

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.17798 of 2015

S.Thangavelu

.. Petitioner

vs.

1.The Presiding Officer,
Central Government,
The Industrial Tribunal cum
Labour Court, Chennai - 104.

2.The Regional Manager,
Central Office,
Indian Overseas Bank,
Personnel Department,
762, Anna Salai,
Chennai - 2.

3.The Deputy General Manager/
Disciplinary Authority,
Central Office,
Indian Overseas Bank,
762, Anna Salai, Chennai- 2.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in connection with the impugned award passed in ID No.83/2013 dated 4.12.2014 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For petitioner

: Mr.M.Muthappan

WEB COPY
ORDER

This Writ Petition has been filed by the petitioner seeking to quash the award passed by the Central Government Industrial Tribunal cum Labour Court, Chennai, in ID No.83 of 2013 dated 4.12.2014 and to direct the respondents to reinstate the petitioner into service and to grant all consequential service and monetary benefits.

2. According to the petitioner, he was appointed as a Messenger in the second respondent Bank at Nattuchalai Branch in the year 2000 at Thanjavur District. By dint of hard work, he was

promoted to the post of Clerk/Shroff and posted to work in Poolambadi Branch. While working at Poolambadi Branch during the year 2011, he was served with a charge sheet dated 22.7.2011 alleging that he had attempted to defraud a sum of Rs.90,000/- from the bank. The petitioner submitted his explanation denying the charges. The respondent did not accept the explanation offered by the petitioner but appointed an Enquiry Officer to enquire into the charges. The Enquiry Officer submitted a report finding the petitioner guilty of the charges. Based on the enquiry report, the Disciplinary Authority had imposed the punishment of dismissal from service by order dated 22.6.2012. Against this order, the petitioner preferred an appeal to the General Manager/appellate authority by his letter dated 11.8.2012 and the said appeal was rejected by an order dated 12.11.2012. Thereafter, the petitioner raised an industrial dispute and upon failure of conciliation, the Government of India referred the said industrial dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Chennai.

3. The Central Government Industrial cum Labour Court, Chennai, after going through the oral and documentary evidence held that the petitioner had committed the misconduct alleged in the charge memo and the petitioner was working in a post where utmost confidence was required and this confidence was betrayed by the petitioner by his attempted misappropriation and the Enquiry Officer had sufficient reasons to find him guilty of the charges. As such, the Central Government Industrial cum Labour Court, Chennai passed Award dated 4.12.2014 in I.D.No.83/2013 and answered the reference against the petitioner. Aggrieved against this Award, the petitioner has filed the present Writ Petition.

4. The learned counsel appearing for the petitioner reiterating the averments made in the affidavit filed in support of the writ petition submitted that while working at Poolambadi Branch during the year 2011, he was served with a charge sheet dated 22.7.2011 alleging that he has attempted to defraud a sum of Rs.90,000/-. Without accepting the explanation offered by the petitioner, an enquiry was conducted on the charges. Only the Investigation Officer was examined by the Enquiry Officer. No independent witness was examined. During the enquiry, the enquiry officer did not accept the objections raised by the defence representative. Apart from that, the petitioner was denied the legitimate right of cross examination on the documents relied on by the third respondent bank. In the absence of bringing the documents on record by examining the author of documents, those documents do not acquire any evidentiary value. The enquiry was not conducted in a fair and proper manner. Based on the enquiry report, the disciplinary authority passed an order of dismissal from service against the petitioner. The appeal preferred against the dismissal order of the disciplinary authority was also rejected. Thereafter, the petitioner raised an industrial dispute and upon failure of conciliation, the dispute was referred to the Central Government Industrial Tribunal cum Labour Court. The Central Government Industrial Tribunal cum Labour Court had failed to appreciate the

fact that there is no evidence available on record to show that the petitioner was the author of the cheque and made attempts to misappropriate the funds. Merely because the petitioner in his explanation, Ex.W.3 has given a reply stating that he was filling up the cheques of the illiterate persons cannot be said that the petitioner has committed the delinquency in the absence of examining the author of the instrument. Moreover, when there is evidence to show that the cheque is in favour of Cholamadevi from the account of Vinaytheerthan, it cannot be stated that the petitioner forged the signature and attempted to transfer the funds into his account. The Industrial Tribunal, without taking into consideration any of the points raised by the petitioner in his claim statement and also the points raised at the time of argument, gave adverse findings against the petitioner. A perusal of the order of the Industrial Tribunal is a repetition of the orders passed by the disciplinary authority as well as the appellate authority in all respects without appreciating the facts. Therefore, the impugned award passed by the Industrial Tribunal is liable to be quashed and the petitioner is entitled to reinstatement.

5. Heard the learned counsel for the petitioner and perused the documents available on record.

6. This Court hardly finds any merit in the Writ Petition. The contention of the learned counsel for the petitioner is also untenable. It is seen from the charges levelled against the petitioner that he had stealthily removed the cheque book bearing Nos.074361 to 074370 from the custody of the bank and fraudulently made a fictitious entry in the cheque book issued register and forged the signature of Ms.C.Sudha (Assistant, Nattuchalai Village Panchayat Office) in the receiver column of cheque book issued register. He had removed cheque leaf bearing No.074361 out of the said cheque book, filled up the name of the payee as "Cholamadevi" and wrote the date of the cheque as 10.9.2009, forged the signature of Mr.Vinaitheerthan (deceased holder of SB Account No.73) in the aforesaid cheque leafs and filled up common pay in slip towards crediting Rs.90,000/- into SB Account No.337 of Ms.G.Cholamadevi. Thus, he had committed gross misconduct within the meaning of clause - 5(d) and 5(j) of the Memorandum of Settlement entered into between the bank and its workmen. This apart, the petitioner after receiving the charge memo submitted a detailed reply denying the charges on 20.8.2011. Enquiry was conducted. The Investigating Officer who had closely examined the cheque book issued register and the entries in the relevant cheque compared them with the handwriting of the petitioner had come to the conclusion that it is the petitioner who made the entries. The Management has produced the Cheque Book Issued Register, the copy of the cheque in question, withdrawal slip etc., in the enquiry proceedings. MW.1 found that the signature in the cheque issued register as that of Panchayat Assistant Sudha is totally different from the signatures put by her earlier while receiving cheque books. The conclusion of MW.1 is corroborated by the Forensic Report. Considering the evidence adduced by the management as well as the petitioner, the enquiry

officer came to the conclusion that the petitioner had committed misconduct and held as the charges were proved. Based on the enquiry report, the charges levelled against the petitioner and the evidence adduced, the disciplinary authority passed the order of dismissal against the petitioner, which was confirmed by the appellate authority on appeal. The Industrial Tribunal was not inclined to interfere with the order of the appellate authority as well as the disciplinary authority considering the materials available on record and the evidence adduced by holding that the petitioner was working in a post where utmost confidence was required and that confidence was betrayed by the petitioner by his attempted misappropriation. In view of the above findings, this Court is unable to find any infirmity or illegality in the Award passed in I.D.No.83 of 2013 dated 4.12.2014 by the Central Government Industrial Tribunal cum Labour Court, Chennai. Hence, the Writ Petition fails and the same is dismissed. No costs.

Sd/--
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

asvm

To

1.The Presiding Officer,
Central Government,
The Industrial Tribunal cum
Labour Court, Chennai - 104.

2.The Regional Manager,
Central Office,
Indian Overseas Bank,
Personnel Department,
762, Anna Salai,
Chennai - 2.

3.The Deputy General Manager/
Disciplinary Authority,
Central Office,
Indian Overseas Bank,
762, Anna Salai, Chennai - 2.

+1 cc to Mr.M.Muthappan, Advocate, sr.31071

W.P.No.17798 of 2015

vgi(co)
kra(19/08)