Ltd. The vehicle was purchased by availing of such finance and copy of the Certificate of Registration was also produced before the Bank. Eventually the consumer loan was also closed. This is the specific admission of the petitioner.

9. Even going by the admission made, the petitioner admits to have misappropriated the amounts, since the loan granted for purchase of a vehicle was not used for the said purpose and the money was encashed from the dealer, without informing the Bank and without remitting the money so allegedly refunded; to the loan account. A vehicle is said to have been purchased, but with finance from another company. Definitely the said company would have endorsed the hypothecation of the vehicle as per Section 51 of the Motor Vehicles Act, 1988. Hence, the sole security which was available to the Bank as against the loan was also seriously hampered. The factum of the closure of the loan account is of no consequence, especially considering the fact that the petitioner is a Bank employee, who has to deal with money transacted by the Bank, entrusted to it by the customers, which involves a position of trust.

10. Charge No.6 specifically alleged that a person was introduced to the Bank, as the authorised person of the dealer, fraudulently and had thus permitted encashment of the cheque across the counter. The Managing Partner of the dealer was examined, who categorically deposed that the dealership does not encash cheques over the counter. The cheques would only be presented through the account of the dealership for payment. The Managing Partner denied the official seal of the dealership, affixed in the cheque and the signature too was said to be not of any of the authorised persons or employees of the firm. The official seal of the firm was also specifically noticed by the Enquiry Officer from the records available in the enquiry files, which differed from the seal affixed on the back of the office cheque issued as against the loan amount.

11. A colleague of the petitioner who had passed the cheque for payment, deposed before the Enquiry Officer that the same was done since the payee of the cheque was introduced by a member of the staff, the delinquent employee. The paying Cashier also admitted the payment, for reason of the identification of the alleged authorised person, by the petitioner.

The afore-stated statements clearly prove that the petitioner's version on charge No.5 is false and concocted.

12. The petitioner, an employee of the Bank, had availed of a consumer loan and the office cheque issued in favour of the dealership was presented across the counter of the Bank by another person; set up by the petitioner. The said person was introduced and identified as the authorised representative of the dealership, by the petitioner, to the other officials of the Bank. The petitioner had, thus, through a fictitious person, without handing over the cheque to the dealership, obtained the amounts across the counter, using his good offices, to mislead his own colleagues and thus defrauded the Bank.

13. It is also clear that, then the petitioner had purchased a two-wheeler with finance from another Company and had produced the copy of the Registration Certificate before his employer. The evidence in the enquiry also reveals that, the vehicle purchased with the finance of another company, was on hire purchase agreement with the said company, the factum of which had been endorsed in the Certificate of Registration of the said vehicle. The petitioner had produced

photocopy of the Certificate of Registration before the Bank, purportedly to evidence the purchase of a vehicle; but, however, removing the page on which the endorsement was made, thus suppressing the endorsement of hypothecation made in favour of Bajaj Auto Finance Ltd. The said deliberate acts on the part of the petitioner definitely discloses a charge of misappropriation and deliberate fraudulent acts, which stood proved at the enquiry.

14. This Court does not find any reason to interfere with the finding of the Tribunal that the charges at item Nos.5 and 6 were properly held to be proved by the Enquiry Officer. There could be no unreasonableness or perversity found in the findings of the Labour Court. In view of the findings with respect to charge Nos.5 and 6, the punishment awarded on charge No.8 is inconsequential. However, on going through the finding of the Tribunal on that charge also, this Court is of the opinion that the same stood proved in the enquiry.

15. What remains is the question with respect to the interference under Section 11A of the ID Act. The principles which should govern the grant of such relief have been

succinctly stated by the Hon'ble Supreme court in ***Regional Manager, U.P.SRTC v. Hoti Lal*** **[(2003) 3 SCC 605].** Therein, the termination of the service of the bus conductor for carrying ticketless passengers in a State Transport bus was upheld despite the fact that the loss caused was only of Rs.16/-. The reasoning adopted by the Hon'ble Supreme Court was that when an "employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning" (sic), the misconduct would have to be dealt with iron hands and not leniently. That the petitioner, an employee of the Bank, held such position of trust cannot at all be disputed.

16. An employee of the Bank deals with the money of the public, which is entrusted with the Bank by its customers. The petitioner availed of a consumer loan for purchasing a two-wheeler, for which purpose the Management-Bank issued a cheque in the name of the dealer. The petitioner deliberately, with *mala fide* intent, using his good office and the goodwill with his co-employees, effected encashment of the cheque over the counter of the Bank, which ordinarily the Bank would not have done. The identification made of the payee was also fraudulent.

The money released by the Bank for the specific purpose of purchasing a vehicle was misappropriated and diverted. The vehicle was not produced and on insistence of the Manager to produce the documents with respect to the vehicle, the petitioner deliberately produced the copy of a Certificate of Registration, which did not indicate the entire particulars, viz., the hypothecation of the vehicle, which endorsement would have disclosed that the vehicle was hypothecated to another finance company. That the petitioner violated trust placed on him by the management is very evident. The refusal of the management to show any leniency in the matter and the consequent denial of the Tribunal to interfere under Section 11A of the ID Act cannot be faulted. The award of the Tribunal is upheld.

The writ petition would stand dismissed. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge

vku/-

(true copy)