

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.3.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Writ Appeal No.2716 of 2012
and
MP.No.1 of 2012

1. The Deputy General Manager,
State Bank of India, Zonal
Office, Tiruchirapalli.
2. The Assistant General Manager,
Region II, State Bank of India,
Mc.Donalds Road, Tiruchirapalli.
Pin : 620001.

...Appellants

Vs

1. Central Government Industrial
Tribunal-cum-Labour Court,
rep.by its Presiding Officer,
Sastri Bhavan, Nungambakkam,
Chennai.

- 2.T.Andal
- 3.T.Amudharaj

...Respondents

APPEAL under Clause 12 of the Letters Patent against the order of this court dated 13.8.2012 made in W.P.No.10172 of 2006.

Writ Petition has been filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the concerned records from the first respondent Industrial Tribunal and to quash the award passed by the first respondent Industrial Tribunal dated 07.06.2005 in I.D.No.298 of 2004 and consequently direct the second and third respondent bank to pay full back wages, continuity of service and all other attendant benefits till the date of death of C.Thanigachalam to the first and

second petitioner.

For Appellants	:	Mr.S.Kanniah
For Respondents 2 & 3	:	Mr.Balan Haridas
For Respondent 1	:	Tribunal

JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN, J

The State Bank of India has come up with the above appeal, questioning the correctness of an order passed by the learned Judge in a writ petition filed by the respondents 2 and 3 herein, against an award of the Tribunal.

2. Heard Mr.S.Kanniah, learned counsel for the appellants and Mr.Balan Haridas, learned counsel appearing for the respondents 2 and 3.

3. The respondents 2 and 3 are the wife and son of a person, who was employed in the State Bank of India. On the basis of a complaint given by one of the customers of the bank on 15.2.1999, the bank issued a show cause notice to the employee on 27.5.1999. The employee submitted an explanation. Not satisfied with the explanation, a charge memo was issued and an enquiry followed. The Enquiry Officer submitted a report on 7.2.2001 holding four out of eight charges proved. On the basis of the enquiry report, a second show cause notice was issued on 8.6.2001. After getting the explanation of the employee, the Disciplinary Authority passed an order on 5.7.2001 imposing the penalty of discharge from service.

4. As against the order discharging the employee from service, the employee preferred a statutory appeal on 13.8.2001. It was dismissed by the Appellate Authority by an order dated 12.8.2002. Thereafter, the employee raised an industrial dispute in I.D.No.293 of 2004 on the file of the first respondent. During the pendency of the industrial dispute, the employee died. Therefore, the respondents 2 and 3 herein were impleaded as the petitioners 2 and 3 by an order passed on 21.3.2005.

5. In the industrial dispute, the parties agreed that the departmental enquiry was conducted in a fair and proper manner. The Tribunal also held that the discharge of the employee was legal and justified. Consequently, the Tribunal held that the legal heirs are not entitled to any relief.

6. Aggrieved by the said award, the respondents 2 and 3 filed a writ petition in W.P.No.10172 of 2006. The said writ petition was allowed by a learned Judge by an order dated 13.8.2012 in toto, forcing the management of the bank to come up with the above appeal.

7. As seen from the order of the learned Judge, the only reason as to why the learned Judge allowed the writ petition and set aside the award of the Tribunal was that the appellate authority relied upon P.Ex.15 where the delinquent employee had admitted his guilt. The learned Judge held that P.Ex.15 was not in the nature of further evidence, but had been before the Enquiry Officer. The Enquiry Officer did not rely upon P.Ex.15 to come to the conclusion that four out of eight charges were proved. Therefore, the learned Judge held that the Tribunal was not right in upholding the penalty of discharge from service.

8. It is seen from the award of the Tribunal that despite the fact that the Tribunal did not rely upon P.Ex.15, the Tribunal held that the enquiry was held in a fair and proper manner. The Tribunal did not choose to interfere with the findings of the Enquiry Officer. The Tribunal did not choose to exercise the power under Section 11-A, after recording a finding against the employee. On the other hand, the Tribunal held that the discharge was justified.

9. Therefore, it is in such circumstances that the reliance placed by the appellate authority on P.Ex.15 cannot be taken advantage of by the respondents 2 and 3. As rightly contended by the learned counsel for the appellants, the penalty imposed upon the employee was only a discharge from service. The employee was discharged on 5.7.2001. Subsequently, he died on 27.11.2004. Since the employee was an award staff, he was entitled to (i) employer's and employee's contribution to provident fund; and (ii) gratuity. The employee was admittedly entitled to interest at 15% per annum on the gratuity. None of these amounts have been deprived to the employee, in view of the fact that the discharge did not result in the forfeiture of the gratuity or accumulation to provident fund. The only penalty that the employee suffered was the denial of wages from the date of discharge namely 5.7.2001 to the date of death namely 27.11.2004. In any case, admittedly, he had not become eligible for the grant of pensionary benefits due to the non-fulfilment of the qualifying years of service. Therefore, looking at the whole gamut of facts, the discharge of the employee for the proved misconduct, cannot also be said to be unfair.

10. Once it is found that the domestic enquiry was held in a fair and proper manner and once it is found that the findings recorded did not call for interference on the ground of being

perverse, the scope of jurisdiction under Article 226 to interfere with the award of the Tribunal was very limited.

11. In such circumstances, the order of the learned Judge upsetting the award of the Tribunal only on the ground that the appellate authority and the Tribunal also took note of P.Ex.15, which was not relied upon by the Enquiry Officer, may not be proper as the same is nothing but a reply given by the employee to the show cause notice served on him. The Appellate Authority was right in taking into account P.Ex.15, as it was a departmental appeal, entitling him to scrutinize the facts. Hence, the award of the Tribunal did not actually warrant interference by the learned Judge.

12. Accordingly, the writ appeal is allowed and the impugned order of the learned Judge is set aside. However, we make it clear that the respondents 2 and 3 are entitled to payment of gratuity together with interest at 15% and also the contribution on both sides to the provident fund. The amounts statutorily due and payable to the respondents 2 and 3 shall be disbursed to them within a period of four weeks from the date of receipt of a copy of this order after any deduction lawfully made. No costs. Consequently, the above MP is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

RS

To

The Presiding Officer,
Central Government Industrial Tribunal-cum-Labour Court,
Sastri Bhavan, Nungambakkam, Chennai.

1 CC to Mr.S.Kanniah, Advocate SR.No. 12283

1 CC to Mr.Balan Haridas, Advocate SR.No. 12239

WA.No.2716 of 2012
and MP.No.1 of 2012

EV (CO)
PSI (24.04.2015)