IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

WP(C).No. 30526 of 2008 (H)

PETITIONER(S):

K.S.MAYA DEVI
NAVA SREE, 34/1042 F, CHANDRATHIL ROAD,
EDAPPALLY.P.O, KOCHI - 682 024.

BY ADVS.SRI.DEVAN RAMACHANDRAN
SRI.K.M.ANEESH
SRI.K.SANTHOSH KUMAR (KALIYANAM)
SRI.S.NIKHIL SANKAR
SRI.ADARSH KUMAR

RESPONDENT(S):

THE DEPUTY GENERAL MANAGER,
STATE BANK OF TRAVANCORE,
ZONAL OFFICE, ERNAKULAM.

BY ADVS. SRI.P.RAMAKRISHNAN
SRI.SANTHOSH MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 30526 of 2008 (H)
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APPENDIX

PETITIONERS' EXHIBITS

P1: COPY OF CHARGE SHEET ISSUED TO THE PETITIONER BEFORE THE RESPONDENT VIDE NO.AGMI/EKM/DPS DATED 21/11/2000

P2: COPY OF REPORT OF THE ENQUIRY OFFICER DATED 30/11/2000

P3: COPY OF FINAL ORDER ISSUED BY THE RESPONDENT TO THE PETITIONER AGMI/EKM/DPS35/2001-2002 DATED 1/11/2001

P4: COPY OF APPELLATE ORDER ISSUED BY THE RESPONDENT TO THE PETITIONER VIDE NO.DGM:EKM:DPS:72/2001-2002 DATED 4/3/2002

P5: COPY OF JUDGMENT DATED 20/3/2007 IN CRIMINAL APPEAL NO.355/2005OF THE ADDITIONAL SESSIONS JUDGE (ADHOC-III), ERNAKULAM

P6: COPY OF AWARD OF THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM IN ID.191/2006(ID.28/2008 OF LABOUR COURT, ERNAKULAM.

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K. SURENDRA MOHAN,J.

W.P(C) NO. 30526 OF 2008

Dated this the 23rd January, 2015.

JUDGMENT

The petitioner has filed this writ petition challenging the action of the respondent in discharging her from service. The petitioner was working as the Head Cashier of the State Bank of Travancore under the respondent. On 23.10.2000 while the petitioner was holding charge as Head Cashier of the Edappally branch of State Bank of Travancore shortage in cash was detected. A verification of the entire cash held by the branch was conducted in the presence of the petitioner. The verification revealed a shortage in cash of Rs.45,510/-. Certain other minor discrepancies were also detected. The petitioner was thereupon proceeded with, departmentally.

2. Ext.P1 charge sheet dated 21.11.2000 was issued to her. She submitted her explanation on 15.12.2000. She

admitted that a shortage of Rs.45,510/- was detected on 23.10.2000 while closing and consolidating the currency chest figure for the day. Since the petitioner and the Deputy Manager (Accounts) were the joint custodians of the cash they had made good the amount that was found to be short as per the guidelines of the bank. However she has alleged that the Deputy Manager (Accounts) had refused to accept the amount so deposited and had retained the amount in a sundry account. The explanation of the petitioner was that, apart from substantial amount of cash that was available as balance in the currency chest totalling about Rs.37 crores, on 28.9.2000 the Reserve Bank of India had made a further remittance of Rs.17,62,50,000/- to the currency chest. Consequently the currency chest was full with currency and the notes had to be stacked even on the floor. The petitioner had been working regularly upto 8 or 9 p.m and sometimes even upto 1.30 a.m, to set right matters. There were frequent electricity failures and even break down of the generator. All the above circumstances have caused the shortfall. According to her the loss occurred during the days of stress and strain and not by any wilful negligence. The Deputy Manager (Accounts) who was also jointly responsible was given only a lesser punishment. Therefore she sought for a similar treatment.

3. Upon receipt of the explanation of the petitioner, a domestic enquiry was conducted. Ext.P2 report of the Enquiry Officer found that all the charges against the petitioner except one were proved. A copy of the enquiry report was supplied to the petitioner. She made her submissions on the findings of the enquiry officer on 27.8.2001. Her contentions were considered and by Ext.P3, the disciplinary authority dismissed the petitioner from service. Aggrieved by Ext.P3, the petitioner preferred an appeal to the Appellate Authority, the respondent herein. The Appellate Authority considered the appeal, found that the contentions of the petitioner were not acceptable and

confirmed the proceedings against her. However, the punishment imposed on the petitioner was interfered with and her dismissal was modified into “discharge from service with superannuation benefits”. Not satisfied with the Appellate order the petitioner raised an industrial dispute which was referred by the Government to the Labour Court, Ernakulam, initially. The same was later on transferred to the Industrial Tribunal from the Labour Court, Ernakulam and was numbered as I.D191/2006.

4. The Labour Court considered the contentions of the petitioner, examined the files of the enquiry proceedings and passed Ext.P6 award holding that the punishment imposed on the petitioner was justified and that she would not be entitled to any other relief in the matter. This writ petition is filed challenging Ext.P6.

5. According to Mr.Adarsh Kumar who appears for the petitioner there is not even an allegation against the petitioner that she was guilty of misappropriation of any amount.

Reference is made to Ext.P1 charge sheet to point out that the charges framed are wide in terms. The reference made to the clauses of the bipartite settlement do not indicate in what manner the said clauses were attracted to the act alleged against the petitioner. The various sub clauses in clause 19.5 of the bipartite settlement refers to “wilful damage and wilful insubordination”, indicating the requirement of a mental element to constitute them. Such a mental element has neither been alleged nor established by the respondent in any of the proceedings. The charges under Clause 19.7 of the bipartite settlement refer only to minor misconduct for which, the punishment of dismissal/discharge from service was grossly disproportionate. It is therefore contended that, the punishment imposed on the petitioner and confirmed by the Appellate Authority and the Labour Court is unduly harsh. My attention is drawn to the enquiry report Ext.P2 to point out that no finding has been entered by the enquiry officer of any wilful act on the part of the petitioner attracting imposition of a major penalty. It is further contended by the counsel that copies of all relevant documents had not been made available to the petitioner before the commencement of the enquiry thereby denying to her an effective opportunity to cross examine the witnesses. Consequently, she was seriously handicapped during the enquiry proceedings, resulting in violation of the principles of natural justice. The counsel also refers to various decisions of the Honourable Supreme Court as well as this Court to contend that where the charges are vague an employee is denied an opportunity to contest the charges effectively. It is also pointed out that, the joint custodian of cash in this case was let off with a minor punishment whereas the petitioner was mulcted with the serious punishment of discharge from service. It is contended that for the above reasons it is necessary to interfere with and set aside Ext.P6 award of the Industrial Tribunal.

6. Adv.P.Ramakrishnan appears for the respondent.

The counsel seriously disputes the contentions made on behalf of the petitioner. According to the counsel Ext.P1 charge sheet contains a detailed description of the manner in which the discrepancy alleged against the petitioner was detected. Upon detection of the shortage in cash, a verification was conducted in her presence. It was upon such verification that, the shortage was actually quantified. The petitioner admitted the loss and was even prepared to make good the shortfall. A portion of the cash has been remitted by the Deputy Manager (Accounts) and the other portion by the petitioner. Therefore, it is contended that Ext.P1 charge sheet contained all the necessary details. The petitioner did not contest the allegations made against her. Her explanation was only that because of the stress and strain of the circumstances in which she was placed at the relevant time the shortfall had occurred. Her explanation was considered, she was given full opportunity to participate in the domestic enquiry that was conducted and it was only thereafter that the punishment was imposed on her. The Appellate Authority thereafter considered her appeal and found that the proceedings appealed against were proper but nevertheless modified the punishment imposed and reduced the same to one of discharge from service with superannuation benefits. The petitioner had availed the further opportunity of having the entire matter gone into by the Industrial Tribunal and by Ext.P6, the said authority has also found that the proceedings were all in order. It is therefore contended that no interference at the hands of this Court in exercise of the jurisdiction under Art.226 of the Constitution is called for. The counsel also places reliance on various decisions of the Honourable Supreme Court to drive home the point that banks being custodians of public money, the employees thereof are duty bound to exercise utmost diligence and care while dealing with the same. Any lapse or negligence resulting in loss to the bank is to be viewed seriously and has to be considered as a circumstance resulting in loss of confidence in the employee and warranting the discharge from service. In view of the above, it is contended that no interference with the impugned proceedings are called for.

7. Heard. The facts in this case are not in dispute. The petitioner does not dispute that, she was in charge of the cash at the Edappally branch of the State Bank of Travancore on 28.12.2000. It was on the said date that the shortage in cash was detected. Thereupon, the bank caused a verification of the entire cash held by the branch in the presence of the petitioner. The verification revealed shortage of an amount of Rs.45,510/-. It is true that there is no allegation that the petitioner had misappropriated the amount or misapplied the same for collateral purposes. But, the fact remains that a substantial sum of money was found missing, for which the petitioner has no explanation whatsoever. The shortfall in cash is without doubt loss caused to the bank for which, the person in charge of the currency chest is answerable. A perusal of Ext.P2 report of enquiry shows that the explanation

of the petitioner was regarding the pressure of work in the branch at the relevant time. An additional remittance of a large amount of cash by the Reserve Bank of India, which also had to be dealt with by the petitioner is cited as another reason for the pressure of work at that time. She also alleges paucity of staff, frequent disruption of power as well as breakdown of the generator as circumstances that mounted additional pressure on her manner of functioning. However, there is absolutely no material or evidence regarding the above aspects. There is also nothing on record to show that the petitioner had ever brought the difficulties that were faced, to the notice of her superiors with a request for additional staff to handle the excess work that she was not in a position to handle by herself. It has come out in the report of the enquiry that a substantial sum of money had been remitted by the Reserve Bank of India to the bank during September 2000. The short fall in cash was detected on 28.12.2000, that is by the end of December. Therefore, to accept the explanation of the petitioner as sufficient to justify the shortfall that was detected is difficult. At any rate, it cannot be accepted that the pressure of work could justify the shortfall in cash that was detected. Therefore on facts I do not find any justification for the contentions of the petitioner.

8. With respect to the contention that the charges in Ext.P1 are vague what has to be noticed is that, the entire facts and circumstances under which the shortfall in cash was detected has been stated therein. It has been further stated that the conduct of the petitioner amounted to gross misconduct under clause 19.5(d)(e) and (j). The objection of the counsel for the petitioner is that it has not been stated as to how the conduct of the petitioner amounted to violation of the said clause. The object of a charge sheet is to put the petitioner on notice regarding the allegations made against her and to give her an opportunity to defend the said allegations. In the present case the petitioner very well knew the facts and circumstances under which the domestic enquiry

was instituted. She was fully aware of the allegations against her. She had participated in the enquiry fully, letting in evidence to substantiate her case. Therefore, I am not satisfied that an omission to state how the conduct of the petitioner attracted the relevant clauses referred to in Ext.P1 has prejudiced the proceedings initiated against the petitioner. For the above reasons I do not find that the dictum in the decisions reported in Natavarbhai S.Makwana v. Union Bank of India [(1985)II LLJ 296 Guj] , Sawai Singh v, State of Rajasthan [(1986)3 SCC 454], Ramani v. Karuvatta S.Co-op. Society [1993(2) KLT 681] and Narinder Mohan Arya v. United India Insurance co. Ltd. [(2006)4SCC 713] require to be considered at any length.

9. The other contention canvassed by the counsel for the petitioner is that the punishment imposed on the petitioner is unduly harsh and disproportionate to the charges levelled against her. It is pointed out that the bank had not lost any money, the shortfall having been made good by the

two employees who were responsible for the same. The superior officer, the Deputy Manager (Accounts) who was jointly responsible for the action has been let off with a lesser punishment whereas the petitioner has been imposed with a punishment of discharge from service. Strong exception is taken to the observations of the Industrial Tribunal in Ext.P6 award to point out that, the said authority has even travelled beyond the enquiry report to enter findings that the petitioner had misappropriated the amount that was found to be short. However, a perusal of Ext.P6 does not warrant any such conclusion. True the Industrial Tribunal has referred to the testimonies of witnesses at the enquiry who had deposed to the conduct of the petitioner and her reactions at the time when the shortfall was detected. It has also been observed that, the conduct was not what was expected of a person who was suddenly confronted with the shortfall of a huge amount. The said observations could be interpreted as pointing to a conclusion that the petitioner was in some way involved with causing the shortage that was detected. However, the Tribunal has not interfered with the findings of the Appellate Authority. It has only maintained the same. Therefore, I am not satisfied that the above observations are sufficient to justify an interference with the award.

10. With respect to the question as to the scope of interference with Ext.P6, it has been repeatedly held by the Apex Court that it is only in exceptional cases that this Court would interfere with such proceedings. It shall be sufficient for me to refer to the observations in State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya [(2011) 4 SCC 584]. Paragraph 7 of the said judgment reads as follows:-

> "7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the

reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings of fact are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C.Chaturvedi v. Union of India [(1995)6SCC 749], Union of India v. G.Ganayuthan [(1997)7 SCC 463], Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762] and High Court of Judicature at Bombay v, Shashikant S.Patil [(2000)1 SCC 416]."

On the same lines is a decision in Commissioner of Police, New Delhi v. Narender Singh [(2006)4 SCC 265].

11. It has been held by the Hon'ble Supreme Court in State Bank of India and Another v. Bela Bagchi and Others [(2005) 7 SCC 435], as follows:-

> "A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests 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."

The above observations emphasize the fact that employees of the bank who deal with public money have to exercise extreme diligence and care, considering the fact that they are dealing in public money. In the present case, the petitioner has not exercised such diligence and care as is expected of a responsible employee of the bank holding the post of Head Cashier. Whatever be the reasons that may be put forward for the lapse, the fact remains that she was not careful in dealing with public money. Therefore the contention that the bank has no confidence in the employee cannot be brushed aside as illusory or non-existent. In the present case, the petitioner was the actual person in physical charge of the cash. The Deputy Manager (Accounts) was only exercising supervisory control, though he was jointly liable. For the above reasons I do not find any discrepancy in the manner in which the petitioner and the said person have been punished. The

Appellate Authority has in this case converted the dismissal of the petitioner to discharge from service with superannuation benefits. I do not find any grounds to interfere with the said punishment.

For the above reasons this writ petition is dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

jj /True copy/