

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.05.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3894 of 2015

G.Nagasubramanian

... Petitioner

-vs-

1.Indian Bank
rep.by its Deputy Manager
Corporate Office, Compliance Department
Royapettah, Chennai-600 014

2.Indian Bank
rep.by its Assistant General Manager
Zonal Office, Pennagaram Road
Dharmapuri-636 702

3.The Central Government Industrial
Tribunal-cum-Labour Court
Sastri Bhavan, Madras-600 006

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records in I.D.No.8 of 2013, dated 30.12.2014, on the file of the third respondent and quash the same as illegal, incompetent, unconstitutional and without justification and further direct the respondents 1 and 2 to reinstate the petitioner in service with effect from 25.09.2010 with backwages, continuity.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mrs.Rita Chandrasekar
for M/s.Aiyar & Dolia for R1

ORDER

Reserved on : 01.04.2016

Pronounced on : 04.05.2016

This writ petition has been filed for issuance of a writ of certiorarified mandamus to quash the Award, dated 30.12.2014, passed in I.D.No.8 of 2013, by the third respondent / Central Government Industrial Tribunal-cum-Labour Court (hereinafter referred to as “the Labour Court”) and for a consequential direction to the respondents 1 and 2 to reinstate the petitioner in service in the respondent Bank with effect from 25.09.2010 with backwages and continuity of service.

2. The petitioner joined the service of the respondent Bank during 1995 as a Clerk-cum-Shroff and had been working in various places. When he was transferred and posted to Kambainallur Branch as a Single Window Operator from 03.03.2008, on an allegation that the petitioner unauthorizedly debited a sum of Rs.10,000/- from the savings bank account of one Nagamani and committed misappropriation of customers' money, based on an alleged complaint given by the account-holder on 25.11.2008, he was placed under suspension by a communication, dated 08.07.2009, which was also a show-cause notice calling upon him to show-cause as to why disciplinary action should not be taken against him. The petitioner submitted his reply on 07.08.2009 and not being satisfied with the reply, a charge memo was issued on 28.10.2009.

3. The petitioner submitted his explanation, dated 11.11.2009, to the charge memo totally denying the charges. An Enquiry Officer was

appointed, who submitted his findings, on 05.05.2010, holding the charges proved as against the petitioner. The copy of the enquiry report was communicated to the petitioner by the Disciplinary Authority calling upon him to show-cause as to why the findings should not be accepted. The petitioner submitted his reply, whereupon the Disciplinary Authority by communication, dated 19.08.2010, issued a show-cause notice calling upon the petitioner to show-cause as to why the punishment of dismissal from service should not be issued against him. The petitioner, submitted his reply, on 25.08.2010, and he was afforded an opportunity of personal hearing on 31.08.2010 and final orders were passed by the Disciplinary Authority, on 25.09.2010, dismissing the petitioner from service. The petitioner preferred an appeal before the Deputy General Manager / Appellate Authority on 25.10.2010, which was dismissed by the Appellate Authority by Order, dated 19.03.2011. Challenging the Order of dismissal from service, the petitioner raised the dispute before the third respondent / Labour Court.

4. Before the Labour Court, the petitioner was examined as W.W.1 and 23 documents were marked as Exs.W1 to W23 and on the side of the Management one Mr.G.Rajendran was examined as M.W.1 and 28 documents were marked as Exs.M1 to M28. The Labour Court proceeded to consider the issue as to whether there is any justification in the action of the respondent Bank in imposing the punishment of dismissal from service of the petitioner. After analyzing the oral and documentary evidence, the Labour Court held that the punishment is justified and not disproportionate

to the proven charges. Accordingly, an Award was passed, on 28.10.2014, rejecting the claim petition. Challenging the same, the petitioner is before this Court by way of this writ petition.

5. The learned counsel for the petitioner submitted that the incident, based on which charge proceedings were issued, is alleged to have taken place on 05.11.2008, but the charge proceedings were issued after a period of nine months on 28.10.2009 and there is no explanation for such a long delay. Further, it is submitted that the complainant was neither produced nor examined at any point of time during the course of enquiry and he never appeared before the Enquiry Officer. It is further submitted that the anonymous letter, dated 18.03.2009, was never produced at any point of time and was introduced only before the Appellate Authority. Further, the Appellate Authority failed to take note of the fact that the complainant had updated his passbook on 14.11.2008 and the allegation is with regard to the withdrawal on 05.11.2008 and there is no explanation for the belated complaint given after eleven days. Further, it is submitted that the Labour Court ought to have considered that the action was initiated based on an anonymous letter, dated 18.03.2009 and unsigned pay-in-slip marked as Ex.M5 and the documents were not proved in the manner known to law.

6. It is further submitted that Ex.M26 was produced for the first time before the Labour Court, which is a withdrawal slip, dated 05.11.2008,

signed by the complainant along with the Bank Manager and this document was not placed in the domestic enquiry. Further, it is submitted that the Labour Court failed to consider that despite M.W.1 being unable to corroborate his statement by producing the VVR and the Labour Court ought to have rejected the deposition of M.W.1 as to his reliability as M.W.1 was removed from service for misappropriation. On these grounds, the learned counsel prays for setting aside the Award passed by the Labour Court and for a direction to reinstate the petitioner in service.

7. The learned counsel for the respondent Bank submitted that the petitioner was appointed as a Clerk-cum-Shroff in the respondent Bank on 11.09.1995 and was subsequently posted as a Single Window Operator (SWO). During his tenure of service, he had committed irregularities and was first issued a punishment of stoppage of increment with cumulative effect for submitting false LFC/TA Bills, by Order dated 05.11.2005. The petitioner was working as a Single Window Operator in Dharmapuri Branch and while he was in service in the said Branch, a complaint was received from a customer, on 28.10.2006, stating that a sum of Rs.5,500/- has been withdrawn from his savings account unauthorizedly by the petitioner. Another complaint was received from another customer on 07.12.2006 stating that a contra voucher for Rs.2,000/- was posted by the petitioner by debiting the savings bank account of a Senior Manager of the respondent Bank. Though the petitioner stated that he did so with the consent of the said Senior Manager, who denied the same. Another complaint was received on 22.12.2006 when the Branch detected a shortage of four pieces in

Rs.500/- section received from the Single Window Operator when the petitioner was a cashier. The petitioner admitted the same and remitted the amounts of Rs.5,500/- and Rs.2,000/-. A punishment of censure was imposed and he was transferred to Kambainallur Branch. While functioning at Kambainallur, a complaint was received from one A.Nagamani, on 05.11.2008, stating that he had deposited Rs.20,000/- in his savings bank account and there was a withdrawal of Rs.10,000/- on the same day. The account-holder is said to have come to the Branch on 26.11.2008 objecting to withdrawal of Rs.10,000/- effected on 05.11.2008. The withdrawal was admitted and at the Branch level it appears that an attempt was made to ensure that the customer was not put to any loss. The Vigilance Department and the respondent Bank received an anonymous letter on 18.03.2009 about the incident which ultimately resulted in issuing of the show-cause notice, dated 08.07.2009, to the petitioner regarding unauthorized withdrawal of Rs.10,000/-. The explanation submitted by the petitioner was not found to be satisfactory and an Enquiry Officer was appointed, who conducted the domestic enquiry in a fair and proper manner between 09.02.2010 and 03.03.2010. The Enquiry Officer submitted his findings that the charges are proved and the copy of which was furnished to the petitioner for his comments. On considering the comments offered by the petitioner, the punishment of dismissal of service was imposed, which was challenged by the petitioner by raising a dispute before the Labour Court. It is submitted that the Assistant Branch Manager of Kambainallur Branch was examined as M.W.1, who on receipt of the complaint from the customer concerned, namely, Nagamani verified the statement of accounts and noticed

that a sum of Rs.10,000/- was withdrawn on 05.11.2008, the date on which the amount of Rs.20,000/- was deposited. M.W.1 clearly deposed that the petitioner admitted that he had withdrawn a sum of Rs.10,000/- from the account of Nagamani on 05.11.2008 and requested not to take any action and agreed to pay the amount into the account of Nagamani. Accordingly, the petitioner himself filled the credit challan and deposited the amount. The credit challan filled by the petitioner in his own handwriting for remitting a sum of Rs.10,000/- to the account of the customer was marked as Ex.M5. It is further submitted that the Labour Court considered the case in a proper manner and given cogent reasons for dismissing the claim petition.

8. With regard to the alleged delay, as referred to by the petitioner, the complaint made at Branch level was on 25.11.2008 and it came to the knowledge of the Zonal Office by anonymous letter sent on 18.03.2009 and the matter was administratively processed at various levels and on account of which there was a delay of four months in issuing charge sheet and this delay will not wipeout the serious misconduct committed by the petitioner and that cannot be a reason to set aside the Award passed by the Labour Court. It is further submitted that non-examination of the complainant is not fatal and the findings were on the basis of the oral evidences of M.W.1 and M.W.2. It is further submitted that during the course of domestic enquiry, the petitioner denied of having remitted Rs.10,000/- to the savings account of Nagamani and stated that the account-holder himself had remitted the amount and he only extended a helping hand in filling up the

challan. It is further submitted that if that was the case, then there is no reason for Nagamani, who had lodged the complaint on 26.11.2008. Further, it is submitted that the punishment was imposed taking into consideration the entire facts as well as the past conduct of the petitioner and the Labour Court examined the correctness of the procedure adopted and rejected the claim petition and the scope of the judicial review in such matters is limited and ordinarily this Court will not interfere with the Award passed by the Labour Court unless there is an error apparent on the face of the record. On the admitted facts, the petitioner has been found guilty and the evidence available has been scrutinized by the Labour Court and as such there is no error in the Award passed.

9. Heard Mr.V.Raghavachari, learned counsel for the petitioner and Mrs.Rita Chandrasekar, learned counsel for the respondent Bank and perused the materials placed on record including the rerecords called for from the Labour Court.

10. Before examining the correctness and propriety of the findings recorded by the Labour Court, it would be first necessary to take note of the scope of interference with the Awards of the Labour Court or Industrial Tribunal in a petition filed under Article 226 of the Constitution of India. This aspect has also to be examined from another point of view with regard

to the proportionality of the punishment imposed on the petitioner.

11. The Honourble Supreme Court in ***Amrit Vanaspati Co. Ltd. vs., Khem Chand***, reported in **(2006) 6 SCC 325**, while examining the correctness of the order passed by the High Court of Judicature at Allahabad allowing the writ petition filed by the respondent therein and thereby interfering with the punishment imposed on the employee, among other issues, considered the power of the Tribunal in adjudicating the dispute relating to dismissal of discharge. The Honourable Supreme Court took note of the decision in the case of ***Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd.***, reported in (1973) 1 SCC 813, held that the High Court, while exercising powers under writ jurisdiction, cannot interfere with the factual findings of the Labour Court, which are based on the appreciation of facts adduced before it by leading evidence.

12. In ***Nelton India vs. Bipin V.Patel***, reported in **(2006) 9 SCC 192**, while considering the Judgment of the Division Bench of the High Court, confirming the Order passed by the Labour Court, with regard to the pay and allowances of the employee, it was pointed out that the High Court should not interfere with such an order of the Labour Court unless it were of the opinion that the conclusion of the Labour Court was so perverse that it could not be reasonably supported.

13. In ***Madurantakam Coop. Sugar Mills Ltd. v. S.Viswanathan***,

reported in **(2005) 3 SCC 193**, the Honourable Supreme Court held that normally the Labour Court or the Industrial Tribunal, as the case may be, is the final Court of facts, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution of India can go into the question of facts decided by the Labour Court or the Tribunal. But before going into such an exercise, it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court, the writ Court will not enter into the realm of factual disputes and findings given thereon. On considering the order impugned in the said appeal, the Honourable Supreme Court pointed out that the order of the High Court nowhere shows that the Court came to a conclusion that the findings of the Labour Court was either perverse or based on evidence, which is not legally acceptable. Commenting on the order of the High Court it was held that the High Court proceeded as if sitting in a Court of appeal on facts and item after item of evidence recorded in domestic enquiry as well as before the Labour Court.

14. Bearing the above legal principles on mind, this Court proceeds to examine the impugned Award.

15. Admittedly, the petitioner has not been able to point out as to whether there was any gross procedural error committed by the Labour Court nor the petitioner has been able to successfully point out as to

whether there is any perversity in the approach of the Labour Court or it was a case of no evidence. The only contention, which was stressed by the learned counsel, during the course of argument, is that when pay-in-slip (Ex.M26) has been produced, the question of holding the petitioner guilty does not arise. There is no challenge to the manner in which the domestic enquiry was conducted. Infact, the documents, which were exhibited before the Labour Court, were marked by consent. Admittedly, the petitioner did not canvass such a contention before the Labour Court. In any event, Ex.M26 is a pay-in-slip signed by the account-holder Nagamani for depositing a sum of Rs.20,000/- in his Bank account on 05.11.2008. The charge pertains to the unauthorized withdrawal of Rs.10,000/- on the same day (05.11.2008). Therefore, the fact that the amount of Rs.20,000/- was deposited in the customer's account is an admitted fact and was never under dispute. Therefore, the contention raised by the petitioner that Ex.M26 was not considered by the Labour Court cannot be a ground to interfere with the impugned Award, this is moreso because the documents were marked with consent and no such ground was raised by the petitioner, even in the rejoinder statement filed to the counter statement filed by the respondent Bank before the Labour Court. The documents, which were marked on the side of the Management, were through G.Rajendran, who worked as Senior Manager of the respondent Bank with additional charge as the Vigilance Officer and the Circle Officer at Dharmapuri and there was no cross-examination on the said aspect. Thus, in the absence of any perversity in the approach of the Labour Court and the contention now sought to be advanced in this writ petition for the first time and never raised before the

Labour Court cannot be a ground to set aside the impugned Award. As pointed out earlier, Ex.M26 is the pay-in-slip signed by the account-holder depositing a sum of Rs.20,000/- in his Bank account and whereas the charge was that the petitioner had withdrawn Rs.10,000/- from the said customer's account, which was unauthorized.

16. With regard to the proportionality of punishment, it would be beneficial to take note of the observations made by the Honourable Supreme Court in ***Coimbatore District Central Coop. Bank v. Employees Association***, reported in ***(2007) 4 SCC 669***, wherein the Honourable Supreme Court held that the constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix in each case; it cannot be put in a straightjacket formula; it must be considered keeping in view the doctrine of flexibility and before an action (order) is struck down the Court must be satisfied that a case has been made out for exercise of power of judicial review.

17. In the instant case, the Management has afforded full and effective opportunity to the petitioner during the domestic enquiry and the petitioner has not raised any plea of violation being committed in the domestic enquiry proceedings. The Management of the respondent Bank took note of the past conduct of the petitioner, who had been punished on earlier occasion and imposed punishment of dismissal.

18. Taking note of the fact that the petitioner was an employee of a Nationalized Bank and posted in a rural Branch and was a Single Window Operator, at any stretch of imagination can it be said that the punishment imposed on the petitioner is disproportionate. Hence, for all the above reasons, the petitioner has not made out any case for interference with the impugned Award.

19. In the result, the writ petition fails and it is dismissed. No costs.

04.05.2016

Internet : Yes / No

Index : Yes / No

Note to Office : Registry is directed to send back the records to the Labour Court.

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To:
The Central Government Industrial
Tribunal-cum-Labour Court,
Sastri Bhavan, Madras-600 006.

T.S.SIVAGNANAM, J.

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PRE-DELIVERY ORDER
IN
W.P.No.3894 of 2015

04.05.2016