

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.4854 OF 2009

DATED:02-9-2015

Between:

S.S.P. Sharma

... Petitioner

And

The Industrial Tribunal-II
Chandra Vihar Complex, M.J. Road, Hyderabad
and another

... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mr. V. Hari Haran

COUNSEL FOR RESPONDENT NO.1: -

COUNSEL FOR RESPONDENT NO.2: Ms. G. Sudha

THE COURT MADE THE FOLLOWING:

ORDER:

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This writ petition is filed for issue of writ of certiorari for quashing Award dt.30.5.2008, as published in G.O. Rt. No.1575, Labour, Employment, Training & Factories (LAB-I) Department, dt.18.7.2008, and consequently to allow I.D. No.11 of 1997, on the file of the Industrial Tribunal-II, Hyderabad.

2. The facts leading to filing of this writ petition are briefly stated hereunder.

The petitioner was an employee of respondent No.2. During the relevant period, he worked as Cashier of Ghatkesar unit of respondent No.2. In discharge of his functions as Cashier, he has allegedly misappropriated certain amounts. A show cause notice was issued to the petitioner on 10.7.1995 alleging misappropriation of funds to which he submitted his explanation on 31.8.1995. A charge sheet was issued to the petitioner containing four charges. Shorn of the details relating to various vouchers, the main heads of the charges read as under:

- I. *"You have fraudulently drawn the following amounts from the cash and misappropriated the same.*
- II. *You have fraudulently drawn the following amounts and misappropriated the same.*
- III. *You have dishonestly and fraudulently drawn amounts allegedly towards payment of pensions more than once for the same person for the same month as detailed below.*
- IV. *It is also noted that you have drawn various amounts covered under 34 vouchers shown below during the period 02/01/1995 to 25/02/1995 totalling to Rs.35,002/- and booked them under various account heads. On verification we find such expenses were not incurred by the department concerned to which you booked these expenses. It is also noted that these vouchers have been removed by you from the concerned file which was in your custody with an ulterior*

motive to destroy the evidence/records.”

The enquiry officer appointed by the disciplinary authority has held enquiry and submitted his report on 12.3.1996 holding all charges as proved. On 26.3.1996 a show cause notice was issued to the petitioner to which he submitted his explanation on 19.4.1996. By order dt.25.5.1996 the petitioner was dismissed from service. On the very same day, an application was moved under Section 33(2) of the Industrial Disputes Act, 1947 (for short, 'the Act') by respondent No.2 seeking permission of the Court to dismiss the petitioner. On the petitioner approaching the Government of Andhra Pradesh, the latter has issued G.O. Rt. No.2891, referring the dispute to Labour Court-III for adjudication. The dispute was numbered as I.D. No.217 of 1996. After filing of claims statement by the petitioner, the I.D. was re-numbered as I.D. No.11 of 1997. (On a joint Memo filed in W.P. No.5147 of 1997 by both the parties, both MP/3/1996 and I.D. No.217/1997 were clubbed together to be renumbered as I.D. No.11 of 1997). By order dt.26.2.1998, the Industrial Tribunal-II to which the case was transferred, disposed of MP/3/96 holding that the domestic enquiry conducted by respondent No.2 was illegal and invalid. However, by Award dt.18.6.1999 the Industrial Tribunal has rejected the I.D. filed by the petitioner. Feeling aggrieved thereby, the petitioner has filed W.P. No.23833 of 1999 which was allowed by this Court, and while setting aside the Award, the Industrial Tribunal was directed to consider the case afresh in accordance with law. On 30.5.2008 the Industrial Tribunal-II has passed the impugned Award.

4. Mr. V. Hari Haran, learned counsel for the petitioner, made the following submissions.

(i) The writ petitioner is a protected workman and therefore his dismissal from service by respondent No.2 without permission of the Industrial Tribunal is contrary to Section 33(3) of the Act. In support of his submission, he has relied on a judgment of the Gujarat High Court

in *R. Balasubramaniyan v. Carborundum Universal Limited*^[1] and

(ii) that respondent No.1 – Tribunal has committed a serious error in appreciating the evidence on record and rendered perverse findings regarding the alleged misconduct of the petitioner.

5. Ms. G. Sudha, learned counsel representing respondent No.2, has strenuously opposed these submissions of the learned counsel for the petitioner. She has submitted that the petitioner is not a protected workman in terms of Section 33(3) of the Act read with Rule 61 of the Industrial Disputes (Central) Rules, 1957 (for short, 'the Rules') as the trade union of which the petitioner was elected as President has not communicated to respondent No.2, the names and addresses of the officers of the union who are employed in that establishment and should be recognized as protected workmen. She has further submitted that respondent No.1 – Tribunal has discussed the evidence on record properly and rendered findings based on evidence and that therefore the impugned Award is not liable for interference.

6. Let me first consider the first submission of the learned counsel for the petitioner. Section 33 of the Act envisages certain protection to the workman during the pendency of the industrial disputes. Sub-section (3) thereof, which is relevant for the present purpose, reads as under:

33(3). Notwithstanding anything contained in sub-section (2), no employer shall during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute –

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman;

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation - For the purposes of this sub-section, a 'protected workman' in relation to an establishment, means a workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognized as such in accordance with

rules made in that behalf.”

It is not in dispute that by the time the disciplinary proceedings were initiated against him, the petitioner was elected as President of the workers' union. Respondent No.1 – Tribunal has rejected the plea of the petitioner on the ground that since the charges pertain to the period prior to his election as the Union President, the protection under Section 33(3) of the Act is not available to the petitioner. This reasoning of the Tribunal, in my opinion, is erroneous. Therefore, I will independently consider the plea of the petitioner with reference to the relevant statutory provisions.

7. As could be seen from the above mentioned provision, if any industrial dispute is pending before any authority, the employer is prevented from taking certain measures against the 'protected workman', including his discharge, dismissal or otherwise. The question is as to who is the protected workman? Under the explanation to the aforesaid provision, 'protected workman' is one who is a member of the executive or other office bearer of a registered trade union connected with the establishment, and is recognized as such in accordance with rules made in that behalf. Sub-rules (1) and (2) of Rule 61 of the Rules, which are relevant for the purpose of the present case, read as under:

61. Protected Workmen:- (1) Every registered trade union concerned with an industrial establishment, to which the Act applies shall communicate to the employer before the (30th April) every year, the names and addresses of such of the officers of the union who are employed in that establishment and who, in the opinion of the union should be recognized as 'protected workmen'. Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.

(2) The employer shall, subject to Section 33, sub-section (4) recognize such workmen to be 'protected workmen' for the purposes of sub-section (3) of the said Section and communicate to the union, in writing, within fifteen days of the receipt of the names and addresses under sub-rule (1), the list of workmen recognized as protected workmen for the period of twelve months from the date of such communication.”

8. Under the above statutory provisions a workman can claim to be a 'protected workman' provided he represents the registered trade union as a member of the executive or other office bearer and his name is included in the list communicated by the Registered Trade Union to the employer before 30th of April of every year. Though the petitioner has claimed that he is a protected workman, he has neither pleaded nor produced any evidence to show that his union has communicated the list of the protected workmen to respondent No.2. However, the learned counsel for the petitioner placed his reliance on the judgment of the Gujarat High Court in *R. Balasubramanyam* (1 supra). In that case, a list was communicated by the union to the employer, but, no specific order was passed by the employer as required under sub-rule (2) of Rule 61 of the Rules. On those facts, the Gujarat High Court held that under Rule 61(2) [wrongly shown as Rule 66(2) in the report] there is an obligation on the part of the employer to recognize the workmen to be protected workmen within fifteen days of receipt of the names and if the employer has not discharged the said obligation, the workmen will not cease to be protected workmen as by communication of the list by the union the right came to be vested in the workmen to be treated as 'protected workmen'. This judgment would have been of help to the petitioner if he has pleaded and produced evidence to the effect that the union has communicated such list to respondent No.2. In the absence any such plea supported by evidence, the petitioner cannot claim the benefit under Section 33(3) of the Act.

9. Before considering the submission of the learned counsel for the petitioner on the legality or otherwise of the Award of respondent No.1 – Tribunal, I feel it profitable to recapitulate the settled legal position pertaining to the scope of jurisdiction of the Courts in interfering with the orders passed in departmental proceedings/Awards of the Labour Courts, pertaining to such proceedings.

10. In *State of Andhra Pradesh v. Sree Rama Rao*^[2], the Supreme Court held:

“The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.”

This ratio is reiterated in many subsequent judgments of the Supreme Court (See *State of Andhra Pradesh v. Chitra Venkata Rao*^[3], *K.L. Shinde v. State of Mysore*^[4], *Jiwan Mal Kochar v. Union of India*^[5], *B.C. Chaturvedi v. Union of India*^[6], *High Court of Judicature at Bombay through its Registrar v. Shashikant S Patil*^[7], and *South Bengal State Transport Corporation v. Swapan Kumar Mitra*^[8]).

11. Bearing in mind the legal parameters referred to above, I shall consider whether the findings recorded by respondent No.1 – Tribunal are supported by evidence and whether they are perverse. The

imputation under Charge No.I is as under:

“The recent audit of the Factory revealed the following omissions and commissions committed by you during the period you worked as cashier in the Factory.

I. You have fraudulently drawn the following amounts from the cash and misappropriated the same.

- By Voucher no.43 on 03/01/95 you have drawn a Rs.100/- as Widow Pension for November 1994 allegedly to one Smt. Manemma W/o.Ex Dkt no.86 late Mr. Rararam though she ceased to be eligible for Widow pension in April, 1992.

- By voucher no.70 on 05/01/95 you have drawn Rs.100/- as Widow pension for November 1994 allegedly to one Smt. Yadamma W/o. of Ex. Dkt no.28 late Mr. Sathiah though she ceased to be eligible for Widow pension in March 1991.

- By voucher no.70 on 05/01/95 you have drawn Rs.100/- as Widow pension for November 1994 allegedly to one Smt. Sakkubai W/o. of Ex. Dkt No.201 late Mr. Mallesh though she ceased to be eligible for Widow pension in March 1993.”

12. In order to prove the charge, the management examined M.Ws. 1 to 11, and marked Exs.M.1 to M.86. The petitioner examined himself as W.W.1 and marked Exs.W.1 to W.12. In this context, it is relevant to note the stand taken by the petitioner with reference to his duties. In his examination in chief as W.W.1, he has *inter alia* stated as under:

“The nature of duties of Cashier to which I was posted commence at 8 in the morning and I will take cash for the cash required for the day from the Accounts Officer and make payments as authorized by him and at the end of the day i.e, at 4 ‘o clock I will have to hand over unspent money to the Accounts Officer, vouch safing all the payments made during the day. A cash book will be maintained for all the entries of payments made day to day. The Accounts Officer verifies the cash book reflecting the payments made during the day at tallies all the figures and unspent money., after which he will put his signature. The vouchers will also be handed over to the Accounts Officer after making entries in the Cash book. The Accounts Officer checks voucher by voucher. Ex.M.83 is the Cash book maintained during my tenure of cashier wherein my signature as well as the Accounts Officer signature is there. After taking possessions of the cashbook and voucher the vouchers will not come back to me and they will be in the possession of the Accounts Officer. The vouchers pertain to various Deptts., and they will come to me for payment after authorization of the Accounts Officer....”

13. From the afore-extracted deposition of the petitioner, it is evident

that it is his pleaded case that as a Cashier his duty is only to make payments as authorized by the Accounts Officer. He has also specifically deposed that the entries pertaining to various departments will come to him for payment after authorization of the Accounts Officer. However, in his cross-examination, he has clearly admitted that he has himself prepared the vouchers such as Exs.M.8, M.11, M.14, M.17, M.22 etc., with reference to which Charge No.I is prepared.

14. Coming to the evidence of the department, in support of Charge No.I, pertaining to voucher No.43, the same was marked as Ex.M.8 which relates to purported payment of widow pension of Rs.100/- drawn in the name of Smt.Manemma in November, 1994, and an Ex-employee pension of Rs.267/- drawn in the name of B. Narsimhulu. Charge No.I specifically alleged that the eligibility of Smt. Manemma to draw widow pension has ceased in April, 1992 while the petitioner has prepared voucher, Ex.M.8, and fraudulently drawn the said amount for the Month of November, 1994 and misappropriated the same. In his cross-examination, it was elicited from the petitioner that in Ex.M.9, register maintained by the petitioner pertaining to pensions of Ex-employees for the Month of November, 1994 Manemma's thumb impression was affixed against the name of Manemma and that Ex.M.58 relates to register of Manemma pertaining to pension payments which contains her thumb impressions. The witness was questioned on comparison of thumb impressions between Ex.M.9 and Ex.M.58 and a suggestion was put to him that even to the naked eye there is a variation in the thumb impressions between the said two documents. Significantly, the petitioner has admitted that Ex.M.8 indicates that Manemma was eligible for widow pension upto April, 1992 only, while as per the record, vide Exs.M.8 and M.9, the widow pension was drawn for the month of November, 1994. A suggestion was also put to the petitioner that by manipulating the records he has drawn November, 1994 pension which of course was denied by him.

15. It is significant to note that Manemma was examined for Management as M.W.9. She has categorically stated in her evidence that her husband died 18 years back while in service, that she was paid widow pension of Rs.100/- and nominal pension of Rs.80/- per month, that her entitlement for widow pension has ceased from May, 1992 and that she was not paid widow pension in November, 1994 as shown in Ex.M.9. However, she was paid Rs.80/- in November, 1994. The only relevant suggestion that was put to this witness by the petitioner was that she was deposing falsely.

16. The next part of the charge was voucher No.70, dt.5.1.1995 pertaining to the purported widow pension of Smt. Yadamma. The petitioner has admitted that he has prepared Ex.M.11, voucher, relating to the widow pension of Yadamma and Ex.M.12, register for pensions, showing that payment of Rs.199/- was made towards widow pension for November, 1994. He has admitted that as per Ex.M.59, Yadamma's entitlement to receive widow pension was upto April, 1991 only. He has further admitted that there was a signature under the signature column, and Yadamma's name was written under the thumb impression. However, a perusal of Ex.M.57, which is undisputed pension payment register relating to Yadamma, shows that she has received pension upto March, 1991 only and she has affixed her thumb impressions as she is a thumb impressionist. Yadamma was examined by the management as M.W.8. She has deposed that she was paid widow pension of Rs.100/- and nominal pension of Rs.85/- per month from March, 1998, that she was not paid widow pension in the Month of November, 1994 as shown in Ex.M.12 and that the said document does not bear her signature and somebody has signed the same. In her cross-examination, she has however, stated that she could not remember when she received pension for the month of November, 1994 and that she has not complained to the respondent No.2 for not receiving pension for the month of November, 1994.

17. Voucher No.70 referred to as a third part of Charge No.I, pertains to the purported payment of widow pension to Smt. Sakkubai. The petitioner has admitted that Ex.M.11 is the voucher and Ex.M.12 is the register prepared by him pertaining to payment of November, 1994 pension to Sakkubai and that Ex.M.14 voucher and Ex.M.15 register were prepared by him for December, 1994. He has further admitted that in Ex.M.15 register at Serial No.2, Sakkubai's name was written in Telugu, whereas in Ex.M.60 pension payment register of Sakkubai, she has affixed thumb impressions and she has not signed. He has denied the suggestion that the thumb impressions between Ex.M.12 and Ex.M.60 vary. Sakkubai was examined as M.W.7. She has deposed that she has affixed thumb impressions only while receiving pension. She denied her purported signature on Ex.M.15 by saying that she always affixes thumb impressions as she is an illiterate. She has further admitted that in the year 1994 she was paid Rs.87/-. Significantly not even a suggestion was put to this witness that she has received pension for December, 1994 from the petitioner or that she is speaking falsehood. The petitioner also failed to put any suggestion that the witness has signed Ex.M.15.

18. The above discussed evidence would clearly show that contrary to the stand taken by the petitioner that his duty was to pay cash based on vouchers received by him from various departments, he has himself prepared the vouchers referred to in Charge No.I. It has also come out clearly from the evidence that while the vouchers and payment registers prepared by him showed payment of pension to Manemma in November, 1994, the fact however remains that her entitlement to receive pension ceased in April, 1992 and said Manemma in her evidence clearly denied receipt of pension for November, 1994. The same is the case of Yadamma and Sakkubai, who have denied signatures on Exs.M.12 and M.15.

19. In my opinion, this evidence would sufficiently prove the

delinquency of the petitioner as alleged under Charge No.I that he has fraudulently drawn certain amounts towards widow pension and misappropriated the same without making payments to the persons in whose names vouchers and other records were prepared.

20. Charge No.II pertains to the alleged fraudulent drawal of Annual Leave Advance of two employees by name, Mr. Dharmaiah and Mr. Ramulu. The gravamen of this charge is that the petitioner has fraudulently drawn Rs.600/- in the name of Mr. Dharmaiah, as annual leave advance, through voucher No.37, on 3.1.1995 (Ex.M.36) and that the said amount was not paid to said Dharmaiah. Further, under Voucher No.128 under Ex.M.40, a sum of Rs.800/- was drawn in the name of Mr. Ramulu towards annual leave advance, but the said amount was not paid to him. The petitioner has admitted in his cross-examination that he has prepared both these vouchers. With regard to Ex.M.36, the voucher was prepared under Code No.4719 and it contains purported signature of Dharmaiah in English and shown under Code No.288. A suggestion was put to him that the said Code (No.288) relates to Machine spares and canteen expenses. The petitioner has also admitted that Ex.M.40 voucher was prepared by him for Rs.800/- and it contains the purported signature of Ramulu in Telugu. A suggestion was put to him that he has prepared the voucher with Code No.195 which pertains to Firewood expenses.

21. As regards Ex.M.36, it contains the purported signature of Dharmaiah in English. In Ex.M.38, representation dt.10.7.1995 made by the said Dharmaiah to the management, complaining that he has not availed the annual leave advance of Rs.600/- vide Ex.M.36 voucher, he has signed in Telugu. The management has also marked the representation of Dharmaiah stating that he has never availed the annual leave advance, as Ex.M.56. Similarly, with regard to Ex.M.40 pertaining to Ramulu while it is shown to have been signed in Telugu using his purported initial 'R' in English. However, in Ex.M.42, the

complaint made by him to the management against the alleged drawal of Rs.800/- towards annual leave advance, he has signed in English. It is pertinent to note that Dharmaiah was examined as M.W.3. He has categorically deposed as under:

“...I am illiterate. I can sign. Ex.M.56 is the letter endorsement made by me. Ex.M.56 is the endorsement of my denying availment of leave advance. During the enquiry I stated that somebody has signed my signature and drawn the leave advance Rs.600/-. I protested for deducting the leave advance of Rs.600/- the enquiry made on 13-7-95. During the enquiry by the Factory Personnel Manager showed the voucher, I denied the signature on the voucher. I normally sign in telugu, i.e., B. Dharmaiah.”

Interestingly, no suggestion was put to this witness by the petitioner that he was speaking falsehood and that he has availed the annual leave advance and received a sum of Rs.600/-. Similarly, Ramulu was examined as M.W.2. In his chief examination, he has reiterated his stand as reflected in his complaint under Ex.M.42. Even to this witness, the petitioner failed to suggest that he has made false complaint and that he has received the annual leave advance of Rs.800/-. The overwhelming oral and documentary evidence referred to above, proves charge No.II without any cavil of doubt.

22. Coming to Charge No.III, it must be observed that this charge is wholly misconceived for the reason that the same is framed on the premise that there is double payment. Indeed, the question of double payment would not arise as the payment purportedly made by the petitioner, which is the subject matter of Charge No.I cannot be considered as a payment at all. Therefore, the latter payments which are genuinely made alone constitute valid payment and therefore this charge is wholly misconceived.

23. Charge No.IV pertains to missing of 34 vouchers prepared by the petitioner, payments under which were made to a tune of Rs.35,000/- during the period 2.1.1995 to 25.2.1995 under various accounts heads.

In his cross-examination the petitioner admitted that Ex.M.8

pertains to pension and widow pension for November, 1994, while corresponding computer voucher (Ex.M.10) mentioned Code No.195 which pertains to mutton expenses of Rs.437/-. Of course, the petitioner has denied the suggestion that he has drawn Rs.437/- under Code 197 & 997 pertaining to widow pension, appropriated the same and that for the purpose of accounts he has showed the said amount under Account Code 195 towards mutton expenses.

24. Similarly, the petitioner has admitted preparation of Ex.M.11, voucher, dt.5.1.1995, for Rs.508/- under pension and widow pension Code 197 & 997 and under Ex.M.13 computer voucher, the same amount was shown under Code No.195 which pertains to firewood expenses. Similarly, the petitioner has admitted preparation of manual vouchers with reference to each of the 34 transactions and corresponding computer vouchers by placing different code numbers which are in connection with the expenditure as shown in the manual vouchers, such as canteen expenses, chicken & eggs, firewood etc. With reference to this charge, M.W.1 in his evidence *inter alia* stated as under:

"All the accounts and expenditure were fed into the computer. The petitioner himself fed the information with regard to the expenses. The auditors on inspection found that there are 34 original manually written vouchers missing, i.e., from period 2-1-95 to 25-2-95. All the expenses were put under fictitious accounts. The manual vouchers are not there and the entries made in the computer vouchers on verification we found that no such expenses were incurred by the concerned departments. Most of the expenses on verification we found that they are booked under the canteen code 194 and 195. Ex.M.55 is of 33 folios the total amount is Rs.35,000/-. I have personally verified and also gave the internal auditor for 100% check."

Though the petitioner has cross-examined M.W.1 on various aspects of the computer vouchers (Ex.M.55), not even a suggestion was put to the witness that the computer codes mentioned therein related to the actual expenditure for which manual vouchers were issued. All that was suggested to the witness was that the company has deliberately removed the vouchers and made wrong entries in heads of accounts

after he has left the seat of Cashier. In his cross-examination, W.W.1 has made the following admission.

"It is true that these are 34 computer vouchers consisting in Ex.M.55 and the total amount is for Rs.35,002/- for the period from 2-1-95 to 26-2-96. It is true that before feeding into the computer I will prepare manual voucher. In manual voucher account code was shown and when expenses were booked under the same code it was fed into the computer. It is true that when information printout is taken out from the computer it will be identical as that of the manual voucher. The account code indicates the expenses booked for that head of the computers.It is true that Ex.M.77 (canteen) there are headings with regard to expenses, like Firewood, Vegetables, Chicken Expenses etc. It is true that under Ex.M.58 voucher No.8 is for Rs.600/- dt.2.1.95. It is true that it is meant for vegetable and canteen. It is true that Ex.M.77 dt.2.1.95 no amount was booked for vegetables. It is incorrect to suggest that all the 34 vouchers under Ex.M.55 expenditure was not reflected nor based under the canteen expenditure under Ex.M.77, M.78 and M.79 and M.80. It is true that Ex.M.83 is maintained by me. ... It is incorrect to suggest that 34 vouchers under Ex.M.55 are fed by me and prepared by me."

25. From the above evidence, it is clear that the petitioner has taken a stand that he has not prepared 34 computer vouchers. However, he has admitted that before feeding into computer, he will prepare manual voucher and when information print out is taken out from the computer, it will be identical to that of the manual vouchers. Though the charge to the extent that the petitioner was responsible for misusing of 34 vouchers has not been proved through direct evidence, the fact, however, remains that even in the absence of those vouchers, the computer vouchers, which reflected the contents of the manual vouchers as admitted by the petitioner himself, would clearly prove that the petitioner has booked the expenditure in the computer vouchers under wrong heads evidently to ensure that the vouchers are passed by the computer code as per the programming done in the computer.

26. From the discussion undertaken above, it is evident that the findings on Charge Nos.I, II and IV are based on unimpeachable evidence. While exercising power of judicial review, this Court will not re-appreciate the evidence in order to come to a different conclusion in

interfering with the findings of the disciplinary authority, even if two views are possible on such re-appreciation. It is not a case of no evidence or perverse appreciation of evidence. The evidence available on record based on which penalty is imposed on the petitioner clearly shows that the guilt of the petitioner is established at a level much superior to that of preponderance of probabilities. The consistent suggestion that the respondent No.2 has created the record after the petitioner was elected as President was not supported by any evidence and no foundation whatsoever has been laid on the allegation of victimization.

27. In *Bharat Iron Works v. Bhagubhai Balubhai Patel*^[9] dealing with the plea of victimization, the Supreme Court held as under:

“A word of caution is necessary. Victimisation is a serious charge by an employee against an employer, and, therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The charge must not be vague or indefinite being as it is an amalgam of facts as well as inferences and attitudes. The fact that there is a union espousing the cause of the employees in legitimate trade union activity and an employee is a member or active office-bearer thereof, is, per se, no crucial instance. Collective bargaining being the order of the day in a democratic social welfare State, legitimate trade union activity which must shun all kinds of physical threats, coercion or violence, must march with a spirit of tolerance, understanding and grace in dealings on the part of the employer. Such activity can flow in healthy channel only on mutual cooperation between employer and employee and cannot be considered as irksome by the management in the best interest of the concern. Dialogues with representatives of a union help striking a delicate balance in adjustment and settlement of various contentious claims and issues.”

Nowhere in the pleadings the petitioner has specifically pleaded victimisation, much less proving such plea by adducing evidence. Hence, I do not find any merit in this plea.

28. Learned counsel for the petitioner has lastly submitted that the quantum of punishment may be reduced by invoking powers of this Court under Section 11-A of the Act. Having given by earnest

consideration to this plea, I am of the opinion that as the misconduct proved against the petitioner pertains to misappropriation of money, I am not inclined to invoke the said provision for reduction of penalty.

29. For the above reasons, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P. Nos.6364 of 2009 and 36769 of 2012 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

02-9-2015

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[\[1\]](#) 1975 Law Suit (Guj.) 80

[\[2\]](#) AIR 1963 SC 1723

[\[3\]](#) AIR 1975 SC 2151

[\[4\]](#) AIR 1976 SC 1080

[\[5\]](#) AIR 1983 SC 1102

[\[6\]](#) (1996) 6 SCC 750

[\[7\]](#) (2000) 1 SCC 416

[\[8\]](#) (2006) 2 SCC 584

[\[9\]](#) AIR 1976 SC 98